

REFERENCE TITLE: juveniles; natural life sentence; repeal.

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SB 1352

Introduced by
Senators Dalessandro: Bradley, Cajero Bedford, Contreras, Hobbs, Mendez,
Miranda, Otondo, Peshlakai, Quezada

AN ACT

AMENDING SECTIONS 13-751, 13-752, 13-1423 AND 13-2308.01, 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 13-751, Arizona Revised Statutes, is amended to
3 read:

4 13-751. Sentence of death or life imprisonment; aggravating
5 and mitigating circumstances; definition

6 A. If the state has filed a notice of intent to seek the death
7 penalty and the defendant is:

8 1. Convicted of first degree murder pursuant to section 13-1105,
9 subsection A, paragraph 1 or 3 and was at least eighteen years of age at
10 the time of the commission of the offense, the defendant shall be
11 sentenced to death or imprisonment in the custody of the state department
12 of corrections for natural life as determined and in accordance with the
13 procedures provided in section 13-752. A defendant who is sentenced to
14 natural life is not eligible for commutation, parole, work furlough, work
15 release or release from confinement on any basis.

16 2. Convicted of first degree murder pursuant to section 13-1105 and
17 was under eighteen years of age at the time of the commission of the
18 offense, the defendant shall be sentenced to imprisonment in the custody
19 of the state department of corrections for life ~~or natural life, as~~
20 ~~determined and in accordance with the procedures provided in section~~
21 ~~13-752.~~ A defendant who is sentenced to ~~natural life is not eligible for~~
22 ~~commutation, parole, work furlough, work release or release from~~
23 ~~confinement on any basis. If the defendant is sentenced to life, the~~
24 ~~defendant~~ shall not be released on any basis until the completion of the
25 service of twenty-five calendar years if the murdered person was fifteen
26 or more years of age and thirty-five years if the murdered person was
27 under fifteen years of age or was an unborn child.

28 3. Convicted of first degree murder pursuant to section 13-1105,
29 subsection A, paragraph 2, the defendant shall be sentenced to death or
30 imprisonment in the custody of the state department of corrections for
31 life or natural life as determined and in accordance with the procedures
32 provided in section 13-752. A defendant who is sentenced to natural life
33 is not eligible for commutation, parole, work furlough, work release or
34 release from confinement on any basis. If the defendant is sentenced to
35 life, the defendant shall not be released on any basis until the
36 completion of the service of twenty-five calendar years if the murdered
37 person was fifteen or more years of age and thirty-five years if the
38 murdered person was under fifteen years of age or was an unborn child.

39 B. At the aggravation phase of the sentencing proceeding that is
40 held pursuant to section 13-752, the admissibility of information relevant
41 to any of the aggravating circumstances set forth in subsection F of this
42 section shall be governed by the rules of evidence applicable to criminal
43 trials. The burden of establishing the existence of any of the
44 aggravating circumstances set forth in subsection F of this section is on

1 the prosecution. The prosecution must prove the existence of the
2 aggravating circumstances beyond a reasonable doubt.

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

15 D. Evidence that is admitted at the trial and that relates to any
16 aggravating or mitigating circumstances shall be deemed admitted as
17 evidence at a sentencing proceeding if the trier of fact considering that
18 evidence is the same trier of fact that determined the defendant's guilt.
19 The prosecution and the defendant shall be permitted to rebut any
20 information received at the aggravation or penalty phase of the sentencing
21 proceeding and shall be given fair opportunity to present argument as to
22 whether the information is sufficient to establish the existence of any of
23 the circumstances included in subsections F and G of this section.

24 E. In determining whether to impose a sentence of death or life
25 imprisonment, the trier of fact shall take into account the aggravating
26 and mitigating circumstances that have been proven. The trier of fact
27 shall impose a sentence of death if the trier of fact finds one or more of
28 the aggravating circumstances enumerated in subsection F of this section
29 and then determines that there are no mitigating circumstances
30 sufficiently substantial to call for leniency.

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

33 1. The defendant has been convicted of another offense in the
34 United States for which under Arizona law a sentence of life imprisonment
35 or death was imposable.

36 2. The defendant has been or was previously convicted of a serious
37 offense, whether preparatory or completed. Convictions for serious
38 offenses committed on the same occasion as the homicide, or not committed
39 on the same occasion but consolidated for trial with the homicide, shall
40 be treated as a serious offense under this paragraph.

41 3. In the commission of the offense the defendant knowingly created
42 a grave risk of death to another person or persons in addition to the
43 person murdered during the commission of the offense.

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

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

3 6. The defendant committed the offense in an especially heinous,
4 cruel or depraved manner.

5 7. The defendant committed the offense while:

6 (a) In the custody of or on authorized or unauthorized release from
7 the state department of corrections, a law enforcement agency or a county
8 or city jail.

