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House Engrossed

State of Arizona
House of Representatives
Forty-seventh Legislature
First Regular Session
2005

HOUSE BILL 2522

AN ACT

AMENDING SECTIONS 13-702 AND 13-702.01, ARIZONA REVISED STATUTES; RELATING TO SENTENCING.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 13-702, Arizona Revised Statutes, is amended to
3 read:

4 13-702. Sentencing; definition

5 A. Sentences provided in section 13-701 for a first conviction of a
6 felony, except those felonies involving the discharge, use or threatening
7 exhibition of a deadly weapon or dangerous instrument or the intentional or
8 knowing infliction of serious physical injury upon another or if a specific
9 sentence is otherwise provided, may be increased or reduced by the court
10 within the ranges set by this subsection. Any reduction or increase shall be
11 based on the aggravating and mitigating circumstances contained in
12 subsections C and D of this section and shall be within the following ranges:

	<u>Minimum</u>	<u>Maximum</u>
13 1. For a class 2 felony	4 years	10 years
14 2. For a class 3 felony	2.5 years	7 years
15 3. For a class 4 felony	1.5 years	3 years
16 4. For a class 5 felony	9 months	2 years
17 5. For a class 6 felony	6 months	1.5 years

18 B. The upper or lower term imposed pursuant to section 13-604,
19 13-604.01, 13-604.02, 13-702.01 or 13-710 or subsection A of this section may
20 be imposed only if **ONE OR MORE OF** the circumstances alleged to be in
21 aggravation ~~or mitigation~~ of the crime are found to be true by the **TRIER OF**
22 **FACT BEYOND A REASONABLE DOUBT, OR IN MITIGATION OF THE CRIME ARE FOUND TO BE**
23 **TRUE BY THE** trial judge, on any evidence or information introduced or
24 submitted to the court **OR THE TRIER OF FACT** before sentencing or any evidence
25 ~~previously heard by the judge~~ **PRESENTED** at ~~the~~ trial, and factual findings
26 and reasons in support of such findings are set forth on the record at the
27 time of sentencing.

28 C. For the purpose of determining the sentence pursuant to section
29 13-710 and subsection A of this section, the ~~court~~ **TRIER OF FACT** shall
30 ~~consider~~ **DETERMINE AND THE COURT SHALL CONSIDER** the following aggravating
31 circumstances:

32 1. Infliction or threatened infliction of serious physical injury,
33 except if this circumstance is an essential element of the offense of
34 conviction or has been utilized to enhance the range of punishment under
35 section 13-604.

36 2. Use, threatened use or possession of a deadly weapon or dangerous
37 instrument during the commission of the crime, except if this circumstance is
38 an essential element of the offense of conviction or has been utilized to
39 enhance the range of punishment under section 13-604.

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

42 4. Presence of an accomplice.

43 5. Especially heinous, cruel or depraved manner in which the offense
44 was committed.
45

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

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

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

9 9. The VICTIM OR, IF THE VICTIM HAS DIED AS A RESULT OF THE CONDUCT OF
10 THE DEFENDANT, THE VICTIM'S IMMEDIATE FAMILY SUFFERED physical, emotional ~~and~~
11 OR financial harm ~~caused to the victim or, if the victim has died as a result~~
12 ~~of the conduct of the defendant, the emotional and financial harm caused to~~
13 ~~the victim's immediate family.~~

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

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

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

22 13. The victim of the offense is AT LEAST sixty-five ~~or more~~ years of
23 age or is a disabled person as defined by section 38-492.

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

27 15. Evidence that the defendant committed the crime out of malice
28 toward a victim because of the victim's identity in a group listed in section
29 41-1750, subsection A, paragraph 3 or because of the defendant's perception
30 of the victim's identity in a group listed in section 41-1750, subsection A,
31 paragraph 3.

32 16. The defendant was convicted of a violation of section 13-1102,
33 section 13-1103, section 13-1104, subsection A, paragraph 3 or section
34 13-1204, subsection A, paragraph 1 or 2 arising from an act that was
35 committed while driving a motor vehicle and the defendant's alcohol
36 concentration at the time of committing the offense was 0.15 or more. For
37 the purposes of this paragraph, "alcohol concentration" has the same meaning
38 prescribed in section 28-101.

