

REFERENCE TITLE: death penalty; repeal

State of Arizona
Senate
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Second Regular Session
2016

SB 1129

Introduced by
Senators Bradley, Dalessandro, Hobbs: Contreras

AN ACT

AMENDING SECTIONS 12-120.21, 13-701, 13-706 AND 13-751, ARIZONA REVISED STATUTES; REPEALING SECTIONS 13-752, 13-753, 13-754, 13-755, 13-756, 13-757, 13-758 AND 13-759, ARIZONA REVISED STATUTES; AMENDING SECTIONS 13-1105, 13-3841, 13-3859.02, 13-3870, 13-3906 AND 13-3961, ARIZONA REVISED STATUTES; REPEALING TITLE 13, CHAPTER 38, ARTICLE 17, ARIZONA REVISED STATUTES; AMENDING SECTIONS 13-4031, 13-4033, 13-4040 AND 13-4041, ARIZONA REVISED STATUTES; REPEALING SECTION 13-4042, ARIZONA REVISED STATUTES; AMENDING SECTION 13-4234, ARIZONA REVISED STATUTES; REPEALING SECTION 13-4234.01, ARIZONA REVISED STATUTES; AMENDING SECTIONS 21-102, 31-240, 31-403, 31-445 AND 41-1013, ARIZONA REVISED STATUTES; RELATING TO THE REPEAL OF THE DEATH PENALTY.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 12-120.21, Arizona Revised Statutes, is amended to
3 read:

4 12-120.21. Jurisdiction and venue

5 A. The court of appeals shall have:

6 1. Appellate jurisdiction in all actions and proceedings originating
7 in or permitted by law to be appealed from the superior court, ~~except~~
8 ~~criminal actions involving crimes for which a sentence of death has actually~~
9 ~~been imposed.~~

10 2. Jurisdiction to issue writs of certiorari to review the lawfulness
11 of awards of the industrial commission and to enter judgment affirming or
12 setting aside the awards.

13 3. Jurisdiction to issue injunctions and other writs and orders
14 necessary and proper to the complete exercise of its appellate jurisdiction.

15 4. Jurisdiction to hear and determine petitions for special actions
16 brought pursuant to the ARIZONA rules of procedure for special actions,
17 without regard to its appellate jurisdiction.

18 B. A case or appeal of which the court of appeals has jurisdiction in
19 an action or proceeding originating in or permitted by law to be appealed
20 from the superior court in a county shall be brought or filed in the division
21 ~~which~~ THAT contains that county. An application for a writ of certiorari to
22 review the lawfulness of an award of the industrial commission shall be
23 brought in division 1.

24 Sec. 2. Section 13-701, Arizona Revised Statutes, is amended to read:

25 13-701. Sentence of imprisonment for felony; presentence
26 report; aggravating and mitigating factors;
27 consecutive terms of imprisonment; definition

28 A. A sentence of imprisonment for a felony shall be a definite term of
29 years and the person sentenced, unless otherwise provided by law, shall be
30 committed to the custody of the state department of corrections.

31 B. No prisoner may be transferred to the custody of the state
32 department of corrections without a certified copy of the judgment and
33 sentence, signed by the sentencing judge, and a copy of a recent presentence
34 investigation report unless the court has waived preparation of the report.

35 C. The minimum or maximum term imposed pursuant to section 13-702,
36 13-703, 13-704, 13-705, 13-708, 13-710, 13-1406, 13-3212 or 13-3419 may be
37 imposed only if one or more of the circumstances alleged to be in aggravation
38 of the crime are found to be true by the trier of fact beyond a reasonable
39 doubt or are admitted by the defendant, except that an alleged aggravating
40 circumstance under subsection D, paragraph 11 of this section shall be found
41 to be true by the court, or in mitigation of the crime are found to be true
42 by the court, on any evidence or information introduced or submitted to the
43 court or the trier of fact before sentencing or any evidence presented at
44 trial, and factual findings and reasons in support of such findings are set
45 forth on the record at the time of sentencing.

1 D. For the purpose of determining the sentence pursuant to subsection
2 C of this section, the trier of fact shall determine and the court shall
3 consider the following aggravating circumstances, except that the court shall
4 determine an aggravating circumstance under paragraph 11 of this subsection:

5 1. Infliction or threatened infliction of serious physical injury,
6 except if this circumstance is an essential element of the offense of
7 conviction or has been utilized to enhance the range of punishment under
8 section 13-704.

9 2. Use, threatened use or possession of a deadly weapon or dangerous
10 instrument during the commission of the crime, except if this circumstance is
11 an essential element of the offense of conviction or has been utilized to
12 enhance the range of punishment under section 13-704.

13 3. If the offense involves the taking of or damage to property, the
14 value of the property taken or damaged.

15 4. Presence of an accomplice.

16 5. Especially heinous, cruel or depraved manner in which the offense
17 was committed.

18 6. The defendant committed the offense as consideration for the
19 receipt, or in the expectation of the receipt, of anything of pecuniary
20 value.

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

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

26 9. The victim or, if the victim has died as a result of the conduct of
27 the defendant, the victim's immediate family suffered physical, emotional or
28 financial harm.

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

31 11. The defendant was previously convicted of a felony within the ten
32 years immediately preceding the date of the offense. A conviction outside
33 the jurisdiction of this state for an offense that if committed in this state
34 would be punishable as a felony is a felony conviction for the purposes of
35 this paragraph.

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

37 13. The victim of the offense is at least sixty-five years of age or is
38 a person with a disability as defined in section 38-492, subsection B.

39 14. The defendant was appointed pursuant to title 14 as a fiduciary and
40 the offense involved conduct directly related to the defendant's duties to
41 the victim as fiduciary.

42 15. Evidence that the defendant committed the crime out of malice
43 toward a victim because of the victim's identity in a group listed in section
44 41-1750, subsection A, paragraph 3 or because of the defendant's perception

1 of the victim's identity in a group listed in section 41-1750, subsection A,
2 paragraph 3.

3 16. The defendant was convicted of a violation of section 13-1102,
4 section 13-1103, section 13-1104, subsection A, paragraph 3 or section
5 13-1204, subsection A, paragraph 1 or 2 arising from an act that was
6 committed while driving a motor vehicle and the defendant's alcohol
7 concentration at the time of committing the offense was 0.15 or more. For
8 the purposes of this paragraph, "alcohol concentration" has the same meaning
9 prescribed in section 28-101.

