

REFERENCE TITLE: **sentencing; repetitive offenders**

State of Arizona  
House of Representatives  
Fifty-fourth Legislature  
First Regular Session  
2019

## **HB 2361**

Introduced by  
Representatives Toma: Allen J, Blackman, Bolick, Bowers, Butler, Engel,  
Epstein, Lieberman, Roberts, Stringer, Udall

**AN ACT**

**AMENDING SECTIONS 12-2703, 13-703 AND 41-1604.10, 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 12-2703, Arizona Revised Statutes, is amended to  
3 read:

4 12-2703. Scope of remedies; violation; classification

5 A. It is unlawful for any person to render for compensation any  
6 service constituting the unauthorized practice of immigration and  
7 nationality law or to otherwise violate this chapter.

8 B. A person having an interest or right that is or may be adversely  
9 affected under this chapter may initiate an action for civil remedies.  
10 The provisions of this article are in addition to all other causes of  
11 action, remedies and penalties that are available in this state.

12 C. The attorney general shall initiate appropriate proceedings to  
13 prevent or to stop violations of this chapter.

14 ~~D. Section 13-703, subsection A does not apply for the purpose of  
15 enhancing the sentence of a person who is convicted of two or more  
16 offenses under this section.~~

17 ~~E. D.~~ D. A person who violates this chapter is guilty of a class 6  
18 felony.

19 Sec. 2. Section 13-703, Arizona Revised Statutes, is amended to  
20 read:

21 13-703. Repetitive offenders; sentencing

22 ~~A. If a person is convicted of multiple felony offenses that were  
23 not committed on the same occasion but that either are consolidated for  
24 trial purposes or are not historical prior felony convictions, the person  
25 shall be sentenced as a first time felony offender pursuant to section  
26 13-702 for the first offense, as a category one repetitive offender for  
27 the second offense, and as a category two repetitive offender for the  
28 third and subsequent offenses.~~

29 ~~B.~~ A. Except as provided in section 13-704 or 13-705, a person  
30 shall be sentenced as a category ~~two~~ ONE repetitive offender if the person  
31 is at least eighteen years of age or has been tried as an adult and stands  
32 convicted of a felony and has one historical prior felony conviction.

33 ~~C.~~ B. Except as provided in section 13-704 or 13-705, a person  
34 shall be sentenced as a category ~~three~~ TWO repetitive offender if the  
35 person is at least eighteen years of age or has been tried as an adult and  
36 stands convicted of a felony and has two or more historical prior felony  
37 convictions.

38 ~~D.~~ C. The presumptive term set by this section may be aggravated  
39 or mitigated within the range under this section pursuant to section  
40 13-701, subsections C, D and E.

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

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

3 ~~F.~~ D. If a person is sentenced as a category ~~two~~ ONE repetitive  
4 offender pursuant to subsection A ~~or B~~ of this section and if at least two  
5 aggravating circumstances listed in section 13-701, subsection D apply or  
6 at least two mitigating circumstances listed in section 13-701, subsection  
7 E apply, the court may impose a mitigated or aggravated sentence pursuant  
8 to subsection ~~F~~ F of this section.

9 ~~G.~~ E. If a person is sentenced as a category ~~three~~ TWO repetitive  
10 offender pursuant to subsection ~~C~~ B of this section and at least two  
11 aggravating circumstances listed in section 13-701, subsection D or at  
12 least two mitigating circumstances listed in section 13-701, subsection E  
13 apply, the court may impose a mitigated or aggravated sentence pursuant to  
14 subsection ~~H~~ G of this section.

15 ~~H. A category one repetitive offender shall be sentenced within the  
16 following ranges:~~

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

23 ~~I.~~ F. A category ~~two~~ ONE repetitive offender shall be sentenced  
24 within the 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

31 ~~J.~~ G. A category ~~three~~ TWO repetitive offender shall be sentenced  
32 within the 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

39 ~~K.~~ H. The aggravated or mitigated term imposed pursuant to  
40 subsection ~~H, I or J~~ F OR G of this section may be imposed only if at  
41 least two of the aggravating circumstances are found beyond a reasonable  
42 doubt to be true by the trier of fact or are admitted by the defendant,  
43 except that an aggravating circumstance under section 13-701, subsection  
44 D, paragraph 11 shall be found to be true by the court, or in mitigation  
45 of the crime are found to be true by the court, on any evidence or

1 information introduced or submitted to the court or the trier of fact  
2 before sentencing or any evidence presented at trial, and factual findings  
3 and reasons in support of these findings are set forth on the record at  
4 the time of sentencing.