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

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

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

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

3 21. Any other factor that the ~~court deems appropriate to the ends of~~
4 ~~justice~~ STATE ALLEGES IS RELEVANT TO THE DEFENDANT'S CHARACTER OR BACKGROUND
5 OR TO THE NATURE OR CIRCUMSTANCES OF THE CRIME.

6 D. For the purpose of determining the sentence pursuant to section
7 13-710 and subsection A of this section, the court shall consider the
8 following mitigating circumstances:

9 1. The age of the defendant.

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

14 3. The defendant was under unusual or substantial duress, although not
15 such as to constitute a defense to prosecution.

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

18 5. Any other factor that IS RELEVANT TO THE DEFENDANT'S CHARACTER OR
19 BACKGROUND OR TO THE NATURE OR CIRCUMSTANCES OF THE CRIME AND THAT the court
20 ~~deems appropriate to the ends of justice~~ FINDS TO BE MITIGATING.

21 IF THE TRIER OF FACT FINDS AT LEAST ONE AGGRAVATING CIRCUMSTANCE, THE TRIAL
22 COURT MAY FIND BY A PREPONDERANCE OF THE EVIDENCE ADDITIONAL AGGRAVATING
23 CIRCUMSTANCES. In determining what sentence to impose, the court shall take
24 into account the amount of aggravating circumstances and whether the amount
25 of mitigating circumstances is sufficiently substantial to call for the
26 lesser term. If the ~~court~~ TRIER OF FACT finds aggravating circumstances and
27 THE COURT does not find any mitigating circumstances, the court shall impose
28 an aggravated sentence.

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

32 F. Nothing in this section affects any provision of law that imposes
33 the death penalty, that expressly provides for imprisonment for life or that
34 authorizes or restricts the granting of probation and suspending the
35 execution of sentence.

36 G. Notwithstanding any other provision of this title, if a person is
37 convicted of any class 6 felony not involving the intentional or knowing
38 infliction of serious physical injury or the discharge, use or threatening
39 exhibition of a deadly weapon or dangerous instrument and if the court,
40 having regard to the nature and circumstances of the crime and to the history
41 and character of the defendant, is of the opinion that it would be unduly
42 harsh to sentence the defendant for a felony, the court may enter judgment of
43 conviction for a class 1 misdemeanor and make disposition accordingly or may
44 place the defendant on probation in accordance with chapter 9 of this title
45 and refrain from designating the offense as a felony or misdemeanor until the
46 probation is terminated. The offense shall be treated as a felony for all

1 purposes until such time as the court may actually enter an order designating
2 the offense a misdemeanor. This subsection does not apply to any person who
3 stands convicted of a class 6 felony and who has previously been convicted of
4 two or more felonies. If a crime or public offense is punishable in the
5 discretion of the court by a sentence as a class 6 felony or a class 1
6 misdemeanor, the offense shall be deemed a misdemeanor if the prosecuting
7 attorney:

8 1. Files an information in superior court designating the offense as a
9 misdemeanor.

10 2. Files a complaint in justice court or municipal court designating
11 the offense as a misdemeanor within the jurisdiction of the respective court.

12 3. Files a complaint, with the consent of the defendant, before or
13 during the preliminary hearing amending the complaint to charge a
14 misdemeanor.

15 H. FOR THE PURPOSES OF THIS SECTION, "TRIER OF FACT" MEANS A JURY,
16 UNLESS THE DEFENDANT AND THE STATE WAIVE A JURY IN WHICH CASE THE TRIER OF
17 FACT MEANS THE COURT.

18 Sec. 2. Section 13-702.01, Arizona Revised Statutes, is amended to
19 read:

20 13-702.01. Exceptional circumstances; aggravation; mitigation;
21 definition

22 A. Notwithstanding section 13-702, subsection A, if a person is
23 convicted of a felony without having previously been convicted of any felony
24 and if the ~~court~~ TRIER OF FACT finds BEYOND A REASONABLE DOUBT that at least
25 two ~~substantial~~ aggravating factors listed in section 13-702, subsection C
26 apply, the court may increase the maximum term of imprisonment otherwise
27 authorized for that offense up to the following maximum terms:

- | | | |
|----|-------------------------|------------|
| 28 | 1. For a class 2 felony | 12.5 years |
| 29 | 2. For a class 3 felony | 8.75 years |
| 30 | 3. For a class 4 felony | 3.75 years |
| 31 | 4. For a class 5 felony | 2.5 years |
| 32 | 5. For a class 6 felony | 2 years |

