

REFERENCE TITLE: death penalty; aggravating circumstances

State of Arizona
Senate
Fifty-fourth Legislature
First Regular Session
2019

SB 1314

Introduced by
Senator Farnsworth E

AN ACT

AMENDING SECTION 13-751, ARIZONA REVISED STATUTES; RELATING TO 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 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.~~ 3. The defendant procured the commission of the offense by
45 payment, or promise of payment, of anything of pecuniary value, OR THE

1 DEFENDANT COMMITTED THE OFFENSE AS A RESULT OF PAYMENT, OR A PROMISE OF
2 PAYMENT, OF ANYTHING OF PECUNIARY VALUE.

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

5 ~~6.~~ 4. The defendant committed the offense in an especially
6 heinous, cruel or depraved manner.

7 ~~7.~~ 5. The defendant committed the offense while:

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

11 (b) On probation for a felony offense.

12 ~~8.~~ 6. The defendant has been convicted of one or more other
13 homicides, as defined in section 13-1101, that were committed during the
14 commission of the offense.

15 ~~9.~~ 7. The defendant was an adult at the time the offense was
16 committed or was tried as an adult and the murdered person was under
17 fifteen years of age, was an unborn child in the womb at any stage of its
18 development or was seventy years of age or older.

19 ~~10.~~ 8. The murdered person was an on duty peace officer who was
20 killed in the course of performing the officer's official duties and the
21 defendant knew, or should have known, that the murdered person was a peace
22 officer.

23 ~~11.~~ 9. The defendant committed the offense with the intent to
24 promote, further or assist the objectives of a criminal street gang or
25 criminal syndicate or to join a criminal street gang or criminal
26 syndicate.

27 ~~12.~~ 10. The defendant committed the offense to prevent a person's
28 cooperation with an official law enforcement investigation, to prevent a
29 person's testimony in a court proceeding, in retaliation for a person's
30 cooperation with an official law enforcement investigation or in
31 retaliation for a person's testimony in a court proceeding.

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

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

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

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

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

43 ~~(iii) An identification and tracking system that, on deployment of~~
44 ~~remote electrodes, disperses coded material that is traceable to the~~

~~1 purchaser through records that are kept by the manufacturer on all remote
2 stun guns and all individual cartridges sold.~~

~~3 (iv) A training program that is offered by the manufacturer.~~

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

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

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

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

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

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

28 5. The defendant's age.

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

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

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

39 1. First degree murder.

40 2. Second degree murder.

41 3. Manslaughter.

42 4. Aggravated assault resulting in serious physical injury or
43 committed by the use, threatened use or exhibition of a deadly weapon or
44 dangerous instrument.

45 5. Sexual assault.

- 1 6. Any dangerous crime against children.
- 2 7. Arson of an occupied structure.
- 3 8. Robbery.
- 4 9. Burglary in the first degree.
- 5 10. Kidnapping.
- 6 11. Sexual conduct with a minor under fifteen years of age.
- 7 12. Burglary in the second degree.
- 8 13. Terrorism.