9 (b) On probation for a felony offense.

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

13 9. The defendant was an adult at the time the offense was committed
14 or was tried as an adult and the murdered person was under fifteen years
15 of age, was an unborn child in the womb at any stage of its development or
16 was seventy years of age or older.

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

21 11. The defendant committed the offense with the intent to promote,
22 further or assist the objectives of a criminal street gang or criminal
23 syndicate or to join a criminal street gang or criminal syndicate.

24 12. The defendant committed the offense to prevent a person's
25 cooperation with an official law enforcement investigation, to prevent a
26 person's testimony in a court proceeding, in retaliation for a person's
27 cooperation with an official law enforcement investigation or in
28 retaliation for a person's testimony in a court proceeding.

29 13. The offense was committed in a cold, calculated manner without
30 pretense of moral or legal justification.

31 14. The defendant used a remote stun gun or an authorized remote
32 stun gun in the commission of the offense. For the purposes of this
33 paragraph:

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

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

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

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

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

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

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

12 1. The defendant's capacity to appreciate the wrongfulness of his
13 conduct or to conform his conduct to the requirements of law was
14 significantly impaired, but not so impaired as to constitute a defense to
15 prosecution.

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

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

21 4. The defendant could not reasonably have foreseen that his
22 conduct in the course of the commission of the offense for which the
23 defendant was convicted would cause, or would create a grave risk of
24 causing, death to another person.

25 5. The defendant's age.

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

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

32 J. For the purposes of this section, "serious offense" means any of
33 the following offenses if committed in this state or any offense committed
34 outside this state that if committed in this state would constitute one of
35 the following offenses:

36 1. First degree murder.

37 2. Second degree murder.

38 3. Manslaughter.

39 4. Aggravated assault resulting in serious physical injury or
40 committed by the use, threatened use or exhibition of a deadly weapon or
41 dangerous instrument.

42 5. Sexual assault.

43 6. Any dangerous crime against children.

44 7. Arson of an occupied structure.

45 8. Robbery.

- 1 9. Burglary in the first degree.
- 2 10. Kidnapping.
- 3 11. Sexual conduct with a minor under fifteen years of age.
- 4 12. Burglary in the second degree.
- 5 13. Terrorism.

6 Sec. 2. Section 13-752, Arizona Revised Statutes, is amended to
7 read:

8 13-752. Sentences of death, life imprisonment or natural
9 life; imposition; sentencing proceedings;
10 definitions

11 A. If the state has filed a notice of intent to seek the death
12 penalty and the defendant is convicted of first degree murder, the trier
13 of fact at the sentencing proceeding shall determine whether to impose a
14 sentence of death in accordance with the procedures provided in this
15 section. If the trier of fact determines that a sentence of death is not
16 appropriate, or if the state has not filed a notice of intent to seek the
17 death penalty, and the defendant is convicted of first degree murder
18 pursuant to section 13-1105, subsection A, paragraph 1 or 3 and was at
19 least eighteen years of age at the time of the commission of the offense,
20 the court shall impose a sentence of natural life. If the defendant ~~was~~
21 ~~under eighteen years of age at the time of the commission of the offense~~
22 ~~or if the defendant~~ is convicted of first degree murder pursuant to
23 section 13-1105, subsection A, paragraph 2, the court shall determine
24 whether to impose a sentence of life or natural life.

25 B. Before trial, the prosecution shall notice one or more of the
26 aggravating circumstances under section 13-751, subsection F.

27 C. If the trier of fact finds the defendant guilty of first degree
28 murder, the trier of fact shall then immediately determine whether one or
29 more alleged aggravating circumstances have been proven. This proceeding
30 is the aggravation phase of the sentencing proceeding.

31 D. If the trier of fact finds that one or more of the alleged
32 aggravating circumstances have been proven, the trier of fact shall then
33 immediately determine whether the death penalty should be imposed. This
34 proceeding is the penalty phase of the sentencing proceeding.

35 E. At the aggravation phase, the trier of fact shall make a special
36 finding on whether each alleged aggravating circumstance has been proven
37 based on the evidence that was presented at the trial or at the
38 aggravation phase. If the trier of fact is a jury, a unanimous verdict is
39 required to find that the aggravating circumstance has been proven. If
40 the trier of fact unanimously finds that an aggravating circumstance has
41 not been proven, the defendant is entitled to a special finding that the
42 aggravating circumstance has not been proven. If the trier of fact
43 unanimously finds no aggravating circumstances, the court shall then
44 determine whether to impose a sentence of life or natural life on the
45 defendant pursuant to subsection A of this section.

1 F. The penalty phase shall be held immediately after the trier of
2 fact finds at the aggravation phase that one or more of the aggravating
3 circumstances under section 13-751, subsection F have been proven. A
4 finding by the trier of fact that any of the remaining aggravating
5 circumstances alleged has not been proven or the inability of the trier of
6 fact to agree on the issue of whether any of the remaining aggravating
7 circumstances alleged has been proven shall not prevent the holding of the
8 penalty phase.

