

State of Arizona  
House of Representatives  
Forty-ninth Legislature  
First Regular Session  
2009

# HOUSE BILL 2315

AN ACT

AMENDING SECTIONS 8-238 AND 8-350, ARIZONA REVISED STATUTES; CHANGING THE DESIGNATION OF TITLE 13, CHAPTER 7, ARIZONA REVISED STATUTES, TO "SENTENCING AND IMPRISONMENT"; AMENDING SECTIONS 13-704, 13-708, 13-709.03, 13-710, 13-3419 AND 13-4515, 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 8-238, Arizona Revised Statutes, is amended to  
3 read:

4 8-238. Advisory hearing; DNA

5 A. If a juvenile is arrested for a violation of any of the following  
6 offenses and is summoned to appear at an advisory hearing, the judicial  
7 officer shall order the juvenile to report within five days to the law  
8 enforcement agency that arrested the ~~person~~ JUVENILE or to the agency's  
9 designee and submit a sufficient sample of buccal cells or other bodily  
10 substances for deoxyribonucleic acid testing and extraction:

11 1. An offense listed in title 13, chapter 11.

12 2. A violation of section 13-1402, 13-1403, 13-1404, 13-1405, 13-1406,  
13 13-1410, 13-1411 or 13-1417.

14 3. A violation of section 13-1507 or 13-1508.

15 4. A violation of any serious offense ~~pursuant to section 13-604~~  
16 ~~involving the discharge, use or threatening exhibition of a deadly weapon or~~  
17 ~~dangerous instrument or the intentional or knowing infliction of serious~~  
18 ~~physical injury~~ AS DEFINED IN SECTION 13-706 THAT IS A DANGEROUS OFFENSE AS  
19 DEFINED IN SECTION 13-105.

20 B. If a ~~person~~ JUVENILE does not comply with an order issued pursuant  
21 to subsection A of this section, the court shall revoke the ~~person's~~  
22 JUVENILE'S release.

23 Sec. 2. Section 8-350, Arizona Revised Statutes, is amended to read:

24 8-350. Dangerous offenders; sex offenders; notification to  
25 schools; definition

26 A. If a juvenile is adjudicated delinquent for or convicted of a  
27 dangerous offense or a violation of section 13-1405, 13-1406, 13-1410 or  
28 13-1417 and the juvenile is placed on probation and is attending school, the  
29 court shall notify the elementary or high school district in which the  
30 juvenile resides that the juvenile has been adjudicated delinquent or  
31 convicted and is on probation. The elementary or high school district shall  
32 transmit this notice to the school that the ~~person~~ JUVENILE attends.

33 B. Elementary or high school districts and local elementary and high  
34 schools through the local school district may request from the court the  
35 criminal history of individual students to determine if a student has been  
36 adjudicated delinquent for or convicted of a dangerous offense or a violation  
37 of section 13-1405, 13-1406, 13-1410 or 13-1417.

38 C. The school that the ~~person~~ JUVENILE attends shall make the  
39 information it receives pursuant to this section available to teachers,  
40 parents, guardians or custodians on request.

41 D. For the purposes of this section, "dangerous offense" has the same  
42 meaning prescribed in section 13-105.

43 Sec. 3. Heading change

44 The chapter heading of title 13, chapter 7, Arizona Revised Statutes,  
45 is changed from "IMPRISONMENT" to "SENTENCING AND IMPRISONMENT".

1           Sec. 4. Section 13-704, Arizona Revised Statutes, is amended to read:  
2           13-704. Dangerous offenders: sentencing

3           A. Except as provided in section 13-705, a person who is at least  
4 eighteen years of age or who has been tried as an adult and who stands  
5 convicted of a felony that is a dangerous offense shall be sentenced to a  
6 term of imprisonment as follows:

<u>Felony</u>	<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>
7           Class 2	7 years	10.5 years	21 years
9           Class 3	5 years	7.5 years	15 years
10          Class 4	4 years	6 years	8 years
11          Class 5	2 years	3 years	4 years
12          Class 6	1.5 years	2.25 years	3 years

13          B. Except as provided in section 13-705, a person who is convicted of  
14 a class 4, 5 or 6 felony that is a dangerous offense and who has one  
15 historical prior felony conviction involving a dangerous offense shall be  
16 sentenced to a term of imprisonment as follows:

<u>Felony</u>	<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>
17          Class 4	8 years	10 years	12 years
19          Class 5	4 years	5 years	6 years
20          Class 6	3 years	3.75 years	4.5 years

