

REFERENCE TITLE: **criminal offenses; sentencing**

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

HB 2382

Introduced by
Representative Farnsworth

AN ACT

**AMENDING SECTIONS 12-123, 13-703 AND 13-708, ARIZONA REVISED STATUTES;
RENUMBERING SECTIONS 13-709.02 AND 13-709.06, ARIZONA REVISED STATUTES, AS
SECTIONS 13-714 AND 13-715, RESPECTIVELY; TRANSFERRING AND RENUMBERING
SECTION 13-824, ARIZONA REVISED STATUTES, FOR PLACEMENT IN TITLE 12, CHAPTER
1, ARTICLE 1, ARIZONA REVISED STATUTES, AS SECTION 12-116.07; RELATING TO
CRIMINAL OFFENSES.**

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 12-123, Arizona Revised Statutes, is amended to
3 read:

4 12-123. Jurisdiction and powers

5 A. The superior court shall have original and concurrent jurisdiction
6 as conferred by the constitution, and concurrent jurisdiction with justices
7 of the peace of misdemeanors where the penalty does not exceed a fine of ~~one~~
8 TWO thousand FIVE HUNDRED dollars or imprisonment for six months.

9 B. The court, and the judges thereof, shall have all powers and may
10 issue all writs necessary to the complete exercise of its jurisdiction.

11 Sec. 2. Section 13-703, Arizona Revised Statutes, is amended to read:

12 13-703. Repetitive offenders; sentencing

13 A. A person shall be sentenced as a category one repetitive offender
14 if the person is convicted of two felony offenses that were not committed on
15 the same occasion but that either are consolidated for trial purposes or are
16 not historical prior felony convictions.

17 B. A person shall be sentenced as a category two repetitive offender
18 if the person either:

19 1. Is convicted of three or more felony offenses that were not
20 committed on the same occasion but that either are consolidated for trial
21 purposes or are not historical prior felony convictions.

22 2. Except as provided in section 13-704 or 13-705, is at least
23 eighteen years of age or has been tried as an adult and stands convicted of a
24 felony and has one historical prior felony conviction.

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

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

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

38 F. If a person is sentenced as a category two repetitive offender
39 pursuant to subsection B, paragraph 2 of this section and if at least two
40 aggravating circumstances listed in section 13-701, subsection D apply or at
41 least two mitigating circumstances listed in section 13-701, subsection E
42 apply, the court may impose a mitigated or aggravated sentence pursuant to
43 subsection I of this section.

44 G. If a person is sentenced as a category three repetitive offender
45 pursuant to subsection C of this section and at least two aggravating

1 circumstances listed in section 13-701, subsection D or at least two
 2 mitigating circumstances listed in section 13-701, subsection E apply, the
 3 court may impose a mitigated or aggravated sentence pursuant to subsection J
 4 of this section.

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

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 2 years	2.5 years	3.5 years	7 years	8.75 years
10 Class 4	1.1 years 1 YEAR	1.5 years	2.5 years	3 years	3.75 years
11					
12 Class 5	.5 years	.75 years	1.5 years	2 years	2.5 years
13 Class 6	.3 years	.5 years	1 year	1.5 years	1.8 years

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

16 <u>Felony</u>	<u>Mitigated</u>	<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>	<u>Aggravated</u>
17 Class 2	4.5 years	6 years	9.25 years	18.5 years	23.1 23 years
18 Class 3	3.3 years	4.5 years	6.5 years	13 years	16.25 years
19 Class 4	2.25 years	3 years	4.5 years	6 years	7.5 years
20 Class 5	1 year	1.5 years	2.25 years	3 years	3.75 years
21 Class 6	.75 years	1 year	1.75 years	2.25 years	2.75 years

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

24 <u>Felony</u>	<u>Mitigated</u>	<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>	<u>Aggravated</u>
25 Class 2	10.5 years	14 years	15.75 years	28 years	35 years
26 Class 3	7.5 years	10 years	11.25 years	20 years	25 years
27 Class 4	6 years	8 years	10 years	12 years	15 years
28 Class 5	3 years	4 years	5 years	6 years	7.5 years
29 Class 6	2.25 years	3 years	3.75 years	4.5 years	5.75 years

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

40 L. Convictions for two or more offenses committed on the same occasion
 41 shall be counted as only one conviction for the purposes of subsection B,
 42 paragraph 2 and subsection C of this section.