10 17. Lying in wait for the victim or ambushing the victim during the
11 commission of any felony.

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

14 19. The offense was committed in retaliation for a victim either
15 reporting criminal activity or being involved in an organization, other than
16 a law enforcement agency, that is established for the purpose of reporting or
17 preventing criminal activity.

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

20 21. The defendant was in violation of 8 United States Code section
21 1323, 1324, 1325, 1326 or 1328 at the time of the commission of the offense.

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

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

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

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

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

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

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

41 23. During or immediately following the commission of the offense, the
42 defendant committed a violation of section 28-661, 28-662 or 28-663.

43 24. The defendant was convicted of a violation of section 13-1307 or
44 13-1308 and the defendant recruited, enticed or obtained the victim from a

1 shelter that is designed to serve runaway youth, foster children, homeless
2 persons or victims of human trafficking, domestic violence or sexual assault.

3 25. Any other factor that the state alleges is relevant to the
4 defendant's character or background or to the nature or circumstances of the
5 crime.

6 E. For the purpose of determining the sentence pursuant to subsection
7 C of this section, the court shall consider the following mitigating
8 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 to a degree that would 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. During or immediately following the commission of the offense, the
19 defendant complied with all duties imposed under sections 28-661, 28-662 and
20 28-663.

21 6. Any other factor that is relevant to the defendant's character or
22 background or to the nature or circumstances of the crime and that the court
23 finds to be mitigating.

24 F. If the trier of fact finds at least one aggravating circumstance,
25 the trial court may find by a preponderance of the evidence additional
26 aggravating circumstances. In determining what sentence to impose, the court
27 shall take into account the amount of aggravating circumstances and whether
28 the amount of mitigating circumstances is sufficiently substantial to justify
29 the lesser term. If the trier of fact finds aggravating circumstances and
30 the court does not find any mitigating circumstances, the court shall impose
31 an aggravated sentence.

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

35 H. This section does not affect any provision of law that ~~imposes the~~
36 ~~death penalty, that~~ expressly provides for imprisonment for life or that
37 authorizes or restricts the granting of probation and suspending the
38 execution of sentence.

39 I. The intentional failure by the court to impose the mandatory
40 sentences or probation conditions provided in this title is malfeasance.

41 J. For the purposes of this section, "trier of fact" means a jury,
42 unless the defendant and the state waive a jury in which case the trier of
43 fact means the court.

1 Sec. 3. Section 13-706, Arizona Revised Statutes, is amended to read:
2 13-706. Serious, violent or aggravated offenders; sentencing;
3 life imprisonment; definitions

4 A. A person who is at least eighteen years of age or who has been
5 tried as an adult and who is convicted of a serious offense except a drug
6 offense, first degree murder or any dangerous crime against children as
7 defined in section 13-705, whether a completed or preparatory offense, and
8 who has previously been convicted of two or more serious offenses not
9 committed on the same occasion shall be sentenced to life imprisonment and is
10 not eligible for suspension of sentence, probation, pardon or release from
11 confinement on any basis, except as specifically authorized by section
12 31-233, subsection A or B, until the person has served at least twenty-five
13 years or the sentence is commuted.

14 B. Unless a longer term of imprisonment ~~or death~~ is the prescribed
15 penalty and notwithstanding any provision that establishes a shorter term of
16 imprisonment, a person who has been convicted of committing or attempting or
17 conspiring to commit any violent or aggravated felony and who has previously
18 been convicted on separate occasions of two or more violent or aggravated
19 felonies not committed on the same occasion shall be sentenced to
20 imprisonment for life and is not eligible for suspension of sentence,
21 probation, pardon or release on any basis except that the person may be
22 eligible for commutation after the person has served at least thirty-five
23 years.

24 C. In order for the penalty under subsection B of this section to
25 apply, both of the following must occur:

26 1. The aggravated or violent felonies that comprise the prior
27 convictions shall have been entered within fifteen years of the conviction
28 for the third offense, not including time spent in custody or on probation
29 for an offense or while the person is an absconder.

30 2. The sentence for the first aggravated or violent felony conviction
31 shall have been imposed before the conduct occurred that gave rise to the
32 second conviction, and the sentence for the second aggravated or violent
33 felony conviction shall have been imposed before the conduct occurred that
34 gave rise to the third conviction.

35 D. Chapter 3 of this title applies to all offenses under this section.

36 E. For the purposes of this section, if a person has been convicted of
37 an offense committed in another jurisdiction that if committed in this state
38 would be a violation or attempted violation of any of the offenses listed in
39 this section and that has the same elements of an offense listed in this
40 section, the offense committed in another jurisdiction is considered an
41 offense committed in this state.

42 F. For the purposes of this section:

43 1. "Serious offense" means any of the following offenses if committed
44 in this state or any offense committed outside this state that if committed
45 in this state would constitute one of the following offenses:

- 1 (a) First degree murder.
- 2 (b) Second degree murder.
- 3 (c) Manslaughter.
- 4 (d) Aggravated assault resulting in serious physical injury or
- 5 involving the discharge, use or threatening exhibition of a deadly weapon or
- 6 dangerous instrument.
- 7 (e) Sexual assault.
- 8 (f) Any dangerous crime against children.
- 9 (g) Arson of an occupied structure.
- 10 (h) Armed robbery.
- 11 (i) Burglary in the first degree.
- 12 (j) Kidnapping.
- 13 (k) Sexual conduct with a minor under fifteen years of age.
- 14 (l) Child prostitution.
- 15 2. "Violent or aggravated felony" means any of the following offenses:
- 16 (a) First degree murder.
- 17 (b) Second degree murder.
- 18 (c) Aggravated assault resulting in serious physical injury or
- 19 involving the discharge, use or threatening exhibition of a deadly weapon or
- 20 dangerous instrument.
- 21 (d) Dangerous or deadly assault by prisoner.
- 22 (e) Committing assault with intent to incite to riot or participate in
- 23 riot.
- 24 (f) Drive by shooting.
- 25 (g) Discharging a firearm at a residential structure if the structure
- 26 is occupied.
- 27 (h) Kidnapping.
- 28 (i) Sexual conduct with a minor that is a class 2 felony.
- 29 (j) Sexual assault.
- 30 (k) Molestation of a child.
- 31 (l) Continuous sexual abuse of a child.
- 32 (m) Violent sexual assault.
- 33 (n) Burglary in the first degree committed in a residential structure
- 34 if the structure is occupied.
- 35 (o) Arson of an occupied structure.
- 36 (p) Arson of an occupied jail or prison facility.
- 37 (q) Armed robbery.
- 38 (r) Participating in or assisting a criminal syndicate or leading or
- 39 participating in a criminal street gang.
- 40 (s) Terrorism.
- 41 (t) Taking a child for the purpose of prostitution.
- 42 (u) Child prostitution.
- 43 (v) Commercial sexual exploitation of a minor.
- 44 (w) Sexual exploitation of a minor.

