

State of Arizona  
House of Representatives  
Fiftieth Legislature  
Second Regular Session  
2012

# HOUSE BILL 2373

AN ACT

AMENDING SECTIONS 13-710 AND 13-751, ARIZONA REVISED STATUTES; AMENDING SECTION 13-752, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2008, CHAPTER 301, SECTION 39; AMENDING SECTION 13-752, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2008, CHAPTER 301, SECTION 40; RELATING TO SENTENCING; PROVIDING FOR CONDITIONAL ENACTMENT.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 13-710, Arizona Revised Statutes, is amended to  
3 read:

4 13-710. Sentence for second degree murder

5 A. Except as provided in section 13-705 or section 13-706, subsection  
6 A, a person who is convicted of second degree murder as defined by section  
7 13-1104 shall be sentenced as follows:

8	<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>
9	10 calendar years	16 calendar years	<del>22</del> 25 calendar years

10 B. Except as provided in section 13-704 or section 13-706, subsection  
11 A, a person who is convicted of second degree murder as defined by section  
12 13-1104 and who has previously been convicted of second degree murder or a  
13 class 2 or 3 felony involving the use or exhibition of a deadly weapon or  
14 dangerous instrument or the intentional or knowing infliction of serious  
15 physical injury on another shall be sentenced as follows:

16	<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>
17	15 calendar years	20 calendar years	<del>25</del> 29 calendar years

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

21 Sec. 2. Section 13-751, Arizona Revised Statutes, is amended to read:

22 13-751. Sentence of death or life imprisonment; aggravating and  
23 mitigating circumstances; definition

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

26 1. Convicted of first degree murder ~~as defined in~~ PURSUANT TO section  
27 13-1105, SUBSECTION A, PARAGRAPH 1 OR 3 AND WAS AT LEAST EIGHTEEN YEARS OF  
28 AGE AT THE TIME OF THE COMMISSION OF THE OFFENSE, the defendant shall be  
29 sentenced to death or imprisonment in the custody of the state department of  
30 corrections for ~~life or~~ natural life as determined and in accordance with the  
31 procedures provided in section 13-752. A defendant who is sentenced to  
32 natural life is not eligible for commutation, parole, work furlough, work  
33 release or release from confinement on any basis. ~~If the defendant is~~  
34 ~~sentenced to life, the defendant shall not be released on any basis until the~~  
35 ~~completion of the service of twenty-five calendar years if the murdered~~  
36 ~~person was fifteen or more years of age and thirty-five years if the murdered~~  
37 ~~person was under fifteen years of age or was an unborn child. In this~~  
38 ~~section, for purposes of punishment an unborn child shall be treated like a~~  
39 ~~minor who is under twelve years of age.~~

40 2. CONVICTED OF FIRST DEGREE MURDER PURSUANT TO SECTION 13-1105 AND  
41 WAS UNDER EIGHTEEN YEARS OF AGE AT THE TIME OF THE COMMISSION OF THE OFFENSE,  
42 THE DEFENDANT SHALL BE SENTENCED TO IMPRISONMENT IN THE CUSTODY OF THE STATE  
43 DEPARTMENT OF CORRECTIONS FOR LIFE OR NATURAL LIFE, AS DETERMINED AND IN  
44 ACCORDANCE WITH THE PROCEDURES PROVIDED IN SECTION 13-752. A DEFENDANT WHO  
45 IS SENTENCED TO NATURAL LIFE IS NOT ELIGIBLE FOR COMMUTATION, PAROLE, WORK

1 FURLOUGH, WORK RELEASE OR RELEASE FROM CONFINEMENT ON ANY BASIS. IF THE  
2 DEFENDANT IS SENTENCED TO LIFE, THE DEFENDANT SHALL NOT BE RELEASED ON ANY  
3 BASIS UNTIL THE COMPLETION OF THE SERVICE OF TWENTY-FIVE CALENDAR YEARS IF  
4 THE MURDERED PERSON WAS FIFTEEN OR MORE YEARS OF AGE AND THIRTY-FIVE YEARS IF  
5 THE MURDERED PERSON WAS UNDER FIFTEEN YEARS OF AGE OR WAS AN UNBORN CHILD.