21          C. Except as provided in section 13-705 or section 13-706, subsection  
22 A, a person who is convicted of a class 4, 5 or 6 felony that is a dangerous  
23 offense and who has two or more historical prior felony convictions involving  
24 dangerous offenses shall be sentenced to a term of imprisonment as follows:

<u>Felony</u>	<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>
25          Class 4	12 years	14 years	16 years
27          Class 5	6 years	7 years	8 years
28          Class 6	4.5 years	5.25 years	6 years

29          D. Except as provided in section 13-705 or section 13-706, subsection  
30 A, a person who is convicted of a class 2 or 3 felony involving a dangerous  
31 offense and who has one historical prior felony conviction that is a class 1,  
32 2 or 3 felony involving a dangerous offense shall be sentenced to a term of  
33 imprisonment as follows:

<u>Felony</u>	<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>
34          Class 2	14 years	15.75 years	28 years
36          Class 3	10 years	11.25 years	20 years

37          E. Except as provided in section 13-705 or section 13-706, subsection  
38 A, a person who is convicted of a class 2 or 3 felony involving a dangerous  
39 offense and who has two or more historical prior felony convictions that are  
40 class 1, 2 or 3 felonies involving dangerous offenses shall be sentenced to a  
41 term of imprisonment as follows:

<u>Felony</u>	<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>
42          Class 2	21 years	28 years	35 years
44          Class 3	15 years	20 years	25 years

1 F. A person who is convicted of two or more felony offenses that are  
 2 dangerous offenses and that were not committed on the same occasion but that  
 3 are consolidated for trial purposes or that are not historical prior felony  
 4 convictions shall be sentenced, for the second or subsequent offense,  
 5 pursuant to this subsection. FOR A PERSON SENTENCED PURSUANT TO THIS  
 6 SUBSECTION, THE MINIMUM TERM PRESCRIBED SHALL BE THE PRESUMPTIVE TERM. If  
 7 the court increases or decreases a sentence pursuant to this subsection, the  
 8 court shall state on the record the reasons for the increase or decrease.  
 9 The court shall inform all of the parties before the sentencing occurs of its  
 10 intent to increase or decrease a sentence pursuant to this subsection. If  
 11 the court fails to inform the parties, a party waives its right to be  
 12 informed unless the party timely objects at the time of sentencing. The  
 13 terms are as follows:

14 1. For the second dangerous offense:

				<u>Increased</u>
	<u>Felony</u>	<u>Minimum</u>	<u>Maximum</u>	<u>Maximum</u>
15				
16	Class 2	10.5 years	21 years	26.25 years
17	Class 3	7.5 years	15 years	18.75 years
18	Class 4	6 years	8 years	10 years
19	Class 5	3 years	4 years	5 years
20	Class 6	2.25 years	3 years	3.75 years

21  
 22 2. For any dangerous offense subsequent to the second dangerous felony  
 23 offense:

				<u>Increased</u>
	<u>Felony</u>	<u>Minimum</u>	<u>Maximum</u>	<u>Maximum</u>
24				
25	Class 2	15.75 years	28 years	35 years
26	Class 3	11.25 years	20 years	25 years
27	Class 4	10 years	12 years	15 years
28	Class 5	5 years	6 years	7.5 years
29	Class 6	3.75 years	4.5 years	5.6 years

30  
 31 G. A person who is sentenced pursuant to subsection A, B, C, D, E or F  
 32 of this section is not eligible for suspension of sentence, probation, pardon  
 33 or release from confinement on any basis, except as specifically authorized  
 34 by section 31-233, subsection A or B, until the sentence imposed by the court  
 35 has been served, the person is eligible for release pursuant to section  
 36 41-1604.07 or the sentence is commuted.

37 H. The presumptive term authorized by this section may be mitigated or  
 38 aggravated pursuant to the terms of section 13-701, subsections C, D ~~or~~  
 39 AND E.

40 I. For the purposes of determining the applicability of the penalties  
 41 provided in subsection A, ~~B, C,~~ D or E of this section for second or  
 42 subsequent class 2 or 3 felonies, the conviction for any felony committed  
 43 before October 1, 1978 that, if committed after October 1, 1978, could be a  
 44 dangerous offense under subsection A, ~~B, C,~~ D or E of this section may be  
 45 designated by the state as a prior felony.