1 (x) Unlawful introduction of disease or parasite as prescribed by
2 section 13-2912, subsection A, paragraph 2 or 3.

3 Sec. 4. Heading change

4 The chapter heading of title 13, chapter 7.1, Arizona Revised Statutes,
5 is changed from "CAPITAL SENTENCING" to "LIFE IMPRISONMENT".

6 Sec. 5. Section 13-751, Arizona Revised Statutes, is amended to read:

7 13-751. Sentence of life or natural life imprisonment; victims'
8 rights

9 A. If ~~the state has filed a notice of intent to seek the death penalty~~
10 ~~and the~~ A defendant is:

11 1. Convicted of first degree murder pursuant to section 13-1105,
12 subsection A, paragraph 1 or 3 and was at least eighteen years of age at the
13 time of the commission of the offense, the defendant shall be sentenced to
14 ~~death or~~ imprisonment in the custody of the state department of corrections
15 for natural life ~~as determined and in accordance with the procedures provided~~
16 ~~in section 13-752.~~ A THE COURT SHALL ORDER THAT THE DEFENDANT NOT BE
17 RELEASED ON ANY BASIS FOR THE REMAINDER OF THE DEFENDANT'S NATURAL LIFE, AND
18 THE defendant ~~who is sentenced to natural life~~ is not eligible for
19 commutation, parole, work furlough, work release or release from confinement
20 on any basis.

21 2. Convicted of first degree murder pursuant to section 13-1105 and
22 was under eighteen years of age at the time of the commission of the offense,
23 the defendant shall be sentenced to imprisonment in the custody of the state
24 department of corrections for life or natural life, ~~as determined and in~~
25 ~~accordance with the procedures provided in section 13-752.~~ IF THE COURT
26 IMPOSES A NATURAL LIFE SENTENCE, THE COURT SHALL ORDER THAT THE DEFENDANT NOT
27 BE RELEASED ON ANY BASIS FOR THE REMAINDER OF THE DEFENDANT'S NATURAL LIFE.
28 A defendant who is sentenced to natural life is not eligible for commutation,
29 parole, work furlough, work release or release from confinement on any
30 basis. If the defendant is sentenced to life, the defendant shall not be
31 released on any basis until the completion of the service of twenty-five
32 calendar years if the murdered person was fifteen or more years of age and
33 thirty-five years if the murdered person was under fifteen years of age or
34 was an unborn child.

35 3. Convicted of first degree murder pursuant to section 13-1105,
36 subsection A, paragraph 2, the defendant shall be sentenced to ~~death or~~
37 imprisonment in the custody of the state department of corrections for life
38 or natural life ~~as determined and in accordance with the procedures provided~~
39 ~~in section 13-752.~~ IF THE COURT IMPOSES A NATURAL LIFE SENTENCE, THE COURT
40 SHALL ORDER THAT THE DEFENDANT NOT BE RELEASED ON ANY BASIS FOR THE REMAINDER
41 OF THE DEFENDANT'S NATURAL LIFE. A defendant who is sentenced to natural
42 life is not eligible for commutation, parole, work furlough, work release or
43 release from confinement on any basis. If the defendant is sentenced to
44 life, the defendant shall not be released on any basis until the completion
45 of the service of twenty-five calendar years if the murdered person was

1 fifteen or more years of age and thirty-five years if the murdered person was
2 under fifteen years of age or was an unborn child.

3 ~~B. At the aggravation phase of the sentencing proceeding that is held
4 pursuant to section 13-752, the admissibility of information relevant to any
5 of the aggravating circumstances set forth in subsection F of this section
6 shall be governed by the rules of evidence applicable to criminal trials.
7 The burden of establishing the existence of any of the aggravating
8 circumstances set forth in subsection F of this section is on the
9 prosecution. The prosecution must prove the existence of the aggravating
10 circumstances beyond a reasonable doubt.~~

11 ~~C. At the penalty phase of the sentencing proceeding that is held
12 pursuant to section 13-752, the prosecution or the defendant may present any
13 information that is relevant to any of the mitigating circumstances included
14 in subsection G of this section, regardless of its admissibility under the
15 rules governing admission of evidence at criminal trials. The burden of
16 establishing the existence of the mitigating circumstances included in
17 subsection G of this section is on the defendant. The defendant must prove
18 the existence of the mitigating circumstances by a preponderance of the
19 evidence. If the trier of fact is a jury, the jurors do not have to agree
20 unanimously that a mitigating circumstance has been proven to exist. Each
21 juror may consider any mitigating circumstance found by that juror in
22 determining the appropriate penalty.~~

23 ~~D. Evidence that is admitted at the trial and that relates to any
24 aggravating or mitigating circumstances shall be deemed admitted as evidence
25 at a sentencing proceeding if the trier of fact considering that evidence is
26 the same trier of fact that determined the defendant's guilt. The
27 prosecution and the defendant shall be permitted to rebut any information
28 received at the aggravation or penalty phase of the sentencing proceeding and
29 shall be given fair opportunity to present argument as to whether the
30 information is sufficient to establish the existence of any of the
31 circumstances included in subsections F and G of this section.~~

32 ~~E. In determining whether to impose a sentence of death or life
33 imprisonment, the trier of fact shall take into account the aggravating and
34 mitigating circumstances that have been proven. The trier of fact shall
35 impose a sentence of death if the trier of fact finds one or more of the
36 aggravating circumstances enumerated in subsection F of this section and then
37 determines that there are no mitigating circumstances sufficiently
38 substantial to call for leniency.~~

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

41 ~~1. The defendant has been convicted of another offense in the United
42 States for which under Arizona law a sentence of life imprisonment or death
43 was imposable.~~

44 ~~2. The defendant has been or was previously convicted of a serious
45 offense, whether preparatory or completed. Convictions for serious offenses~~

1 ~~committed on the same occasion as the homicide, or not committed on the same~~
2 ~~occasion but consolidated for trial with the homicide, shall be treated as a~~
3 ~~serious offense under this paragraph.~~