6 3. CONVICTED OF FIRST DEGREE MURDER PURSUANT TO SECTION 13-1105,  
7 SUBSECTION A, PARAGRAPH 2, THE DEFENDANT SHALL BE SENTENCED TO DEATH OR  
8 IMPRISONMENT IN THE CUSTODY OF THE STATE DEPARTMENT OF CORRECTIONS FOR LIFE  
9 OR NATURAL LIFE AS DETERMINED AND IN ACCORDANCE WITH THE PROCEDURES PROVIDED  
10 IN SECTION 13-752. A DEFENDANT WHO IS SENTENCED TO NATURAL LIFE IS NOT  
11 ELIGIBLE FOR COMMUTATION, PAROLE, WORK FURLOUGH, WORK RELEASE OR RELEASE FROM  
12 CONFINEMENT ON ANY BASIS. IF THE DEFENDANT IS SENTENCED TO LIFE, THE  
13 DEFENDANT SHALL NOT BE RELEASED ON ANY BASIS UNTIL THE COMPLETION OF THE  
14 SERVICE OF TWENTY-FIVE CALENDAR YEARS IF THE MURDERED PERSON WAS FIFTEEN OR  
15 MORE YEARS OF AGE AND THIRTY-FIVE YEARS IF THE MURDERED PERSON WAS UNDER  
16 FIFTEEN YEARS OF AGE OR WAS AN UNBORN CHILD.

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

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

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

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

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

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

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

18 3. In the commission of the offense the defendant knowingly created a  
19 grave risk of death to another person or persons in addition to the person  
20 murdered during the commission of the offense.

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

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

25 6. The defendant committed the offense in an especially heinous, cruel  
26 or depraved manner.

27 7. The defendant committed the offense while:

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

31 (b) On probation for a felony offense.

32 8. The defendant has been convicted of one or more other homicides, as  
33 defined in section 13-1101, that were committed during the commission of the  
34 offense.

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

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

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

1           12. The defendant committed the offense to prevent a person's  
2 cooperation with an official law enforcement investigation, to prevent a  
3 person's testimony in a court proceeding, in retaliation for a person's  
4 cooperation with an official law enforcement investigation or in retaliation  
5 for a person's testimony in a court proceeding.

6           13. The offense was committed in a cold, calculated manner without  
7 pretense of moral or legal justification.

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

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

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

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

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

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

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

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

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

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

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

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

45           5. The defendant's age.

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

5 I. IN THIS SECTION, FOR PURPOSES OF PUNISHMENT AN UNBORN CHILD SHALL  
6 BE TREATED LIKE A MINOR WHO IS UNDER TWELVE YEARS OF AGE.

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

- 11 1. First degree murder.
- 12 2. Second degree murder.
- 13 3. Manslaughter.
- 14 4. Aggravated assault resulting in serious physical injury or  
15 committed by the use, threatened use or exhibition of a deadly weapon or  
16 dangerous instrument.
- 17 5. Sexual assault.
- 18 6. Any dangerous crime against children.
- 19 7. Arson of an occupied structure.
- 20 8. Robbery.
- 21 9. Burglary in the first degree.
- 22 10. Kidnapping.
- 23 11. Sexual conduct with a minor under fifteen years of age.
- 24 12. Burglary in the second degree.
- 25 13. Terrorism.

26 Sec. 3. Section 13-752, Arizona Revised Statutes, as amended by Laws  
27 2008, chapter 301, section 39, is amended to read:

28 13-752. Sentences of death, life imprisonment or natural life:  
29 imposition; sentencing proceedings; definitions

30 A. If the state has filed a notice of intent to seek the death penalty  
31 and the defendant is convicted of first degree murder, the trier of fact at  
32 the sentencing proceeding shall determine whether to impose a sentence of  
33 death in accordance with the procedures provided in this section. If the  
34 trier of fact determines that a sentence of death is not appropriate, or if  
35 the state has not filed a notice of intent to seek the death penalty, and the  
36 defendant is convicted of first degree murder PURSUANT TO SECTION 13-1105,  
37 SUBSECTION A, PARAGRAPH 1 OR 3 AND WAS AT LEAST EIGHTEEN YEARS OF AGE AT THE  
38 TIME OF THE COMMISSION OF THE OFFENSE, the court shall ~~determine whether to~~  
39 impose a sentence of ~~life or~~ natural life. IF THE DEFENDANT WAS UNDER  
40 EIGHTEEN YEARS OF AGE AT THE TIME OF THE COMMISSION OF THE OFFENSE OR IF THE  
41 DEFENDANT IS CONVICTED OF FIRST DEGREE MURDER PURSUANT TO SECTION 13-1105,  
42 SUBSECTION A, PARAGRAPH 2, THE COURT SHALL DETERMINE WHETHER TO IMPOSE A  
43 SENTENCE OF LIFE OR NATURAL LIFE.