33 B. Notwithstanding section 13-702, subsection A, if a person is
34 convicted of a felony without having previously been convicted of any felony
35 and if the court finds that at least two ~~substantial~~ mitigating factors
36 listed in section 13-702, subsection D apply, the court may decrease the
37 minimum term of imprisonment otherwise authorized for that offense down to
38 the following minimum terms:

- | | | |
|----|-------------------------|----------|
| 39 | 1. For a class 2 felony | 3 years |
| 40 | 2. For a class 3 felony | 2 years |
| 41 | 3. For a class 4 felony | 1 year |
| 42 | 4. For a class 5 felony | 6 months |
| 43 | 5. For a class 6 felony | 4 months |

44 C. Notwithstanding section 13-604, subsection A or B, if a person is
45 convicted of a felony offense and has one historical prior felony conviction
46 and if the ~~court~~ TRIER OF FACT finds BEYOND A REASONABLE DOUBT that at least

1 two ~~substantial~~ aggravating factors listed in section 13-702, subsection C
2 apply, the court may increase the maximum term of imprisonment otherwise
3 authorized for that offense up to the following maximum terms:

- 4 1. Class 2 felony 23.25 years
- 5 2. Class 3 felony 16.25 years
- 6 3. Class 4 felony 7.5 years
- 7 4. Class 5 felony 3.75 years
- 8 5. Class 6 felony 2.75 years

9 D. Notwithstanding section 13-604, subsection A or B, if a person is
10 convicted of a felony offense and has one historical prior felony conviction
11 and if the court finds that at least two ~~substantial~~ mitigating factors
12 listed in section 13-702, subsection D apply, the court may decrease the
13 minimum term of imprisonment otherwise authorized for that offense down to
14 the following minimum terms:

- 15 1. Class 2 felony 4.5 years
- 16 2. Class 3 felony 3.5 years
- 17 3. Class 4 felony 2.25 years
- 18 4. Class 5 felony 1 year
- 19 5. Class 6 felony 9 months

20 E. Notwithstanding section 13-604, subsection C or D, if a person is
21 convicted of a felony offense and has two or more historical prior felony
22 convictions and if the ~~court~~ TRIER OF FACT finds BEYOND A REASONABLE DOUBT
23 that at least two ~~substantial~~ aggravating factors listed in section 13-702,
24 subsection C apply, the court may increase the maximum term of imprisonment
25 otherwise authorized for that offense up to the following maximum terms:

- 26 1. Class 2 felony 35 years
- 27 2. Class 3 felony 25 years
- 28 3. Class 4 felony 15 years
- 29 4. Class 5 felony 7.5 years
- 30 5. Class 6 felony 5.75 years

31 F. Notwithstanding section 13-604, subsection C or D, if a person is
32 convicted of a felony offense and has two or more historical prior felony
33 convictions and if the court finds that at least two ~~substantial~~ mitigating
34 factors listed in section 13-702, subsection D apply, the court may decrease
35 the minimum term of imprisonment otherwise authorized for that offense down
36 to the following minimum terms:

- 37 1. Class 2 felony 10.5 years
- 38 2. Class 3 felony 7.5 years
- 39 3. Class 4 felony 6 years
- 40 4. Class 5 felony 3 years
- 41 5. Class 6 felony 2.25 years

42 G. The upper or lower term imposed pursuant to this section may be
43 imposed only if AT LEAST TWO OF the AGGRAVATING circumstances ~~alleged to be~~
44 ~~in aggravation or mitigation of the crime~~ are found BEYOND A REASONABLE DOUBT
45 to be true by the TRIER OF FACT, OR IN MITIGATION OF THE CRIME ARE FOUND TO
46 BE TRUE BY THE trial judge, on any evidence or information introduced or

1 submitted to the court OR THE TRIER OF FACT before sentencing or any evidence
2 ~~previously heard by the judge~~ PRESENTED at ~~the~~ trial, and factual findings
3 and reasons in support of these findings are set forth on the record at the
4 time of sentencing.

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

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

12 J. FOR THE PURPOSES OF THIS SECTION, "TRIER OF FACT" MEANS A JURY,
13 UNLESS THE DEFENDANT AND THE STATE WAIVE A JURY IN WHICH CASE THE TRIER OF
14 FACT MEANS THE COURT.