4 ~~3. In the commission of the offense the defendant knowingly created a~~
5 ~~grave risk of death to another person or persons in addition to the person~~
6 ~~murdered during the commission of the offense.~~

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

9 ~~5. The defendant committed the offense as consideration for the~~
10 ~~receipt, or in expectation of the receipt, of anything of pecuniary value.~~

11 ~~6. The defendant committed the offense in an especially heinous, cruel~~
12 ~~or depraved manner.~~

13 ~~7. The defendant committed the offense while:~~

14 ~~(a) In the custody of or on authorized or unauthorized release from~~
15 ~~the state department of corrections, a law enforcement agency or a county or~~
16 ~~city jail.~~

17 ~~(b) On probation for a felony offense.~~

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

21 ~~9. The defendant was an adult at the time the offense was committed or~~
22 ~~was tried as an adult and the murdered person was under fifteen years of age,~~
23 ~~was an unborn child in the womb at any stage of its development or was~~
24 ~~seventy years of age or older.~~

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

28 ~~11. The defendant committed the offense with the intent to promote,~~
29 ~~further or assist the objectives of a criminal street gang or criminal~~
30 ~~syndicate or to join a criminal street gang or criminal syndicate.~~

31 ~~12. The defendant committed the offense to prevent a person's~~
32 ~~cooperation with an official law enforcement investigation, to prevent a~~
33 ~~person's testimony in a court proceeding, in retaliation for a person's~~
34 ~~cooperation with an official law enforcement investigation or in retaliation~~
35 ~~for a person's testimony in a court proceeding.~~

36 ~~13. The offense was committed in a cold, calculated manner without~~
37 ~~pretense of moral or legal justification.~~

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

40 ~~(a) "Authorized remote stun gun" means a remote stun gun that has all~~
41 ~~of the following:~~

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

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

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

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

6 ~~(b) "Remote stun gun" means an electronic device that emits an~~
7 ~~electrical charge and that is designed and primarily employed to incapacitate~~
8 ~~a person or animal either through contact with electrodes on the device~~
9 ~~itself or remotely through wired probes that are attached to the device or~~
10 ~~through a spark, plasma, ionization or other conductive means emitting from~~
11 ~~the device.~~

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

17 ~~1. The defendant's capacity to appreciate the wrongfulness of his~~
18 ~~conduct or to conform his conduct to the requirements of law was~~
19 ~~significantly impaired, but not so impaired as to constitute a defense to~~
20 ~~prosecution.~~

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

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

26 ~~4. The defendant could not reasonably have foreseen that his conduct~~
27 ~~in the course of the commission of the offense for which the defendant was~~
28 ~~convicted would cause, or would create a grave risk of causing, death to~~
29 ~~another person.~~

30 ~~5. The defendant's age.~~

31 ~~H. For the purposes of determining whether a conviction of any~~
32 ~~dangerous crime against children is a serious offense pursuant to this~~
33 ~~section, an unborn child shall be treated like a minor who is under twelve~~
34 ~~years of age.~~

35 ~~I. In this section, for purposes of punishment an unborn child shall~~
36 ~~be treated like a minor who is under twelve years of age.~~

37 ~~J. For the purposes of this section, "serious offense" means any of~~
38 ~~the following offenses if committed in this state or any offense committed~~
39 ~~outside this state that if committed in this state would constitute one of~~
40 ~~the following offenses:~~

41 ~~1. First degree murder.~~

42 ~~2. Second degree murder.~~

43 ~~3. Manslaughter.~~

- 1 ~~4. Aggravated assault resulting in serious physical injury or~~
- 2 ~~committed by the use, threatened use or exhibition of a deadly weapon or~~
- 3 ~~dangerous instrument.~~
- 4 ~~5. Sexual assault.~~
- 5 ~~6. Any dangerous crime against children.~~
- 6 ~~7. Arson of an occupied structure.~~
- 7 ~~8. Robbery.~~
- 8 ~~9. Burglary in the first degree.~~
- 9 ~~10. Kidnapping.~~
- 10 ~~11. Sexual conduct with a minor under fifteen years of age.~~
- 11 ~~12. Burglary in the second degree.~~
- 12 ~~13. Terrorism.~~

13 B. THE VICTIM HAS THE RIGHT TO BE PRESENT AT ANY SENTENCING PROCEEDING
14 AND TO PRESENT ANY INFORMATION THAT IS RELEVANT TO THE PROCEEDING. THE
15 VICTIM MAY PRESENT INFORMATION ABOUT THE MURDERED PERSON AND THE IMPACT OF
16 THE MURDER ON THE VICTIM AND OTHER FAMILY MEMBERS AND MAY SUBMIT A VICTIM
17 IMPACT STATEMENT IN ANY FORMAT. FOR THE PURPOSES OF THIS SUBSECTION,
18 "VICTIM" MEANS THE MURDERED PERSON'S SPOUSE, PARENT, CHILD OR OTHER LAWFUL
19 REPRESENTATIVE, EXCEPT IF THE SPOUSE, PARENT, CHILD OR OTHER LAWFUL
20 REPRESENTATIVE IS IN CUSTODY FOR AN OFFENSE OR IS THE ACCUSED.

21 Sec. 6. Repeal

22 Sections 13-752, 13-753, 13-754, 13-755, 13-756, 13-757, 13-758 and
23 13-759, Arizona Revised Statutes, are repealed.

24 Sec. 7. Section 13-1105, Arizona Revised Statutes, is amended to read:
25 13-1105. First degree murder; classification

26 A. A person commits first degree murder if:

27 1. Intending or knowing that the person's conduct will cause death,
28 the person causes the death of another person, including an unborn child,
29 with premeditation or, as a result of causing the death of another person
30 with premeditation, causes the death of an unborn child.

31 2. Acting either alone or with one or more other persons the person
32 commits or attempts to commit sexual conduct with a minor under section
33 13-1405, sexual assault under section 13-1406, molestation of a child under
34 section 13-1410, terrorism under section 13-2308.01, marijuana offenses under
35 section 13-3405, subsection A, paragraph 4, dangerous drug offenses under
36 section 13-3407, subsection A, paragraphs 4 and 7, narcotics offenses under
37 section 13-3408, subsection A, paragraph 7 that equal or exceed the statutory
38 threshold amount for each offense or combination of offenses, involving or
39 using minors in drug offenses under section 13-3409, drive by shooting under
40 section 13-1209, kidnapping under section 13-1304, burglary under section
41 13-1506, 13-1507 or 13-1508, arson under section 13-1703 or 13-1704, robbery
42 under section 13-1902, 13-1903 or 13-1904, escape under section 13-2503 or
43 13-2504, child abuse under section 13-3623, subsection A, paragraph 1 or
44 unlawful flight from a pursuing law enforcement vehicle under section
45 28-622.01 and, in the course of and in furtherance of the offense or

1 immediate flight from the offense, the person or another person causes the
2 death of any person.