44 B. Before trial, the prosecution shall notice one or more of the  
45 aggravating circumstances under section 13-751, subsection F.

1 C. If the trier of fact finds the defendant guilty of first degree  
2 murder, the trier of fact shall then immediately determine whether one or  
3 more alleged aggravating circumstances have been proven. This proceeding is  
4 the aggravation phase of the sentencing proceeding.

5 D. If the trier of fact finds that one or more of the alleged  
6 aggravating circumstances have been proven, the trier of fact shall then  
7 immediately determine whether the death penalty should be imposed. This  
8 proceeding is the penalty phase of the sentencing proceeding.

9 E. At the aggravation phase, the trier of fact shall make a special  
10 finding on whether each alleged aggravating circumstance has been proven  
11 based on the evidence that was presented at the trial or at the aggravation  
12 phase. If the trier of fact is a jury, a unanimous verdict is required to  
13 find that the aggravating circumstance has been proven. If the trier of fact  
14 unanimously finds that an aggravating circumstance has not been proven, the  
15 defendant is entitled to a special finding that the aggravating circumstance  
16 has not been proven. If the trier of fact unanimously finds no aggravating  
17 circumstances, the court shall then determine whether to impose a sentence of  
18 life or natural life on the defendant **PURSUANT TO SUBSECTION A OF THIS**  
19 **SECTION.**

20 F. The penalty phase shall be held immediately after the trier of fact  
21 finds at the aggravation phase that one or more of the aggravating  
22 circumstances under section 13-751, subsection F have been proven. A finding  
23 by the trier of fact that any of the remaining aggravating circumstances  
24 alleged has not been proven or the inability of the trier of fact to agree on  
25 the issue of whether any of the remaining aggravating circumstances alleged  
26 has been proven shall not prevent the holding of the penalty phase.

27 G. At the penalty phase, the defendant and the state may present any  
28 evidence that is relevant to the determination of whether there is mitigation  
29 that is sufficiently substantial to call for leniency. In order for the  
30 trier of fact to make this determination, **REGARDLESS OF WHETHER THE DEFENDANT**  
31 **PRESENTS EVIDENCE OF MITIGATION,** the state may present any evidence that  
32 demonstrates that the defendant should not be shown leniency **INCLUDING ANY**  
33 **EVIDENCE REGARDING THE DEFENDANT'S CHARACTER, PROPENSITIES, CRIMINAL RECORD**  
34 **OR OTHER ACTS.**

35 H. The trier of fact shall determine unanimously whether death is the  
36 appropriate sentence. If the trier of fact is a jury and the jury  
37 unanimously determines that the death penalty is not appropriate, the court  
38 shall determine whether to impose a sentence of life or natural life **PURSUANT**  
39 **TO SUBSECTION A OF THIS SECTION.**

40 I. If the trier of fact at any prior phase of the trial is the same  
41 trier of fact at the subsequent phase, any evidence that was presented at any  
42 prior phase of the trial shall be deemed admitted as evidence at any  
43 subsequent phase of the trial.

1 J. At the aggravation phase, if the trier of fact is a jury, the jury  
2 is unable to reach a verdict on any of the alleged aggravating circumstances  
3 and the jury has not found that at least one of the alleged aggravating  
4 circumstances has been proven, the court shall dismiss the jury and shall  
5 impanel a new jury. The new jury shall not retry the issue of the  
6 defendant's guilt or the issue regarding any of the aggravating circumstances  
7 that the first jury found not proved by unanimous verdict. If the new jury  
8 is unable to reach a unanimous verdict, the court shall impose a sentence of  
9 life or natural life on the defendant.