5 ~~I.~~ I. Convictions for two or more offenses committed on the same  
6 occasion shall be counted as only one conviction for the purposes of  
7 subsections A AND B ~~and C~~ of this section.

8 ~~M.~~ J. A person who has been convicted in any court outside the  
9 jurisdiction of this state of an offense that was punishable by that  
10 jurisdiction as a felony is subject to this section. A person who has  
11 been convicted as an adult of an offense punishable as a felony under the  
12 provisions of any prior code in this state or the jurisdiction in which  
13 the offense was committed is subject to this section. A person who has  
14 been convicted of a felony weapons possession violation in any court  
15 outside the jurisdiction of this state that would not be punishable as a  
16 felony under the laws of this state is not subject to this section.

17 ~~N.~~ K. The penalties prescribed by this section shall be  
18 substituted for the penalties otherwise authorized by law if an allegation  
19 of A HISTORICAL prior FELONY conviction is charged in the indictment or  
20 information and admitted or found by the court. THE PENALTIES PRESCRIBED  
21 BY THIS SECTION FOR A HISTORICAL PRIOR FELONY CONVICTION MAY BE USED ONLY  
22 IF THE PERSON WAS CONVICTED OF AND SENTENCED FOR THE HISTORICAL PRIOR  
23 FELONY CONVICTION BEFORE THE PERSON COMMITTED THE PRESENT OFFENSE. The  
24 release provisions prescribed by this section shall not be substituted for  
25 any penalties required by the substantive offense or a provision of law  
26 that specifies a later release or completion of the sentence imposed  
27 before release. The court shall allow the allegation of a HISTORICAL  
28 prior FELONY conviction at any time before the date the case is actually  
29 tried unless the allegation is filed fewer than twenty days before the  
30 case is actually tried and the court finds on the record that the person  
31 was in fact prejudiced by the untimely filing and states the reasons for  
32 these findings. If the allegation of a HISTORICAL prior FELONY conviction  
33 is filed, the state must make available to the person a copy of any  
34 material or information obtained concerning the HISTORICAL prior FELONY  
35 conviction. The charge of previous conviction shall not be read to the  
36 jury. For the purposes of this subsection, "substantive offense" means  
37 the felony offense that the trier of fact found beyond a reasonable doubt  
38 the person committed. Substantive offense does not include allegations  
39 that, if proven, would enhance the sentence of imprisonment or fine to  
40 which the person otherwise would be subject.

41 ~~O.~~ L. A person who is sentenced pursuant to this section is not  
42 eligible for suspension of sentence, probation, pardon or release from  
43 confinement on any basis, except as specifically authorized by section  
44 31-233, subsection A or B, until the sentence imposed by the court has

1 been served, the person is eligible for release pursuant to section  
2 41-1604.07 or the sentence is commuted.

3 ~~P.~~ M. The court shall inform all of the parties before sentencing  
4 occurs of its intent to impose an aggravated or mitigated sentence  
5 pursuant to subsection ~~H, I or J~~ F OR G of this section. If the court  
6 fails to inform the parties, a party waives its right to be informed  
7 unless the party timely objects at the time of sentencing.

8 ~~Q.~~ N. The court in imposing a sentence shall consider the evidence  
9 and opinions presented by the victim or the victim's immediate family at  
10 any aggravation or mitigation proceeding or in the presentence report.

11 Sec. 3. Section 41-1604.10, Arizona Revised Statutes, is amended to  
12 read:

13 41-1604.10. Earned release credits; forfeiture; restoration;  
14 applicability

15 A. Each prisoner classified as parole eligible, class one, pursuant  
16 to section 41-1604.09, shall be allowed the following release credits:

17 1. If sentenced on a first conviction other than pursuant to  
18 section 13-751 or other than for a felony involving a dangerous offense as  
19 defined in section 13-105, every two days served within class one shall be  
20 counted as an earned release credit of one day.