3 3. Intending or knowing that the person's conduct will cause death to
4 a law enforcement officer, the person causes the death of a law enforcement
5 officer who is in the line of duty.

6 B. Homicide, as prescribed in subsection A, paragraph 2 of this
7 section, requires no specific mental state other than what is required for
8 the commission of any of the enumerated felonies.

9 C. An offense under subsection A, paragraph 1 of this section applies
10 to an unborn child in the womb at any stage of its development. A person
11 shall not be prosecuted under subsection A, paragraph 1 of this section if
12 any of the following applies:

13 1. The person was performing an abortion for which the consent of the
14 pregnant woman, or a person authorized by law to act on the pregnant woman's
15 behalf, has been obtained or for which the consent was implied or authorized
16 by law.

17 2. The person was performing medical treatment on the pregnant woman
18 or the pregnant woman's unborn child.

19 3. The person was the unborn child's mother.

20 D. First degree murder is a class 1 felony and is punishable by ~~death~~
21 ~~or~~ life OR NATURAL LIFE imprisonment as provided by ~~sections~~ SECTION 13-751
22 ~~and 13-752.~~

23 Sec. 8. Section 13-3841, Arizona Revised Statutes, is amended to read:
24 13-3841. Definitions

25 In this article, unless the context otherwise requires:

26 1. "Charged with crime", "criminal charge" or "criminal offense"
27 includes any of the following:

28 (a) A felony or misdemeanor offense.

29 (b) Escape from confinement or the custody of any of the following:

30 (i) A law enforcement officer.

31 (ii) A custodial official.

32 (iii) A custodial agency.

33 (iv) A custodial institution.

34 (c) Being accused on a warrant of violating the terms of federal or
35 state supervision.

36 (d) Being accused of violating bail or conditions of release.

37 (e) ~~The conviction~~ BEING CONVICTED of a crime.

38 (f) Having an unserved remaining criminal sentence.

39 ~~(g) Being subject to the death penalty on criminal conviction.~~

40 ~~3.~~ 2. "Executive authority" includes the governor, and any person
41 performing the functions of governor in a state other than this state.

42 ~~2.~~ 3. "Governor" includes any person performing the functions of
43 governor by authority of the law of this state.

44 4. "State," when referring to a state other than this state, means
45 any other state or territory, organized or unorganized, of the United States.

1 2. Document the notification to the person's country of citizenship
2 and any waiver of notification.

3 3. Transmit any information obtained pursuant to this section to the
4 court and the prosecuting agency for the purpose of making a determination
5 pursuant to section 13-3961, subsection A, paragraph ~~5- 4~~ or section 13-3967,
6 subsection B, paragraph 14 or for any other lawful purpose.

7 B. The failure or inability of a law enforcement agency to provide the
8 notice required by this section does not:

9 1. Affect the admissibility of any statements, the voluntariness of a
10 guilty plea or the validity of a conviction.

11 2. Afford a defendant any rights in any proceeding related to
12 deportation, exclusion or denial of naturalization.

13 Sec. 12. Section 13-3961, Arizona Revised Statutes, is amended to
14 read:

15 13-3961. Offenses not bailable; purpose; preconviction;
16 exceptions

17 A. A person who is in custody shall not be admitted to bail if the
18 proof is evident or the presumption great that the person is guilty of the
19 offense charged and the offense charged is one of the following:

20 ~~1. A capital offense.~~

21 ~~2.~~ 1. Sexual assault.

22 ~~3.~~ 2. Sexual conduct with a minor who is under fifteen years of age.

23 ~~4.~~ 3. Molestation of a child who is under fifteen years of age.

24 ~~5.~~ 4. A serious felony offense if there is probable cause to believe
25 that the person has entered or remained in the United States illegally. For
26 the purposes of this paragraph:

27 (a) The court shall consider all of the following in making a
28 determination that a person has entered or remained in the United States
29 illegally:

30 (i) Whether a hold has been placed on the arrested person by the
31 United States immigration and customs enforcement.

32 (ii) Any indication by a law enforcement agency that the person is in
33 the United States illegally.

34 (iii) Whether an admission by the arrested person has been obtained by
35 the court or a law enforcement agency that the person has entered or remained
36 in the United States illegally.

37 (iv) Any information received from a law enforcement agency pursuant
38 to section 13-3906.

39 (v) Any evidence that the person has recently entered or remained in
40 the United States illegally.

41 (vi) Any other relevant information that is obtained by the court or
42 that is presented to the court by a party or any other person.

43 (b) "Serious felony offense" means any class 1, 2, 3 or 4 felony or
44 any violation of section 28-1383.

1 B. The purposes of bail and any conditions of release that are set by
2 a judicial officer include:

- 3 1. Assuring the appearance of the accused.
- 4 2. Protecting against the intimidation of witnesses.
- 5 3. Protecting the safety of the victim, any other person or the
6 community.

7 C. The initial determination of whether an offense is bailable
8 pursuant to subsection A of this section shall be made by the magistrate or
9 judicial officer at the time of the person's initial appearance.

10 D. Except as provided in subsection A of this section, a person who is
11 in custody shall not be admitted to bail if the person is charged with a
12 felony offense and the state certifies by motion and the court finds after a
13 hearing on the matter that there is clear and convincing evidence that the
14 person charged poses a substantial danger to another person or the community
15 or engaged in conduct constituting a violent offense, that no condition or
16 combination of conditions of release may be imposed that will reasonably
17 assure the safety of the other person or the community and that the proof is
18 evident or the presumption great that the person committed the offense for
19 which the person is charged. For the purposes of this subsection, "violent
20 offense" means either of the following:

- 21 1. A dangerous crime against children.
- 22 2. Terrorism.