10 K. At the penalty phase, if the trier of fact is a jury and the jury  
11 is unable to reach a verdict, the court shall dismiss the jury and shall  
12 impanel a new jury. The new jury shall not retry the issue of the  
13 defendant's guilt or the issue regarding any of the aggravating circumstances  
14 that the first jury found by unanimous verdict to be proved or not proved.  
15 If the new jury is unable to reach a unanimous verdict, the court shall  
16 impose a sentence of life or natural life on the defendant.

17 L. If the jury that rendered a verdict of guilty is not the jury first  
18 impaneled for the aggravation phase, the jury impaneled in the aggravation  
19 phase shall not retry the issue of the defendant's guilt. If the jury  
20 impaneled in the aggravation phase is unable to reach a verdict on any of the  
21 alleged aggravating circumstances and the jury has not found that at least  
22 one of the alleged aggravating circumstances has been proven, the court shall  
23 dismiss the jury and shall impanel a new jury. The new jury shall not retry  
24 the issue of the defendant's guilt or the issue regarding any of the  
25 aggravating circumstances that the first jury found not proved by unanimous  
26 verdict. If the new jury is unable to reach a unanimous verdict, the court  
27 shall impose a sentence of life or natural life on the defendant.

28 M. Alternate jurors who are impaneled for the trial in a case in which  
29 the offense is punishable by death shall not be excused from the case until  
30 the completion of the sentencing proceeding.

31 N. If the sentence of a person who was sentenced to death is  
32 overturned, the person shall be resentenced pursuant to this section by a  
33 jury that is specifically impaneled for this purpose as if the original  
34 sentencing had not occurred.

35 O. In any case that requires sentencing or resentencing in which the  
36 defendant has been convicted of an offense that is punishable by death and in  
37 which the trier of fact was a judge or a jury that has since been discharged,  
38 the defendant shall be sentenced or resentenced pursuant to this section by a  
39 jury that is specifically impaneled for this purpose.

40 P. The trier of fact shall make all factual determinations required by  
41 this section or the Constitution of the United States or this state to impose  
42 a death sentence. If the defendant bears the burden of proof, the issue  
43 shall be determined in the penalty phase. If the state bears the burden of  
44 proof, the issue shall be determined in the aggravation phase.

1 Q. If the death penalty was not alleged or was alleged but not  
2 imposed, the court shall determine whether to impose a sentence of life or  
3 natural life **PURSUANT TO SUBSECTION A OF THIS SECTION**. In determining  
4 whether to impose a sentence of life or natural life, the court:

5 1. May consider any evidence introduced before sentencing or at any  
6 other sentencing proceeding.

7 2. Shall consider the aggravating and mitigating circumstances listed  
8 in section 13-701 and any statement made by a victim.

9 R. Subject to section 13-751, subsection B, a victim has the right to  
10 be present at the aggravation phase and to present any information that is  
11 relevant to the proceeding. A victim has the right to be present and to  
12 present information at the penalty phase. At the penalty phase, the victim  
13 may present information about the murdered person and the impact of the  
14 murder on the victim and other family members and may submit a victim impact  
15 statement in any format to the trier of fact.

16 S. For the purposes of this section:

17 1. "Trier of fact" means a jury unless the defendant and the state  
18 waive a jury, in which case the trier of fact shall be the court.

19 2. "Victim" means the murdered person's spouse, parent, child,  
20 grandparent or sibling, any other person related to the murdered person by  
21 consanguinity or affinity to the second degree or any other lawful  
22 representative of the murdered person, except if the spouse, parent, child,  
23 grandparent, sibling, other person related to the murdered person by  
24 consanguinity or affinity to the second degree or other lawful representative  
25 is in custody for an offense or is the accused.

26 Sec. 4. Section 13-752, Arizona Revised Statutes, as amended by Laws  
27 2008, chapter 301, section 40, is amended to read:

28 **13-752. Sentences of death, life imprisonment or natural life:**  
29 **imposition; sentencing proceedings; definitions**

