

State of Arizona
House of Representatives
Fifty-third Legislature
Second Regular Session
2018

CHAPTER 61
HOUSE BILL 2007

AN ACT

AMENDING SECTION 13-701, ARIZONA REVISED STATUTES; RELATING TO CRIMINAL SENTENCING.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 13-701, Arizona Revised Statutes, is amended to
3 read:

4 13-701. Sentence of imprisonment for felony; presentence
5 report; aggravating and mitigating factors;
6 consecutive terms of imprisonment; definition

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

10 B. No prisoner may be transferred to the custody of the state
11 department of corrections without a certified copy of the judgment and
12 sentence, signed by the sentencing judge, and a copy of a recent
13 presentence investigation report unless the court has waived preparation
14 of the report.

15 C. The minimum or maximum term imposed pursuant to section 13-702,
16 13-703, 13-704, 13-705, 13-708, 13-710, 13-1406, 13-3212 or 13-3419 may be
17 imposed only if one or more of the circumstances alleged to be in
18 aggravation of the crime are found to be true by the trier of fact beyond
19 a reasonable doubt or are admitted by the defendant, except that an
20 alleged aggravating circumstance under subsection D, paragraph 11 of this
21 section shall be found to be true by the court, or in mitigation of the
22 crime are found to be true by the court, on any evidence or information
23 introduced or submitted to the court or the trier of fact before
24 sentencing or any evidence presented at trial, and factual findings and
25 reasons in support of such findings are set forth on the record at the
26 time of sentencing.

27 D. For the purpose of determining the sentence pursuant to
28 subsection C of this section, the trier of fact shall determine and the
29 court shall consider the following aggravating circumstances, except that
30 the court shall determine an aggravating circumstance under paragraph 11
31 of this subsection:

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

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

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

42 4. Presence of an accomplice.

43 5. Especially heinous, cruel or depraved manner in which the
44 offense was committed.

1 6. The defendant committed the offense as consideration for the
2 receipt, or in the expectation of the receipt, of anything of pecuniary
3 value.

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

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

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

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

14 11. The defendant was previously convicted of a felony within the
15 ten years immediately preceding the date of the offense. A conviction
16 outside the jurisdiction of this state for an offense that if committed in
17 this state would be punishable as a felony is a felony conviction for the
18 purposes of this paragraph.

19 12. The defendant was wearing body armor as defined in section
20 13-3116.

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

24 14. The defendant was appointed pursuant to title 14 as a fiduciary
25 and the offense involved conduct directly related to the defendant's
26 duties to the victim as fiduciary.

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

32 16. The defendant was convicted of a violation of section 13-1102,
33 section 13-1103, section 13-1104, subsection A, paragraph 3 or section
34 13-1204, subsection A, paragraph 1 or 2 arising from an act that was
35 committed while driving a motor vehicle and the defendant's alcohol
36 concentration at the time of committing the offense was 0.15 or more. For
37 the purposes of this paragraph, "alcohol concentration" has the same
38 meaning prescribed in section 28-101.

39 17. Lying in wait for the victim or ambushing the victim during the
40 commission of any felony.

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

44 19. The offense was committed in retaliation for a victim either
45 reporting criminal activity or being involved in an organization, other

1 than a law enforcement agency, that is established for the purpose of
2 reporting or preventing criminal activity.

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

5 21. The defendant was in violation of 8 United States Code section
6 1323, 1324, 1325, 1326 or 1328 at the time of the commission of the
7 offense.

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

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

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

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

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

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

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

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

30 24. The defendant was convicted of a violation of section 13-1307
31 or 13-1308 or section 13-3212, subsection A, paragraph 9 or 10 and the
32 defendant recruited, enticed or obtained the victim from a shelter that is
33 designed to serve runaway youth, foster children, homeless persons or
34 victims of human trafficking, domestic violence or sexual assault.

35 25. The defendant was convicted of a violation of section 13-1204
36 and there is evidence that the defendant committed the crime out of malice
37 toward a victim because of the victim's employment as a peace officer.

38 26. DURING OR IMMEDIATELY FOLLOWING THE COMMISSION OF THE OFFENSE,
39 THE DEFENDANT USED A MASK OR OTHER DISGUISE TO OBSCURE THE DEFENDANT'S
40 FACE TO AVOID IDENTIFICATION.

41 ~~26.~~ 27. Any other factor that the state alleges is relevant to the
42 defendant's character or background or to the nature or circumstances of
43 the crime.

1 E. For the purpose of determining the sentence pursuant to
2 subsection C of this section, the court shall consider the following
3 mitigating circumstances:

4 1. The age of the defendant.

5 2. The defendant's capacity to appreciate the wrongfulness of the
6 defendant's conduct or to conform the defendant's conduct to the
7 requirements of law was significantly impaired, but not so impaired as to
8 constitute a defense to prosecution.

9 3. The defendant was under unusual or substantial duress, although
10 not to a degree that would constitute a defense to prosecution.

11 4. The degree of the defendant's participation in the crime was
12 minor, although not so minor as to constitute a defense to prosecution.

13 5. During or immediately following the commission of the offense,
14 the defendant complied with all duties imposed under sections 28-661,
15 28-662 and 28-663.

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

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

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

30 H. This section does not affect any provision of law that imposes
31 the death penalty, that expressly provides for imprisonment for life or
32 that authorizes or restricts the granting of probation and suspending the
33 execution of sentence.

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

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

APPROVED BY THE GOVERNOR MARCH 23, 2018.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MARCH 23, 2018.