23 E. On oral motion of the state, the court shall order the hearing
24 required by subsection D of this section at or within twenty-four hours of
25 the initial appearance unless the person who is subject to detention or the
26 state moves for a continuance. A continuance that is granted on the motion
27 of the person shall not exceed five calendar days unless there are
28 extenuating circumstances. A continuance on the motion of the state shall be
29 granted on good cause shown and shall not exceed twenty-four hours. The
30 prosecutor shall provide reasonable notice and an opportunity for victims and
31 witnesses to be present and heard at any hearing. The person may be detained
32 pending the hearing. The person is entitled to representation by counsel and
33 is entitled to present information by proffer or otherwise, to testify and to
34 present witnesses in the person's own behalf. Testimony of the person
35 charged that is given during the hearing shall not be admissible on the issue
36 of guilt in any subsequent judicial proceeding, except as it might relate to
37 the compliance with or violation of any condition of release subsequently
38 imposed or the imposition of appropriate sentence or in perjury proceedings,
39 or for the purposes of impeachment. The case of the person shall be placed
40 on an expedited calendar and, consistent with the sound administration of
41 justice, the person's trial shall be given priority. The person may be
42 admitted to bail in accordance with the Arizona rules of criminal procedure
43 whenever a judicial officer finds that a subsequent event has eliminated the
44 basis for detention.

1 F. The finding of an indictment or the filing of an information does
2 not add to the strength of the proof or the presumption to be drawn.

3 G. In a hearing pursuant to subsection D of this section, proof that
4 the person is a criminal street gang member may give rise to the inference
5 that the person poses a substantial danger to another person or the community
6 and that no condition or combination of conditions of release may be imposed
7 that will reasonably assure the safety of the other person or the community.

8 Sec. 13. Repeal

9 Title 13, chapter 38, article 17, Arizona Revised Statutes, is
10 repealed.

11 Sec. 14. Section 13-4031, Arizona Revised Statutes, is amended to
12 read:

13 13-4031. Right of appeal

14 The state, or any party to a prosecution by indictment, information or
15 complaint, may appeal as prescribed by law and in the manner provided by the
16 ARIZONA rules of criminal procedure, ~~except criminal actions involving crimes~~
17 ~~for which a sentence of death has actually been imposed may only be appealed~~
18 ~~to the supreme court.~~

19 Sec. 15. Section 13-4033, Arizona Revised Statutes, is amended to
20 read:

21 13-4033. Appeal by defendant

22 A. An appeal may be taken by the defendant only from:

- 23 1. A final judgment of conviction or verdict of guilty except insane.
- 24 2. An order denying a motion for a new trial.
- 25 3. An order made after judgment affecting the substantial rights of

26 the party.

27 4. A sentence on the grounds that it is illegal or excessive.

28 B. ~~In noncapital cases~~ A defendant may not appeal from a judgment or
29 sentence that is entered pursuant to a plea agreement or an admission to a
30 probation violation.

31 C. A defendant may not appeal under subsection A, paragraph 1 or 2 if
32 the defendant's absence prevents sentencing from occurring within ninety days
33 after conviction and the defendant fails to prove by clear and convincing
34 evidence at the time of sentencing that the absence was involuntary.

35 Sec. 16. Section 13-4040, Arizona Revised Statutes, is amended to
36 read:

37 13-4040. Divestiture of jurisdiction of supreme court after
38 remission of minute entry and decision; exception

39 After a certified copy of the minute entry and a copy of the decision
40 of the supreme court in a criminal appeal ~~has~~ HAVE been remitted to the trial
41 court from which the appeal was taken, the supreme court shall have no
42 further jurisdiction of the appeal, or of the proceedings thereon. All
43 orders ~~which~~ THAT may be necessary to carry the decision of the supreme court
44 into effect shall be made by the court to which the copy of the minute entry
45 and THE COPY OF THE decision ~~is~~ ARE remitted, ~~except when a judgment or~~

1 ~~sentence of death has been affirmed on appeal after the time appointed for~~
2 ~~the execution of the sentence and the supreme court has fixed a new time for~~
3 ~~execution and issued a warrant to the director of the department of~~
4 ~~corrections to execute the sentence at the time designated in the warrant.~~

5 Sec. 17. Section 13-4041, Arizona Revised Statutes, is amended to
6 read:

7 13-4041. Fee of counsel assigned in criminal proceeding or
8 insanity hearing on appeal or in postconviction
9 relief proceedings

10 A. ~~Except pursuant to subsection G of this section,~~ If counsel is
11 appointed by the court to represent the defendant in either a criminal
12 proceeding or insanity hearing on appeal, the county in which the court from
13 which the appeal is taken presides shall pay counsel, except that in those
14 appeals where the defendant is represented by a public defender or other
15 publicly funded office, **THE COUNTY SHALL NOT SET OR PAY** compensation ~~shall~~
16 ~~not be set or paid~~. Compensation for services rendered on appeal shall be in
17 an amount as the supreme court in its discretion deems reasonable,
18 considering the services performed.

19 ~~B. After the supreme court has affirmed a defendant's conviction and~~
20 ~~sentence in a capital case, the supreme court or, if authorized by the~~
21 ~~supreme court, the presiding judge of the county from which the case~~
22 ~~originated shall appoint counsel to represent the capital defendant in the~~
23 ~~state postconviction relief proceeding.~~

24 ~~C. The supreme court shall establish and maintain a list of persons~~
25 ~~who are qualified to represent capital defendants in postconviction~~
26 ~~proceedings. The supreme court may establish by rule more stringent~~
27 ~~standards of competency for the appointment of postconviction counsel in~~
28 ~~capital cases than are provided by this subsection. The supreme court may~~
29 ~~refuse to certify an attorney on the list who meets the qualifications~~
30 ~~established under this subsection or may remove an attorney from the list who~~
31 ~~meets the qualifications established under this subsection if the supreme~~
32 ~~court determines that the attorney is incapable or unable to adequately~~
33 ~~represent a capital defendant. The court shall appoint counsel from the~~
34 ~~list. Counsel who are appointed from the list shall meet the following~~
35 ~~qualifications:~~

36 ~~1. Be a member in good standing of the state bar of Arizona for at~~
37 ~~least five years immediately preceding the appointment.~~

38 ~~2. Have practiced in the area of state criminal appeals or~~
39 ~~postconviction proceedings for at least three years immediately preceding the~~
40 ~~appointment.~~

41 ~~3. Not previously have represented the capital defendant in the case~~
42 ~~either in the trial court or in the direct appeal, unless the defendant and~~
43 ~~counsel expressly request continued representation and waive all potential~~
44 ~~issues that are foreclosed by continued representation.~~