30 A. If the state has filed a notice of intent to seek the death penalty  
31 and the defendant is convicted of first degree murder, the trier of fact at  
32 the sentencing proceeding shall determine whether to impose a sentence of  
33 death in accordance with the procedures provided in this section. If the  
34 trier of fact determines that a sentence of death is not appropriate, or if  
35 the state has not filed a notice of intent to seek the death penalty, and the  
36 defendant is convicted of first degree murder **PURSUANT TO SECTION 13-1105,**  
37 **SUBSECTION A, PARAGRAPH 1 OR 3 AND WAS AT LEAST EIGHTEEN YEARS OF AGE AT THE**  
38 **TIME OF THE COMMISSION OF THE OFFENSE**, the court shall ~~determine whether to~~  
39 impose a sentence of ~~life or~~ natural life. **IF THE DEFENDANT WAS UNDER**  
40 **EIGHTEEN YEARS OF AGE AT THE TIME OF THE COMMISSION OF THE OFFENSE OR IF THE**  
41 **DEFENDANT IS CONVICTED OF FIRST DEGREE MURDER PURSUANT TO SECTION 13-1105,**  
42 **SUBSECTION A, PARAGRAPH 2, THE COURT SHALL DETERMINE WHETHER TO IMPOSE A**  
43 **SENTENCE OF LIFE OR NATURAL LIFE.**

44 B. Before trial, the prosecution shall notice one or more of the  
45 aggravating circumstances under section 13-751, subsection F.

1 C. If the trier of fact finds the defendant guilty of first degree  
2 murder, the trier of fact shall then immediately determine whether one or  
3 more alleged aggravating circumstances have been proven. This proceeding is  
4 the aggravation phase of the sentencing proceeding.

5 D. If the trier of fact finds that one or more of the alleged  
6 aggravating circumstances have been proven, the trier of fact shall then  
7 immediately determine whether the death penalty should be imposed. This  
8 proceeding is the penalty phase of the sentencing proceeding.

9 E. At the aggravation phase, the trier of fact shall make a special  
10 finding on whether each alleged aggravating circumstance has been proven  
11 based on the evidence that was presented at the trial or at the aggravation  
12 phase. If the trier of fact is a jury, a unanimous verdict is required to  
13 find that the aggravating circumstance has been proven. If the trier of fact  
14 unanimously finds that an aggravating circumstance has not been proven, the  
15 defendant is entitled to a special finding that the aggravating circumstance  
16 has not been proven. If the trier of fact unanimously finds no aggravating  
17 circumstances, the court shall then determine whether to impose a sentence of  
18 life or natural life on the defendant **PURSUANT TO SUBSECTION A OF THIS**  
19 **SECTION.**

20 F. The penalty phase shall be held immediately after the trier of fact  
21 finds at the aggravation phase that one or more of the aggravating  
22 circumstances under section 13-751, subsection F have been proven. A finding  
23 by the trier of fact that any of the remaining aggravating circumstances  
24 alleged has not been proven or the inability of the trier of fact to agree on  
25 the issue of whether any of the remaining aggravating circumstances alleged  
26 has been proven shall not prevent the holding of the penalty phase.

27 G. At the penalty phase, the defendant and the state may present any  
28 evidence that is relevant to the determination of whether there is mitigation  
29 that is sufficiently substantial to call for leniency. In order for the  
30 trier of fact to make this determination, **REGARDLESS OF WHETHER THE DEFENDANT**  
31 **PRESENTS EVIDENCE OF MITIGATION,** the state may present any evidence that  
32 demonstrates that the defendant should not be shown leniency **INCLUDING ANY**  
33 **EVIDENCE REGARDING THE DEFENDANT'S CHARACTER, PROPENSITIES, CRIMINAL RECORD**  
34 **OR OTHER ACTS.**

35 H. The trier of fact shall determine unanimously whether death is the  
36 appropriate sentence. If the trier of fact is a jury and the jury  
37 unanimously determines that the death penalty is not appropriate, the court  
38 shall determine whether to impose a sentence of life or natural life **PURSUANT**  
39 **TO SUBSECTION A OF THIS SECTION.**

40 I. If the trier of fact at any prior phase of the trial is the same  
41 trier of fact at the subsequent phase, any evidence that was presented at any  
42 prior phase of the trial shall be deemed admitted as evidence at any  
43 subsequent phase of the trial.

1 J. At the aggravation phase, if the trier of fact is a jury, the jury  
2 is unable to reach a verdict on any of the alleged aggravating circumstances  
3 and the jury has not found that at least one of the alleged aggravating  
4 circumstances has been proven, the court shall dismiss the jury and shall  
5 impanel a new jury. The new jury shall not retry the issue of the  
6 defendant's guilt or the issue regarding any of the aggravating circumstances  
7 that the first jury found not proved by unanimous verdict. If the new jury  
8 is unable to reach a unanimous verdict, the court shall impose a sentence of  
9 life or natural life on the defendant.