1 J. Convictions for two or more offenses committed on the same occasion  
2 shall be counted as only one conviction for the purposes of subsection A, B,  
3 C, D or E of this section.

4 K. A person who has been convicted in any court outside the  
5 jurisdiction of this state of an offense that if committed in this state  
6 would be punishable as a felony is subject to subsection A, B, C, D or E of  
7 this section. A person who has been convicted of an offense punishable as a  
8 felony under the provisions of any prior code in this state is subject to  
9 subsection A, B, C, D or E of this section.

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

31 M. Except as provided in section 13-705 or 13-751, if the victim is an  
32 unborn child in the womb at any stage of its development, the defendant shall  
33 be sentenced pursuant to this section.

34 Sec. 5. Section 13-708, Arizona Revised Statutes, is amended to read:

35 13-708. Offenses committed while released from confinement

36 A. A person who is convicted of any felony involving a dangerous  
37 offense that is committed while the person is on probation, ~~or~~ for a conviction  
38 of a felony offense or parole, work furlough, community supervision or any  
39 other release or has escaped from confinement for conviction of a felony  
40 offense shall be sentenced to imprisonment for not less than the presumptive  
41 sentence authorized under this chapter and is not eligible for suspension or  
42 commutation or release on any basis until the sentence imposed is served.

43 B. A person who is convicted of a dangerous offense that is committed  
44 while the person is on release or has escaped from confinement for a  
45 conviction of a serious offense as defined in section 13-706, an offense

1 resulting in serious physical injury or an offense involving the use or  
2 exhibition of a deadly weapon or dangerous instrument shall be sentenced to  
3 the maximum sentence authorized under this chapter and is not eligible for  
4 suspension or commutation or release on any basis until the sentence imposed  
5 is served. If the court finds that at least two substantial aggravating  
6 circumstances listed in section 13-701, subsection D apply, the court may  
7 increase the maximum sentence authorized under this chapter by up to  
8 twenty-five per cent. A sentence imposed pursuant to this subsection shall  
9 revoke the convicted person's release if the person was on release and shall  
10 be consecutive to any other sentence from which the convicted person had been  
11 temporarily released or had escaped, unless the sentence from which the  
12 convicted person had been paroled or placed on probation was imposed by a  
13 jurisdiction other than this state.

14 C. A person who is convicted of any felony offense that is not  
15 included in subsection A or B of this section and that is committed while the  
16 person is on probation for a conviction of a felony offense or parole, work  
17 furlough, community supervision or any other release or escape from  
18 confinement for conviction of a felony offense shall be sentenced to a term  
19 of not less than the presumptive sentence authorized for the offense and the  
20 person is not eligible for suspension of sentence, probation, pardon or  
21 release from confinement on any basis except as specifically authorized by  
22 section 31-233, subsection A or B until the sentence imposed by the court has  
23 been served, the person is eligible for release pursuant to section  
24 41-1604.07 or the sentence is commuted. The release provisions prescribed by  
25 this section shall not be substituted for any penalties required by the  
26 substantive offense or provision of law that specifies a later release or  
27 completion of the sentence imposed before release. A sentence imposed  
28 pursuant to this subsection shall revoke the convicted person's release if  
29 the person was on release and shall be consecutive to any other sentence from  
30 which the convicted person had been temporarily released or had escaped,  
31 unless the sentence from which the convicted person had been paroled or  
32 placed on probation was imposed by a jurisdiction other than this state. For  
33 the purposes of this subsection, "substantive offense" means the felony,  
34 misdemeanor or petty offense that the trier of fact found beyond a reasonable  
35 doubt the defendant committed. Substantive offense does not include  
36 allegations that, if proven, would enhance the sentence of imprisonment or  
37 fine to which the defendant would otherwise be subject.

38 D. A person who is convicted of committing any felony offense that is  
39 committed while the person is released on bond or on the person's own  
40 recognizance on a separate felony offense or while the person is escaped from  
41 preconviction custody for a separate felony offense shall be sentenced to a  
42 term of imprisonment two years longer than would otherwise be imposed for the  
43 felony offense committed while on release. The additional sentence imposed  
44 under this subsection is in addition to any enhanced punishment that may be  
45 applicable under section 13-703, section 13-704, section 13-709.01,

