

REFERENCE TITLE: **sentencing; probation**

State of Arizona
House of Representatives
Fifty-first Legislature
Second Regular Session
2014

HB 2307

Introduced by
Representative Pierce J

AN ACT

AMENDING SECTIONS 13-703 AND 13-704, 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 13-703, Arizona Revised Statutes, is amended to
3 read:

4 13-703. Repetitive offenders; sentencing

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

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

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

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

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

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

24 E. If a person is sentenced as a category one repetitive offender
25 pursuant to subsection A of this section and if at least two aggravating
26 circumstances listed in section 13-701, subsection D apply or at least two
27 mitigating circumstances listed in section 13-701, subsection E apply, the
28 court may impose a mitigated or aggravated sentence pursuant to subsection H
29 of this section.

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

36 G. If a person is sentenced as a category three repetitive offender
37 pursuant to subsection C of this section and at least two aggravating
38 circumstances listed in section 13-701, subsection D or at least two
39 mitigating circumstances listed in section 13-701, subsection E apply, the
40 court may impose a mitigated or aggravated sentence pursuant to subsection J
41 of this section.

1 H. A category one repetitive offender shall be sentenced within the
 2 following ranges:

3 <u>Felony</u>	<u>Mitigated</u>	<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>	<u>Aggravated</u>
4 Class 2	3 years	4 years	5 years	10 years	12.5 years
5 Class 3	2 years	2.5 years	3.5 years	7 years	8.75 years
6 Class 4	1 year	1.5 years	2.5 years	3 years	3.75 years
7 Class 5	.5 years	.75 years	1.5 years	2 years	2.5 years
8 Class 6	.25 years	.5 years	1 year	1.5 years	2 years

9 I. A category two repetitive offender shall be sentenced within the
 10 following ranges:

11 <u>Felony</u>	<u>Mitigated</u>	<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>	<u>Aggravated</u>
12 Class 2	4.5 years	6 years	9.25 years	18.5 years	23 years
13 Class 3	3.25 years	4.5 years	6.5 years	13 years	16.25 years
14 Class 4	2.25 years	3 years	4.5 years	6 years	7.5 years
15 Class 5	1 year	1.5 years	2.25 years	3 years	3.75 years
16 Class 6	.75 years	1 year	1.75 years	2.25 years	2.75 years

17 J. A category three repetitive offender shall be sentenced within the
 18 following ranges:

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

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

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

38 M. For the purposes of subsection B, paragraph 2 and subsection C of
 39 this section, a person who has been convicted in any court outside the
 40 jurisdiction of this state of an offense that was punishable by that
 41 jurisdiction as a felony is subject to this section. A person who has been
 42 convicted as an adult of an offense punishable as a felony under the
 43 provisions of any prior code in this state or the jurisdiction in which the
 44 offense was committed is subject to this section. A person who has been
 45 convicted of a felony weapons possession violation in any court outside the

1 jurisdiction of this state that would not be punishable as a felony under the
2 laws of this state is not subject to this section.

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

22 O. A person who is sentenced pursuant to this section is not eligible
23 for suspension of sentence, probation, pardon or release from confinement on
24 any basis, except as specifically authorized by section 31-233, subsection A
25 or B, until the sentence imposed by the court has been served, the person is
26 eligible for release pursuant to section 41-1604.07 or the sentence is
27 commuted, EXCEPT THAT, AT THE TIME OF SENTENCING, IF THE PRESENTENCE REPORT
28 INCLUDES A CLEAR AND COMPELLING RECOMMENDATION THAT THE PERSON IS SERIOUSLY
29 MENTALLY ILL OR HAS BEEN DIAGNOSED AND TREATED FOR OR HAS A HISTORY OF MENTAL
30 ILLNESS AND WOULD BENEFIT FROM SUPERVISED PROBATION THE COURT MAY SUSPEND THE
31 IMPOSITION OR EXECUTION OF SENTENCE AND PLACE THE PERSON ON SUPERVISED
32 PROBATION PURSUANT TO CHAPTER 9 OF THIS TITLE.

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

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

41 Sec. 2. Section 13-704, Arizona Revised Statutes, is amended to read:
42 13-704. Dangerous offenders; sentencing

43 A. Except as provided in section 13-705, a person who is at least
44 eighteen years of age or who has been tried as an adult and who stands

1 convicted of a felony that is a dangerous offense shall be sentenced to a
 2 term of imprisonment as follows:

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

8
 9 B. Except as provided in section 13-705, a person who is convicted of
 10 a class 4, 5 or 6 felony that is a dangerous offense and who has one
 11 historical prior felony conviction involving a dangerous offense shall be
 12 sentenced to a term of imprisonment as follows:

<u>Felony</u>	<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>
13 Class 4	8 years	10 years	12 years
14 Class 5	4 years	5 years	6 years
15 Class 6	3 years	3.75 years	4.5 years