10 K. At the penalty phase, if the trier of fact is a jury and the jury  
11 is unable to reach a verdict, the court shall dismiss the jury and shall  
12 impanel a new jury. The new jury shall not retry the issue of the  
13 defendant's guilt or the issue regarding any of the aggravating circumstances  
14 that the first jury found by unanimous verdict to be proved or not proved.  
15 If the new jury is unable to reach a unanimous verdict, the court shall  
16 impose a sentence of life or natural life on the defendant.

17 L. If the jury that rendered a verdict of guilty is not the jury first  
18 impaneled for the aggravation phase, the jury impaneled in the aggravation  
19 phase shall not retry the issue of the defendant's guilt. If the jury  
20 impaneled in the aggravation phase is unable to reach a verdict on any of the  
21 alleged aggravating circumstances and the jury has not found that at least  
22 one of the alleged aggravating circumstances has been proven, the court shall  
23 dismiss the jury and shall impanel a new jury. The new jury shall not retry  
24 the issue of the defendant's guilt or the issue regarding any of the  
25 aggravating circumstances that the first jury found not proved by unanimous  
26 verdict. If the new jury is unable to reach a unanimous verdict, the court  
27 shall impose a sentence of life or natural life on the defendant.

28 M. Alternate jurors who are impaneled for the trial in a case in which  
29 the offense is punishable by death shall not be excused from the case until  
30 the completion of the sentencing proceeding.

31 N. If the sentence of a person who was sentenced to death is  
32 overturned, the person shall be resentenced pursuant to this section by a  
33 jury that is specifically impaneled for this purpose as if the original  
34 sentencing had not occurred.

35 O. In any case that requires sentencing or resentencing in which the  
36 defendant has been convicted of an offense that is punishable by death and in  
37 which the trier of fact was a judge or a jury that has since been discharged,  
38 the defendant shall be sentenced or resentenced pursuant to this section by a  
39 jury that is specifically impaneled for this purpose.

40 P. The trier of fact shall make all factual determinations required by  
41 this section or the Constitution of the United States or this state to impose  
42 a death sentence. If the defendant bears the burden of proof, the issue  
43 shall be determined in the penalty phase. If the state bears the burden of  
44 proof, the issue shall be determined in the aggravation phase.

1 Q. If the death penalty was not alleged or was alleged but not  
2 imposed, the court shall determine whether to impose a sentence of life or  
3 natural life **PURSUANT TO SUBSECTION A OF THIS SECTION**. In determining  
4 whether to impose a sentence of life or natural life, the court:

5 1. May consider any evidence introduced before sentencing or at any  
6 other sentencing proceeding.

7 2. Shall consider the aggravating and mitigating circumstances listed  
8 in section 13-701 and any statement made by a victim.

9 R. Subject to section 13-751, subsection B, a victim has the right to  
10 be present at the aggravation phase and to present any information that is  
11 relevant to the proceeding. A victim has the right to be present at the  
12 penalty phase. At the penalty phase, the victim has the right to be heard  
13 pursuant to section 13-4426.

14 S. For the purposes of this section:

15 1. "Trier of fact" means a jury unless the defendant and the state  
16 waive a jury, in which case the trier of fact shall be the court.

17 2. "Victim" means the murdered person's spouse, parent, child,  
18 grandparent or sibling, any other person related to the murdered person by  
19 consanguinity or affinity to the second degree or any other lawful  
20 representative of the murdered person, except if the spouse, parent, child,  
21 grandparent, sibling, other person related to the murdered person by  
22 consanguinity or affinity to the second degree or other lawful representative  
23 is in custody for an offense or is the accused.

24 Sec. 5. Conditional enactment

25 Section 13-752, Arizona Revised Statutes, as amended by Laws 2008,  
26 chapter 301, section 40 and this act, does not take effect unless the  
27 condition prescribed by Laws 2003, chapter 255, section 8, as amended by Laws  
28 2008, chapter 301, section 118, relating to victim sentencing  
29 recommendations, is met.