1 ~~D. Before filing a petition, the capital defendant may personally~~
 2 ~~appear before the trial court and waive counsel. If the trial court finds~~
 3 ~~that the waiver is knowing and voluntary, appointed counsel may withdraw.~~
 4 ~~The time limits in which to file a petition shall not be extended due solely~~
 5 ~~to the change from appointed counsel to self representation.~~

6 ~~E. If at any time the trial court determines that the capital~~
 7 ~~defendant is not indigent, appointed counsel shall no longer be compensated~~
 8 ~~by public monies and may withdraw.~~

9 ~~F. Unless counsel is employed by a publicly funded office, counsel~~
 10 ~~appointed to represent a capital defendant in state postconviction relief~~
 11 ~~proceedings shall be paid an hourly rate of not to exceed one hundred dollars~~
 12 ~~per hour. Monies shall not be paid to court appointed counsel unless either:~~

13 ~~1. A petition is timely filed.~~

14 ~~2. If a petition is not filed, a notice is timely filed stating that~~
 15 ~~counsel has reviewed the record and found no meritorious claim.~~

16 ~~G.~~ B. The trial court shall compensate appointed counsel from county
 17 funds. The court or the court's designee shall review and approve all
 18 reasonable fees and costs. If the attorney believes that the court has set
 19 an unreasonably low hourly rate or if the court finds that the hours the
 20 attorney spent are unreasonable, the attorney may file a special action with
 21 the Arizona supreme court. If counsel is appointed in successive
 22 postconviction relief proceedings, compensation shall be paid pursuant to
 23 section 13-4013, ~~subsection A.~~

24 ~~H. The county shall request reimbursement for fees it incurs pursuant~~
 25 ~~to subsections F, G and I of this section arising out of the appointment of~~
 26 ~~counsel to represent an indigent capital defendant in a state postconviction~~
 27 ~~relief proceeding. The state shall pay a portion of the fees incurred by the~~
 28 ~~county out of monies appropriated to the supreme court for these purposes.~~
 29 ~~The total amount that may be spent in any fiscal year by this state for~~
 30 ~~indigent capital defense in a state postconviction relief proceeding may not~~
 31 ~~exceed the amount appropriated in the general appropriations act for this~~
 32 ~~purpose, together with additional amounts appropriated by any special~~
 33 ~~legislative appropriation for indigent capital defense. The supreme court~~
 34 ~~shall approve county requests for reimbursement after certification that the~~
 35 ~~amount requested is owed.~~

36 ~~I.~~ C. The trial court may authorize additional monies to pay for
 37 investigative and expert services that are reasonably necessary to adequately
 38 litigate those claims that are not precluded by section 13-4232.

39 Sec. 18. Repeal

40 Section 13-4042, Arizona Revised Statutes, is repealed.

1 ~~E.~~ D. A defendant who has pled guilty and who is precluded from
2 filing a direct appeal pursuant to section 13-4033 may be granted an
3 additional thirty day extension of time in which to file the petition if the
4 defendant's counsel refuses to raise issues and leaves the defendant
5 insufficient time to file a petition within the time limits.

6 ~~F.~~ E. On a specific and detailed showing of good cause, a defendant
7 ~~in a noncapital case~~ may be granted up to a sixty day extension of time in
8 which to file the petition. ~~On a specific and detailed showing of good~~
9 ~~cause, a defendant in a capital case may be granted one thirty day extension~~
10 ~~of time in which to file the petition.~~

11 ~~G.~~ F. The time limits are jurisdictional, and an untimely filed
12 notice or petition shall be dismissed with prejudice.

13 ~~H.~~ G. If the record of the trial proceeding has not been transcribed,
14 the defendant may request on a form provided by the clerk of the superior
15 court that the record be prepared. The court shall order that those portions
16 of the record be prepared that it deems necessary to resolve the issues to be
17 raised in the petition. The preparation of the record is a county expense if
18 the defendant is indigent. The time for filing the petition is tolled from
19 the time a request for the record is made until the record is prepared or the
20 request is denied.

21 ~~I.~~ H. The proceeding shall be assigned to the sentencing judge if it
22 is possible. If it appears that the sentencing judge's testimony is
23 relevant, the sentencing judge shall transfer the case to another judge.

24 ~~J.~~ ~~If the defendant has received a sentence of death and the supreme~~
25 ~~court has fixed the time for execution of the sentence, a stay of execution~~
26 ~~shall not be granted on the filing of a second or subsequent petition except~~
27 ~~on separate application for a stay to the supreme court setting forth with~~
28 ~~particularity those issues raised which are not precluded under section~~
29 ~~13-4232. The warrant shall not be stayed to allow for the filing of a~~
30 ~~petition.~~

31 Sec. 20. Repeal

32 Section 13-4234.01, Arizona Revised Statutes, is repealed.

33 Sec. 21. Section 21-102, Arizona Revised Statutes, is amended to read:

34 21-102. Juries; size; degree of unanimity required; waiver

35 A. A jury for trial of a criminal case in which a sentence of ~~death or~~
36 imprisonment for thirty years or more is authorized by law shall consist of
37 twelve persons, and the concurrence of all shall be necessary to render a
38 verdict.

39 B. A jury for trial in any court of record of any other criminal case
40 shall consist of eight persons, and the concurrence of all shall be necessary
41 to render a verdict.

42 C. A jury for trial in any court of record of a civil case shall
43 consist of eight persons, and the concurrence of all but two shall be
44 necessary to render a verdict.

1 D. In a court not of record, a jury for trial of any case shall
2 consist of six persons. The concurrence of all in a criminal case and all
3 but one in a civil case shall be necessary to render a verdict.

4 E. The parties in a civil case, and the parties with the consent of
5 the court in a criminal case, may waive trial by jury, or at any time before
6 a verdict is returned consent to try the case with or receive a verdict
7 concurred in by a lesser number of jurors than that specified above.

8 Sec. 22. Section 31-240, Arizona Revised Statutes, is amended to read:

9 31-240. Prisoner education services budget; prohibitions

10 A. The director shall establish and maintain a dedicated prisoner
11 education services budget for each state prison to identify the monies
12 appropriated to the department and expended for the following education
13 programs:

14 1. The functional literacy program established pursuant to section
15 31-229.

16 2. Adult basic education.

17 3. General equivalency diploma PREPARATION.

18 4. Vocational and technical education.

19 B. The director shall not expend the education services budget monies
20 for education programs dedicated to prisoners incarcerated in a special
21 management unit ~~or prisoners sentenced to death~~.