16
 17 C. Except as provided in section 13-705 or section 13-706, subsection
 18 A, a person who is convicted of a class 4, 5 or 6 felony that is a dangerous
 19 offense and who has two or more historical prior felony convictions involving
 20 dangerous offenses shall be sentenced to a term of imprisonment as follows:

<u>Felony</u>	<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>
21 Class 4	12 years	14 years	16 years
22 Class 5	6 years	7 years	8 years
23 Class 6	4.5 years	5.25 years	6 years

24
 25 D. Except as provided in section 13-705 or section 13-706, subsection
 26 A, a person who is convicted of a class 2 or 3 felony involving a dangerous
 27 offense and who has one historical prior felony conviction that is a class 1,
 28 2 or 3 felony involving a dangerous offense shall be sentenced to a term of
 29 imprisonment as follows:

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

32
 33 E. Except as provided in section 13-705 or section 13-706, subsection
 34 A, a person who is convicted of a class 2 or 3 felony involving a dangerous
 35 offense and who has two or more historical prior felony convictions that are
 36 class 1, 2 or 3 felonies involving dangerous offenses shall be sentenced to a
 37 term of imprisonment as follows:

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

40
 41 F. A person who is convicted of two or more felony offenses that are
 42 dangerous offenses and that were not committed on the same occasion but that
 43 are consolidated for trial purposes or that are not historical prior felony
 44 convictions shall be sentenced, for the second or subsequent offense,
 45 pursuant to this subsection. For a person sentenced pursuant to this

1 subsection, the minimum term prescribed shall be the presumptive term. If
 2 the court increases or decreases a sentence pursuant to this subsection, the
 3 court shall state on the record the reasons for the increase or decrease.
 4 The court shall inform all of the parties before the sentencing occurs of its
 5 intent to increase or decrease a sentence pursuant to this subsection. If
 6 the court fails to inform the parties, a party waives its right to be
 7 informed unless the party timely objects at the time of sentencing. The
 8 terms are as follows:

9 1. For the second dangerous offense:

	<u>Felony</u>	<u>Minimum</u>	<u>Maximum</u>	<u>Increased Maximum</u>
10				
11				
12	Class 2	10.5 years	21 years	26.25 years
13	Class 3	7.5 years	15 years	18.75 years
14	Class 4	6 years	8 years	10 years
15	Class 5	3 years	4 years	5 years
16	Class 6	2.25 years	3 years	3.75 years

17 2. For any dangerous offense subsequent to the second dangerous felony
 18 offense:

	<u>Felony</u>	<u>Minimum</u>	<u>Maximum</u>	<u>Increased Maximum</u>
19				
20				
21	Class 2	15.75 years	28 years	35 years
22	Class 3	11.25 years	20 years	25 years
23	Class 4	10 years	12 years	15 years
24	Class 5	5 years	6 years	7.5 years
25	Class 6	3.75 years	4.5 years	5.6 years

26 G. A person who is sentenced pursuant to subsection A, B, C, D, E or F
 27 of this section is not eligible for suspension of sentence, probation, pardon
 28 or release from confinement on any basis, except as specifically authorized
 29 by section 31-233, subsection A or B, until the sentence imposed by the court
 30 has been served, the person is eligible for release pursuant to section
 31 41-1604.07 or the sentence is commuted, EXCEPT THAT AT THE TIME OF
 32 SENTENCING, IF THE PRESENTENCE REPORT INCLUDES A CLEAR AND COMPELLING
 33 RECOMMENDATION THAT THE PERSON IS NOT A RISK, IS SERIOUSLY MENTALLY ILL OR
 34 HAS BEEN DIAGNOSED AND TREATED FOR OR HAS A HISTORY OF MENTAL ILLNESS AND
 35 WOULD BENEFIT FROM SUPERVISED PROBATION THE COURT MAY SUSPEND THE IMPOSITION
 36 OR EXECUTION OF SENTENCE AND PLACE THE PERSON ON SUPERVISED PROBATION
 37 PURSUANT TO CHAPTER 9 OF THIS TITLE.

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

40 I. For the purposes of determining the applicability of the penalties
 41 provided in subsection A, D or E of this section for second or subsequent
 42 class 2 or 3 felonies, the conviction for any felony committed before October
 43 1, 1978 that, if committed after October 1, 1978, could be a dangerous
 44 offense under subsection A, D or E of this section may be designated by the
 45 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 was punishable by that
6 jurisdiction as a felony is subject to subsection A, B, C, D or E of this
7 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 or the
9 jurisdiction in which the offense was committed is subject to subsection A,
10 B, C, D or E of this section. A person who has been convicted of a felony
11 weapons possession violation in any court outside the jurisdiction of this
12 state that would not be punishable as a felony under the laws of this state
13 is not subject to this section.

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

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