1 subsection A or section 13-709.02, subsection C. The person is not eligible  
 2 for suspension of sentence, probation, pardon or release from confinement on  
 3 any basis, except as specifically authorized by section 31-233, subsection A  
 4 or B, until the two years are served, the person is eligible for release  
 5 pursuant to section 41-1604.07 or the sentence is commuted. The penalties  
 6 prescribed by this subsection shall be substituted for the penalties  
 7 otherwise authorized by law if the allegation that the person committed a  
 8 felony while released on bond or on the person's own recognizance or while  
 9 escaped from preconviction custody is charged in the indictment or  
 10 information and admitted or found by the court. The release provisions  
 11 prescribed by this subsection shall not be substituted for any penalties  
 12 required by the substantive offense or provision of law that specifies a  
 13 later release or completion of the sentence imposed before release. The  
 14 court shall allow the allegation that the person committed a felony while  
 15 released on bond or on the person's own recognizance on a separate felony  
 16 offense or while escaped from preconviction custody on a separate felony  
 17 offense at any time before the case is actually tried unless the allegation  
 18 is filed fewer than twenty days before the case is actually tried and the  
 19 court finds on the record that the person was in fact prejudiced by the  
 20 untimely filing and states the reasons for these findings. The allegation  
 21 that the person committed a felony while released on bond or on the person's  
 22 own recognizance or while escaped from preconviction custody shall not be  
 23 read to the jury. For the purposes of this subsection, "substantive offense"  
 24 means the felony offense that the trier of fact found beyond a reasonable  
 25 doubt the person committed. Substantive offense does not include allegations  
 26 that, if proven, would enhance the sentence of imprisonment or fine to which  
 27 the person otherwise would be subject.

28 Sec. 6. Section 13-709.03, Arizona Revised Statutes, is amended to  
 29 read:

30 13-709.03. Special sentencing provisions; drug offenses

31 A. A person who is convicted of a violation of section 13-3407,  
 32 subsection A, paragraph 2, 3, 4 or 7 involving methamphetamine shall be  
 33 sentenced as follows:

<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>
5 CALENDAR years	10 CALENDAR years	15 CALENDAR years

36 B. A person who is convicted of a violation of section 13-3407,  
 37 subsection A, paragraph 2, 3, 4 or 7 involving methamphetamine and who has  
 38 previously been convicted of a violation of section 13-3407, subsection A,  
 39 paragraph 2, 3, 4 or 7 involving methamphetamine or section 13-3407.01 shall  
 40 be sentenced as follows:

<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>
10 CALENDAR years	15 CALENDAR years	20 CALENDAR years

41 C. The presumptive, minimum and maximum sentence for a violation of  
 42 section 13-3411, subsection A shall be increased by one year. A person is  
 43 not eligible for suspension of sentence, probation, pardon or release from  
 44  
 45

1 confinement on any basis except pursuant to section 31-233, subsection A or B  
2 until the sentence imposed by the court has been served or commuted. The  
3 additional sentence imposed under section 13-3411, subsection B is in  
4 addition to any enhanced punishment that may be applicable under section  
5 13-703, section 13-704, section 13-708, subsection D or any provision of  
6 chapter 34 of this title.

7 D. The presumptive term imposed pursuant to subsections A and B of  
8 this section may be mitigated or aggravated pursuant to section 13-701,  
9 subsections D and E.

10 Sec. 7. Section 13-710, Arizona Revised Statutes, is amended to read:

11 13-710. Sentence for second degree murder

12 A. Except as provided in section 13-705 or section 13-706, subsection  
13 A, a person who is convicted of second degree murder as defined by section  
14 13-1104 shall be sentenced as follows:

<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>
10 CALENDAR years	16 CALENDAR years	22 CALENDAR years

17 B. Except as provided in section 13-704 or section 13-706, subsection  
18 A, a person who is convicted of second degree murder as defined by section  
19 13-1104 and who has previously been convicted of second degree murder or a  
20 class 2 or 3 felony involving the use or exhibition of a deadly weapon or  
21 dangerous instrument or the intentional or knowing infliction of serious  
22 physical injury on another shall be sentenced as follows:

<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>
15 CALENDAR years	20 CALENDAR years	25 CALENDAR years

25 C. The presumptive term imposed pursuant to subsections A and B of  
26 this section may be mitigated or aggravated pursuant to section 13-701,  
27 subsections D and E.