9 G. At the penalty phase, the defendant and the state may present
10 any evidence that is relevant to the determination of whether there is
11 mitigation that is sufficiently substantial to call for leniency. In
12 order for the trier of fact to make this determination, regardless of
13 whether the defendant presents evidence of mitigation, the state may
14 present any evidence that demonstrates that the defendant should not be
15 shown leniency including any evidence regarding the defendant's character,
16 propensities, criminal record or other acts.

17 H. The trier of fact shall determine unanimously whether death is
18 the appropriate sentence. If the trier of fact is a jury and the jury
19 unanimously determines that the death penalty is not appropriate, the
20 court shall determine whether to impose a sentence of life or natural life
21 pursuant to subsection A of this section.

22 I. If the trier of fact at any prior phase of the trial is the same
23 trier of fact at the subsequent phase, any evidence that was presented at
24 any prior phase of the trial shall be deemed admitted as evidence at any
25 subsequent phase of the trial.

26 J. At the aggravation phase, if the trier of fact is a jury, the
27 jury is unable to reach a verdict on any of the alleged aggravating
28 circumstances and the jury has not found that at least one of the alleged
29 aggravating circumstances has been proven, the court shall dismiss the
30 jury and shall impanel a new jury. The new jury shall not retry the issue
31 of the defendant's guilt or the issue regarding any of the aggravating
32 circumstances that the first jury found not proved by unanimous verdict.
33 If the new jury is unable to reach a unanimous verdict, the court shall
34 impose a sentence of life or natural life on the defendant.

35 K. At the penalty phase, if the trier of fact is a jury and the
36 jury is unable to reach a verdict, the court shall dismiss the jury and
37 shall impanel a new jury. The new jury shall not retry the issue of the
38 defendant's guilt or the issue regarding any of the aggravating
39 circumstances that the first jury found by unanimous verdict to be proved
40 or not proved. If the new jury is unable to reach a unanimous verdict,
41 the court shall impose a sentence of life or natural life on the
42 defendant.

43 L. If the jury that rendered a verdict of guilty is not the jury
44 first impaneled for the aggravation phase, the jury impaneled in the
45 aggravation phase shall not retry the issue of the defendant's guilt. If

1 the jury impaneled in the aggravation phase is unable to reach a verdict
2 on any of the alleged aggravating circumstances and the jury has not found
3 that at least one of the alleged aggravating circumstances has been
4 proven, the court shall dismiss the jury and shall impanel a new jury.
5 The new jury shall not retry the issue of the defendant's guilt or the
6 issue regarding any of the aggravating circumstances that the first jury
7 found not proved by unanimous verdict. If the new jury is unable to reach
8 a unanimous verdict, the court shall impose a sentence of life or natural
9 life on the defendant.

10 M. Alternate jurors who are impaneled for the trial in a case in
11 which the offense is punishable by death shall not be excused from the
12 case until the completion of the sentencing proceeding.

13 N. If the sentence of a person who was sentenced to death is
14 overturned, the person shall be resentenced pursuant to this section by a
15 jury that is specifically impaneled for this purpose as if the original
16 sentencing had not occurred.

17 O. In any case that requires sentencing or resentencing in which
18 the defendant has been convicted of an offense that is punishable by death
19 and in which the trier of fact was a judge or a jury that has since been
20 discharged, the defendant shall be sentenced or resentenced pursuant to
21 this section by a jury that is specifically impaneled for this purpose.

22 P. The trier of fact shall make all factual determinations required
23 by this section or the Constitution of the United States or this state to
24 impose a death sentence. If the defendant bears the burden of proof, the
25 issue shall be determined in the penalty phase. If the state bears the
26 burden of proof, the issue shall be determined in the aggravation phase.

27 Q. If the death penalty was not alleged or was alleged but not
28 imposed, the court shall determine whether to impose a sentence of life or
29 natural life pursuant to subsection A of this section. In determining
30 whether to impose a sentence of life or natural life, the court:

31 1. May consider any evidence introduced before sentencing or at any
32 other sentencing proceeding.

33 2. Shall consider the aggravating and mitigating circumstances
34 listed in section 13-701 and any statement made by a victim.

35 R. Subject to section 13-751, subsection B, a victim has the right
36 to be present at the aggravation phase and to present any information that
37 is relevant to the proceeding. A victim has the right to be present and
38 to present information at the penalty phase. At the penalty phase, the
39 victim may present information about the murdered person and the impact of
40 the murder on the victim and other family members and may submit a victim
41 impact statement in any format to the trier of fact.