22 C. ~~The provisions of~~ Subsection B of this section ~~shall~~ DOES not apply
23 to prisoners who are under eighteen years of age and prisoners with
24 disabilities who are under twenty-two years of age.

25 Sec. 23. Section 31-403, Arizona Revised Statutes, is amended to read:

26 31-403. Commutation; restrictions on consideration

27 A. A person who is otherwise eligible for commutation and who is
28 denied a commutation of sentence recommendation shall not petition or be
29 considered by the board for commutation of that sentence for a period of five
30 years following the date of the board's denial of the commutation
31 recommendation if the offense for which the commutation recommendation was
32 denied involved any of the following:

33 1. Death in violation of section 13-1104 or 13-1105.

34 2. Serious physical injury if the person was sentenced pursuant to
35 section 13-704.

36 3. A dangerous crime against children as defined in section 13-705.

37 4. A felony offense in violation of title 13, chapter 14 or 35.1.

38 B. Notwithstanding subsection A, paragraph 2 of this section, if, in
39 its sole discretion, the board determines that the person committed an
40 offense that involved serious physical injury as defined in section 13-105
41 and that the person was not sentenced pursuant to section 13-704, the board
42 may order that the person shall not petition or be considered by the board
43 for commutation of that sentence for a period of five years following the
44 date of the board's denial of the commutation recommendation.

1 C. Notwithstanding subsection A or B of this section, the board, at
2 the time of denial, may lengthen the five year period of time prescribed in
3 subsection A or B of this section to a period of up to ten years, except that
4 if the offense for which commutation was denied involved a violation of an
5 offense listed in subsection A, paragraph 1 of this section, the board may
6 lengthen the period of time to a period of time that is greater than ten
7 years and that is specified by the board by one of the following votes:

8 1. A majority affirmative vote if four or more members consider the
9 action.

10 2. A unanimous affirmative vote if three members consider the action.

11 3. A unanimous affirmative vote if two members consider the action
12 pursuant to section 31-401, subsection I and the chairman concurs after
13 reviewing the information considered by the two members. If the chairman is
14 one of the two members constituting a two member quorum under section 31-401,
15 subsection I, and both the chairman and the other member vote to lengthen the
16 five year period to a period of time greater than ten years, no further
17 action shall be taken and the decision on whether to lengthen the five year
18 period shall be considered by the board at a meeting at which at least three
19 members are present and voting.

20 D. The board may waive the provisions of subsections A, B and C of
21 this section if any of the following applies:

22 1. The person is in imminent danger of death due to a medical
23 condition, as determined by the board.

24 ~~2. The person is the subject of a warrant of execution.~~

25 ~~3.~~ 2. The sentence for which commutation is sought is the subject of
26 a special order issued by the court pursuant to section 13-603, subsection L.

27 E. This section applies only to offenses that are committed on or
28 after January 1, 2006.

29 Sec. 24. Section 31-445, Arizona Revised Statutes, is amended to read:

30 ~~31-445.~~ 31-445. Publication of reasons for granting a commutation,
31 pardon or reprieve

32 ~~When the governor grants a commutation, pardon, reprieve or stay or~~
33 ~~suspends execution of sentence in a case where a sentence of death is~~
34 ~~imposed, he shall,~~ Within ten days after granting ~~the A~~ commutation, pardon,
35 ~~OR reprieve, or stay or suspension of execution, cause to be published~~ **THE**
36 **GOVERNOR SHALL PUBLISH** in bold type, in a newspaper of general circulation,
37 **THAT IS** published in the county where the conviction was had, and shall file
38 with the secretary of state for publication in the Arizona administrative
39 register, a statement setting forth ~~his~~ **THE GOVERNOR'S** reasons for granting
40 the commutation, pardon, ~~OR reprieve or for staying or suspending such~~
41 ~~execution.~~ A further reprieve shall not be granted except ~~upon~~ **ON** the same
42 procedure.

1 Sec. 25. Section 41-1013, Arizona Revised Statutes, is amended to
2 read:

3 41-1013. Register

4 A. The secretary of state shall publish the register at least once
5 each month, including the information which is provided under subsection B of
6 this section and which is filed with the secretary of state during the
7 preceding thirty days. The secretary of state shall publish an index to the
8 register at least twice each year.

9 B. The register shall contain:

10 1. A schedule of the time, date and place of all hearings on proposed
11 repeals, makings or amendments of rules.

12 2. Each governor's executive order.

13 3. Each governor's proclamation of general applicability, and each
14 statement filed by the governor in granting a commutation, pardon or reprieve
15 ~~or stay or suspension of execution where a sentence of death is imposed.~~

16 4. A summary of each attorney general's opinion.

17 5. Each governor's appointment of state officials and board and
18 commission members.

19 6. A table of contents.

20 7. The notice and agency summary of each docket opening.

21 8. The full text and accompanying preamble of each proposed rule.

22 9. The full text and accompanying preamble of each final rule.

23 10. The full text and accompanying preamble of each emergency rule.

24 11. Supplemental notices of a proposed rule.

25 12. Proposed and final notices of expedited rule making and notices
26 that an objection was received regarding a proposed expedited rule making.

27 13. A summary of council action on each rule.

28 14. The full text of any exempt final rule filed with the secretary of
29 state pursuant to section 41-1005, subsection C.

30 15. The notice and a summary of substantive policy statements and
31 notice and a summary of any guidance document publication or revision
32 submitted by an agency. The notice for a substantive policy statement shall
33 contain the website address where the full text of the document is available,
34 if practicable.

35 16. Notices of oral proceedings, public workshops or other meetings on
36 an open rule making docket.

37 C. The register shall be available by subscription and for single copy
38 purchase. The charge for each register or periodic subscription shall be a
39 reasonable charge, not to exceed all costs of production and distribution of
40 the register.

41 D. For purposes of this section, full text publication in the register
42 includes all new, amended or added language and such existing language as the
43 proposing agency deems necessary for a proper understanding of the proposed
44 rule. Rules that are undergoing extensive revision may be reprinted in

1 whole. Existing rule language not required for understanding shall be
2 omitted and marked "no change".

3 Sec. 26. Death sentences; commutation

4 The supreme court shall remand each case in which a sentence of death
5 was imposed before the effective date of this act to the court in the county
6 in which the sentence of death was imposed and that court shall strike the
7 sentence of death and enter in its place a sentence of natural life. An
8 order sentencing a prisoner to natural life is not subject to commutation,
9 parole, community supervision, work furlough or work release.