

REFERENCE TITLE: repetitive offenders; sentencing

State of Arizona  
House of Representatives  
Fifty-second Legislature  
First Regular Session  
2015

# HB 2289

Introduced by  
Representative Farnsworth E

AN ACT

AMENDING SECTIONS 13-703 AND 13-708, 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 FOR THE SECOND OFFENSE if the person is convicted of two felony offenses that  
7 were not committed on the same occasion but that either are consolidated for  
8 trial purposes or are not historical prior felony convictions. FOR THE FIRST  
9 OFFENSE, THE PERSON SHALL BE SENTENCED AS A FIRST TIME FELONY OFFENDER  
10 PURSUANT TO SECTION 13-702.

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

13 1. Is convicted of three or more felony offenses that were not  
14 committed on the same occasion but that either are consolidated for trial  
15 purposes or are not historical prior felony convictions. THE PERSON SHALL BE  
16 SENTENCED AS A CATEGORY TWO REPETITIVE OFFENDER FOR THE THIRD AND ANY  
17 ADDITIONAL FELONY CONVICTIONS. THE PERSON SHALL BE SENTENCED AS A CATEGORY  
18 ONE REPETITIVE OFFENDER FOR THE SECOND OFFENSE AND PURSUANT TO SECTION  
19 13-702 FOR THE FIRST OFFENSE.

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

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

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

30 E. If a person is sentenced as a category one repetitive offender  
31 pursuant to subsection A 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 H  
35 of this section.

36 F. If a person is sentenced as a category two repetitive offender  
37 pursuant to subsection B of this section and if at least two aggravating  
38 circumstances listed in section 13-701, subsection D apply 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 I  
41 of this section.

42 G. If a person is sentenced as a category three repetitive offender  
43 pursuant to subsection C of this section and at least two aggravating  
44 circumstances listed in section 13-701, subsection D or at least two  
45 mitigating circumstances listed in section 13-701, subsection E apply, the

1 court may impose a mitigated or aggravated sentence pursuant to subsection J  
2 of this section.

3 H. A category one repetitive offender shall be sentenced within the  
4 following ranges:

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

11 I. A category two repetitive offender shall be sentenced within the  
12 following ranges:

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

19 J. A category three repetitive offender shall be sentenced within the  
20 following ranges:

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

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

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

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

1 offense was committed is subject to this section. A person who has been  
2 convicted of a felony weapons possession violation in any court outside the  
3 jurisdiction of this state that would not be punishable as a felony under the  
4 laws of this state is not subject to this section.

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

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

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

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

38 Sec. 2. Section 13-708, Arizona Revised Statutes, is amended to read:

39 13-708. Offenses committed while released from confinement

40 A. A person who is convicted of any felony involving a dangerous  
41 offense that is committed while the person is on probation for a conviction  
42 of a felony offense or parole, work furlough, community supervision or any  
43 other release or has escaped from confinement for conviction of a felony  
44 offense shall be sentenced to imprisonment for not less than the presumptive

1 sentence authorized under this chapter and is not eligible for suspension or  
2 commutation or release on any basis until the sentence imposed is served.

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

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

43 D. A person who is convicted of committing any felony offense that is  
44 committed while the person is released on bond or on the person's own  
45 recognizance on a separate felony offense or while the person is escaped from

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

32 E. A SENTENCE IMPOSED PURSUANT TO SUBSECTION A, B OR C OF THIS SECTION  
33 SHALL REVOKE THE CONVICTED PERSON'S RELEASE IF THE PERSON WAS ON RELEASE AND  
34 SHALL BE CONSECUTIVE TO ANY OTHER SENTENCE FROM WHICH THE CONVICTED PERSON  
35 HAD BEEN TEMPORARILY RELEASED OR HAD ESCAPED, UNLESS THE SENTENCE FROM WHICH  
36 THE CONVICTED PERSON HAD BEEN PAROLED OR PLACED ON PROBATION WAS IMPOSED BY A  
37 JURISDICTION OTHER THAN THIS STATE.