42 S. For the purposes of this section:

43 1. "Trier of fact" means a jury unless the defendant and the state
44 waive a jury, in which case the trier of fact shall be the court.

1 2. "Victim" means the murdered person's spouse, parent, child,
2 grandparent or sibling, any other person related to the murdered person by
3 consanguinity or affinity to the second degree or any other lawful
4 representative of the murdered person, except if the spouse, parent,
5 child, grandparent, sibling, other person related to the murdered person
6 by consanguinity or affinity to the second degree or other lawful
7 representative is in custody for an offense or is the accused.

8 Sec. 3. Section 13-1423, Arizona Revised Statutes, is amended to
9 read:

10 13-1423. Violent sexual assault; natural life sentence

11 A. A person is guilty of violent sexual assault if in the course of
12 committing an offense under section 13-1404, 13-1405, 13-1406 or 13-1410
13 the offense involved the discharge, use or threatening exhibition of a
14 deadly weapon or dangerous instrument or involved the intentional or
15 knowing infliction of serious physical injury and the person has a
16 historical prior felony conviction for a sexual offense under this chapter
17 or any offense committed outside this state that if committed in this
18 state would constitute a sexual offense under this chapter.

19 B. Notwithstanding section 13-703, section 13-704, section 13-705,
20 section 13-706, subsection A and section 13-708, subsection D, a person
21 who is **AT LEAST EIGHTEEN YEARS OF AGE AND WHO IS** guilty of a violent
22 sexual assault shall be sentenced to life imprisonment and the court shall
23 order that the person not be released on any basis for the remainder of
24 the person's natural life.

25 Sec. 4. Section 13-2308.01, Arizona Revised Statutes, is amended to
26 read:

27 13-2308.01. Terrorism; classification

28 A. It is unlawful for a person to intentionally or knowingly do any
29 of the following:

- 30 1. Engage in an act of terrorism.
- 31 2. Organize, manage, direct, supervise or finance an act of
32 terrorism.
- 33 3. Solicit, incite or induce others to promote or further an act of
34 terrorism.
- 35 4. Without lawful authority or when exceeding lawful authority,
36 manufacture, sell, deliver, display, use, make accessible to others,
37 possess or exercise control over a weapon of mass destruction knowing or
38 having reason to know that the device or object involved is a weapon of
39 mass destruction.
- 40 5. Make property available to another, by transaction,
41 transportation or otherwise, knowing or having reason to know that the
42 property is intended to facilitate an act of terrorism.
- 43 6. Provide advice, assistance or direction in the conduct,
44 financing or management of an act of terrorism knowing or having reason to
45 know that an act of terrorism has occurred or may result by:

- 1 (a) Harboring or concealing any person or property.
- 2 (b) Warning any person of impending discovery, apprehension,
- 3 prosecution or conviction. This subdivision does not apply to a warning
- 4 that is given in connection with an effort to bring another person into
- 5 compliance with the law.
- 6 (c) Providing any person with material support or resources or any
- 7 other means of avoiding discovery, apprehension, prosecution or
- 8 conviction.
- 9 (d) Concealing or disguising the nature, location, source,
- 10 ownership or control of material support or resources.
- 11 (e) Preventing or obstructing by means of force, deception or
- 12 intimidation anyone from performing an act that might aid in the
- 13 discovery, apprehension, prosecution or conviction of any person or that
- 14 might aid in the prevention of an act of terrorism.
- 15 (f) Suppressing by any act of concealment, alteration or
- 16 destruction any physical evidence that might aid in the discovery,
- 17 apprehension, prosecution or conviction of any person or that might aid in
- 18 the prevention of an act of terrorism.
- 19 (g) Concealing the identity of any person.
- 20 7. Provide advice, assistance or direction in the conduct,
- 21 financing or management of a terrorist organization.
- 22 B. A violation of this section is a class 2 felony.
- 23 C. A person who is convicted of a violation of this section may be
- 24 sentenced to imprisonment in the custody of the state department of
- 25 corrections for life or, **IF THE PERSON WAS AT LEAST EIGHTEEN YEARS OF AGE**
- 26 **AT THE TIME OF THE COMMISSION OF THE OFFENSE,** natural life. A defendant
- 27 who is sentenced to natural life is not eligible for commutation, parole,
- 28 work furlough, work release or release from confinement on any basis for
- 29 the remainder of the defendant's natural life. A defendant who is
- 30 sentenced to life is not eligible for suspension of sentence, probation,
- 31 pardon or release from confinement on any basis except as specifically
- 32 authorized by section 13-716 or section 31-233, subsection A or B until
- 33 the completion of the service of twenty-five calendar years or the
- 34 sentence is commuted. If the defendant is not sentenced to life or
- 35 natural life, the defendant shall be sentenced to a term of imprisonment
- 36 as follows:

37 <u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>
38 10 calendar years	16 calendar years	25 calendar years