43 M. For the purposes of subsection B, paragraph 2 and subsection C of
 44 this section, a person who has been convicted in any court outside the
 45 jurisdiction of this state of an offense that if committed in this state

1 would be punishable as a felony is subject to this section. A person who has
2 been convicted as an adult of an offense punishable as a felony under the
3 provisions of any prior code in this state is subject to this section.

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

23 O. A person who is sentenced pursuant to this section is not eligible
24 for suspension of sentence, probation, pardon or release from confinement on
25 any basis, except as specifically authorized by section 31-233, subsection A
26 or B, until the sentence imposed by the court has been served, the person is
27 eligible for release pursuant to section 41-1604.07 or the sentence is
28 commuted.

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

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

37 Sec. 3. Section 13-708, Arizona Revised Statutes, is amended to read:
38 13-708. Offenses committed while released from confinement

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

1 B. A person who is convicted of a dangerous offense that is committed
2 while the person is on release or has escaped from confinement for a
3 conviction of a serious offense as defined in section 13-706, an offense
4 resulting in serious physical injury or an offense involving the use or
5 exhibition of a deadly weapon or dangerous instrument shall be sentenced to
6 the maximum sentence authorized under this chapter and is not eligible for
7 suspension or commutation or release on any basis until the sentence imposed
8 is served. If the court finds that at least two substantial aggravating
9 circumstances listed in section 13-701, subsection D apply, the court may
10 increase the maximum sentence authorized under this chapter by up to
11 twenty-five per cent. A sentence imposed pursuant to this subsection shall
12 revoke the convicted person's release if the person was on release and shall
13 be consecutive to any other sentence from which the convicted person had been
14 temporarily released or had escaped, unless the sentence from which the
15 convicted person had been paroled or placed on probation was imposed by a
16 jurisdiction other than this state.

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

41 D. A person who is convicted of committing any felony offense that is
42 committed while the person is released on bond or on the person's own
43 recognizance on a separate felony offense or while the person is escaped from
44 preconviction custody for a separate felony offense shall be sentenced to a
45 term of imprisonment two years longer than would otherwise be imposed for the

1 felony offense committed while on release. The additional sentence imposed
 2 under this subsection is in addition to any enhanced punishment that may be
 3 applicable under section 13-703, section 13-704, section 13-1204, subsection
 4 C or section ~~13-709.02~~ 13-714. The person is not eligible for suspension of
 5 sentence, probation, pardon or release from confinement on any basis, except
 6 as specifically authorized by section 31-233, subsection A or B, until the
 7 two years are served, the person is eligible for release pursuant to section
 8 41-1604.07 or the sentence is commuted. The penalties prescribed by this
 9 subsection shall be substituted for the penalties otherwise authorized by law
 10 if the allegation that the person committed a felony while released on bond
 11 or on the person's own recognizance or while escaped from preconviction
 12 custody is charged in the indictment or information and admitted or found by
 13 the court. The release provisions prescribed by this subsection shall not be
 14 substituted for any penalties required by the substantive offense or
 15 provision of law that specifies a later release or completion of the sentence
 16 imposed before release. The court shall allow the allegation that the person
 17 committed a felony while released on bond or on the person's own recognizance
 18 on a separate felony offense or while escaped from preconviction custody on a
 19 separate felony offense at any time before the case is actually tried unless
 20 the allegation is filed fewer than twenty days before the case is actually
 21 tried and the court finds on the record that the person was in fact
 22 prejudiced by the untimely filing and states the reasons for these findings.
 23 The allegation that the person committed a felony while released on bond or
 24 on the person's own recognizance or while escaped from preconviction custody
 25 shall not be read to the jury. For the purposes of this subsection,
 26 "substantive offense" means the felony offense that the trier of fact found
 27 beyond a reasonable doubt the person committed. Substantive offense does not
 28 include allegations that, if proven, would enhance the sentence of
 29 imprisonment or fine to which the person otherwise would be subject.

30 Sec. 4. Renumber

31 Sections 13-709.02 and 13-709.06, Arizona Revised Statutes, are
 32 renumbered as sections 13-714 and 13-715, respectively.

33 Sec. 5. Transfer and renumber

34 Section 13-824, Arizona Revised Statutes, is transferred and renumbered
 35 for placement in title 12, chapter 1, article 1, Arizona Revised Statutes, as
 36 section 12-116.07.