28 Sec. 8. Section 13-3419, Arizona Revised Statutes, is amended to read:

29 13-3419. Multiple drug offenses not committed on the same  
30 occasion; sentencing

31 A. Except for a person convicted of possession offenses pursuant to  
32 section 13-3405, subsection A, paragraph 1, section 13-3407, subsection A,  
33 paragraph 1 or section 13-3408, subsection A, paragraph 1, a person who is  
34 convicted of two or more offenses under this chapter that were not committed  
35 on the same occasion but that either are consolidated for trial purposes or  
36 are not historical prior felony convictions shall be sentenced for the second  
37 or subsequent offense pursuant to this section. The person shall not be  
38 eligible for suspension of sentence, probation, pardon or release from  
39 confinement on any basis except as specifically authorized by section 31-233,  
40 subsection A or B until the sentence imposed by the court has been served,  
41 the person is eligible for release pursuant to section 41-1604.07 or the  
42 sentence is commuted, except that a person sentenced pursuant to paragraph 1  
43 of this subsection shall be eligible for probation. The presumptive term for  
44 paragraph 1, 2, 3 or 4 of this subsection may be aggravated ~~within the range~~  
45 under this section pursuant to section 13-701, subsections C and D. The

1 presumptive term for paragraph 1, 2 or 3 of this subsection may be mitigated  
2 within the range under this section pursuant to section 13-701, subsections C  
3 and E. The terms are as follows:

4 1. For two offenses for which the aggregate amount of drugs involved  
5 in one offense or both of the offenses is less than the statutory threshold  
6 amount for the second offense:

7 <u>Felony</u>	<u>MITIGATED</u>	<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>	<u>AGGRAVATED</u>
8 Class 2	3 YEARS	4 years	5 years	10 years	12.5 YEARS
9 Class 3	1.8 YEARS	2.5 years	3.5 years	7 years	8.7 YEARS
10 Class 4	1.1 YEARS	1.5 years	2.5 years	3 years	3.7 YEARS
11 Class 5	.5 YEARS	.75 years	1.5 years	2 years	2.5 YEARS

12 2. For three or more offenses for which the aggregate amount of drugs  
13 involved in one offense or all of the offenses is less than the statutory  
14 threshold amount for any offense subsequent to the second offense:

15 <u>Felony</u>	<u>MITIGATED</u>	<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>	<u>AGGRAVATED</u>
16 Class 2	3 YEARS	4 years	5 years	10 years	12.5 YEARS
17 Class 3	1.8 YEARS	2.5 years	3.5 years	7 years	8.7 YEARS
18 Class 4	1.1 YEARS	1.5 years	2.5 years	3 years	3.7 YEARS
19 Class 5	.5 YEARS	.75 years	1.5 years	2 years	2.5 YEARS

20 3. For two offenses for which the aggregate amount of drugs involved  
21 in one offense or all of the offenses equals or exceeds the statutory  
22 threshold amount for the second offense:

23 <u>Felony</u>	<u>MITIGATED</u>	<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>	<u>AGGRAVATED</u>
24 Class 2	3 YEARS	4 years	5 years	10 years	12.5 YEARS
25 Class 3	1.8 YEARS	2.5 years	3.5 years	7 years	8.7 YEARS
26 Class 4	1.1 YEARS	1.5 years	2.5 years	3 years	3.7 YEARS
27 Class 5	.5 YEARS	.75 years	1.5 years	2 years	2.5 YEARS

28 4. For three or more offenses for which the aggregate amount of drugs  
29 involved in one offense or all of the offenses equals or exceeds the  
30 statutory threshold amount for any offense subsequent to the second offense:

31 <u>Felony</u>	<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>	<u>AGGRAVATED</u>
32 Class 2	4 years	7 years	12 years	15 YEARS
33 Class 3	2.5 years	5 years	9 years	11.2 YEARS
34 Class 4	1.5 years	3 years	5 years	6.2 YEARS
35 Class 5	.75 years	2.5 years	4 years	5 YEARS

36 ~~B. For offenders who are sentenced pursuant to subsection A of this~~  
37 ~~section the court may increase the maximum sentence otherwise authorized by~~  
38 ~~up to twenty-five per cent.~~

39 ~~C. For offenders who are sentenced pursuant to subsection A, paragraph~~  
40 ~~1, 2 or 3 of this section the court may decrease the minimum sentence~~  
41 ~~otherwise authorized by up to twenty-five per cent.~~

42 ~~D.~~ B. If the court increases or decreases a sentence pursuant to this  
43 section, the court shall state on the record the reasons for the increase or  
44 decrease.