21 2. If sentenced pursuant to section 13-703, subsection ~~B~~ A or on  
22 first conviction of a class 4, 5 or 6 felony involving a dangerous offense  
23 as defined in section 13-105 or any other ~~provisions~~ PROVISION of law that  
24 prohibits release on any basis until serving not less than one-half the  
25 sentence imposed by the court, every two days served within class one  
26 shall be counted as an earned release credit of one day.

27 3. If sentenced pursuant to any other provision of section 13-703,  
28 section 13-704, subsection A, B, C, D or E, section 13-706, subsection A  
29 or section 13-708, subsection D or any other provision of law that  
30 prohibits release on any basis until serving not less than two-thirds the  
31 sentence imposed by the court, every three days served within class one  
32 shall be counted as an earned release credit of one day.

33 B. Release credits earned by a prisoner pursuant to subsection A of  
34 this section shall not reduce the term of imprisonment imposed by the  
35 court on such prisoner, nor reduce the sentence imposed on the prisoner  
36 for the purpose of determining such prisoner's parole eligibility.

37 C. On reclassification of a prisoner resulting from the prisoner's  
38 failure to adhere to the rules of the department or failure to demonstrate  
39 a continual willingness to volunteer for or successfully participate in a  
40 work, educational, treatment or training program, the director may declare  
41 any and all release credits earned by the prisoner forfeited. In the  
42 discretion of the director the release credits may subsequently be  
43 restored. The director shall maintain an account of release credits  
44 earned by each prisoner.

1           D. The director, according to rules adopted by the department, may  
 2 authorize the release of any prisoner who has earned release credits that,  
 3 when added to the time served by the prisoner, equal the sentence imposed  
 4 by the court which shall be the prisoner's earned release credit date. A  
 5 prisoner on earned release credit release is not under the control of the  
 6 department and the department is not required to provide parole services  
 7 or otherwise supervise any prisoner released, except that the department  
 8 may revoke the release of the prisoner until the final expiration of the  
 9 prisoner's sentence if the department has reason to believe that the  
 10 released prisoner has engaged in criminal conduct during the term of  
 11 release. If a prisoner has a term of probation to be completed or served,  
 12 the probation department shall begin supervision of the prisoner when the  
 13 prisoner is released on the earned release credit date. If the prisoner's  
 14 term of probation equals or exceeds the prisoner's final expiration date,  
 15 the director of the state department of corrections shall issue the  
 16 prisoner an absolute discharge on the prisoner's earned release credit  
 17 date. The prisoner is not under the control of the department and the  
 18 department is not required to provide parole services or otherwise  
 19 supervise the prisoner. If the prisoner's term of probation is less than  
 20 the prisoner's final expiration date, the prisoner is not under the  
 21 control of the department and the department is not required to provide  
 22 parole services or otherwise supervise the prisoner, except that the  
 23 department may revoke the release at any time between the earned release  
 24 credit date and the final expiration date if the department has reason to  
 25 believe that the released prisoner has engaged in criminal conduct during  
 26 the term of release. The director may issue the prisoner an absolute  
 27 discharge from the sentence of imprisonment if it appears that the  
 28 prisoner will live and remain at liberty without violating the law and it  
 29 is in the best interest of the state. The state department of corrections  
 30 shall provide reasonable notice to the probation department of the  
 31 scheduled release of the prisoner from confinement by the state department  
 32 of corrections.

33           E. A prisoner shall forfeit five days of the prisoner's earned  
 34 release credits if the court finds or a disciplinary hearing held after a  
 35 review by and recommendations from the attorney general's office  
 36 determines that the prisoner does any of the following:

- 37           1. Brings a claim without substantial justification.
- 38           2. Unreasonably expands or delays a proceeding.
- 39           3. Testifies falsely or otherwise presents false information or  
 40 material to the court.
- 41           4. Submits a claim that is intended solely to harass the party it  
 42 is filed against.

1           F. If the prisoner does not have five days of earned release  
2 credits, the prisoner shall forfeit the prisoner's existing earned release  
3 credits and be ineligible from accruing earned release credits until the  
4 number of earned release credits the prisoner would have otherwise accrued  
5 equals the difference between five days and the number of existing earned  
6 release credit days the prisoner forfeits pursuant to this section.  
7           G. This section applies only to persons who commit felonies before  
8 January 1, 1994.