

REFERENCE TITLE: death penalty repeal..

State of Arizona
Senate
Fifty-fifth Legislature
First Regular Session
2021

SB 1695

Introduced by
Senators Mendez: Alston, Contreras, Gonzales, Navarrete, Quezada, Rios,
Steele; Representatives Hernandez M, Salman

AN ACT

AMENDING SECTIONS 12-120.21, 13-701, 13-706 AND 13-751, ARIZONA REVISED STATUTES; REPEALING SECTIONS 13-752, 13-753, 13-754, 13-755, 13-756, 13-757, 13-758 AND 13-759, ARIZONA REVISED STATUTES; AMENDING SECTIONS 13-1105, 13-3841, 13-3859.02, 13-3870, 13-3906 AND 13-3961, ARIZONA REVISED STATUTES; REPEALING TITLE 13, CHAPTER 38, ARTICLE 17, ARIZONA REVISED STATUTES; AMENDING SECTIONS 13-4031, 13-4033, 13-4040 AND 13-4041, ARIZONA REVISED STATUTES; REPEALING SECTION 13-4042, ARIZONA REVISED STATUTES; AMENDING SECTION 13-4234, ARIZONA REVISED STATUTES; REPEALING SECTION 13-4234.01, ARIZONA REVISED STATUTES; AMENDING SECTIONS 21-102, 31-240, 31-403 AND 31-445, 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 12-120.21, Arizona Revised Statutes, is amended
3 to read:

4 12-120.21. Jurisdiction and venue

5 A. The court of appeals shall have:

6 1. Appellate jurisdiction in all actions and proceedings
7 originating in or ~~permitted~~ ALLOWED by law to be appealed from the
8 superior court, ~~except criminal actions involving crimes for which a~~
9 ~~sentence of death has actually been imposed.~~

10 2. Jurisdiction to issue writs of certiorari to review the
11 lawfulness of awards of the industrial commission and to enter judgment
12 affirming or setting aside the awards.

13 3. Jurisdiction to issue injunctions and other writs and orders
14 necessary and proper to the complete exercise of its appellate
15 jurisdiction.

16 4. Jurisdiction to hear and determine petitions for special actions
17 brought pursuant to the ARIZONA rules of procedure for special actions,
18 without regard to its appellate jurisdiction.

19 B. A case or appeal of which the court of appeals has jurisdiction
20 in an action or proceeding originating in or ~~permitted~~ ALLOWED by law to
21 be appealed from the superior court in a county shall be brought or filed
22 in the division ~~which~~ THAT contains that county. An application for a
23 writ of certiorari to review the lawfulness of an award of the industrial
24 commission shall be brought in division 1.

25 Sec. 2. Section 13-701, Arizona Revised Statutes, is amended to
26 read:

27 13-701. Sentence of imprisonment for felony; presentence
28 report; aggravating and mitigating factors;
29 consecutive terms of imprisonment; definition

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

33 B. No prisoner may be transferred to the custody of the state
34 department of corrections without a certified copy of the judgment and
35 sentence, signed by the sentencing judge, and a copy of a recent
36 presentence investigation report unless the court has waived preparation
37 of the report.

38 C. The minimum or maximum term imposed pursuant to section 13-702,
39 13-703, 13-704, 13-705, 13-708, 13-710, 13-1406, 13-3212 or 13-3419 may be
40 imposed only if one or more of the circumstances alleged to be in
41 aggravation of the crime are found to be true by the trier of fact beyond
42 a reasonable doubt or are admitted by the defendant, except that an
43 alleged aggravating circumstance under subsection D, paragraph 11 of this
44 section shall be found to be true by the court, or in mitigation of the
45 crime are found to be true by the court, on any evidence or information

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

5 D. For the purpose of determining the sentence pursuant to
6 subsection C of this section, the trier of fact shall determine and the
7 court shall consider the following aggravating circumstances, except that
8 the court shall determine an aggravating circumstance under paragraph 11
9 of this subsection:

10 1. Infliction or threatened infliction of serious physical injury,
11 except if this circumstance is an essential element of the offense of
12 conviction or has been ~~utilized~~ USED to enhance the range of punishment
13 under section 13-704.

14 2. Use, threatened use or possession of a deadly weapon or
15 dangerous instrument during the commission of the crime, except if this
16 circumstance is an essential element of the offense of conviction or has
17 been ~~utilized~~ USED to enhance the range of punishment under section
18 13-704.

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

21 4. Presence of an accomplice.

22 5. Especially heinous, cruel or depraved manner in which the
23 offense was committed.

24 6. The defendant committed the offense as consideration for the
25 receipt, or in the expectation of the receipt, of anything of pecuniary
26 value.

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

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

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

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

37 11. The defendant was previously convicted of a felony within the
38 ten years immediately preceding the date of the offense. A conviction
39 outside the jurisdiction of this state for an offense that if committed in
40 this state would be punishable as a felony is a felony conviction for the
41 purposes of this paragraph.

42 12. The defendant was wearing body armor as defined in section
43 13-3116.

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

4 14. The defendant was appointed pursuant to title 14 as a fiduciary
5 and the offense involved conduct directly related to the defendant's
6 duties to the victim as fiduciary.

7 15. Evidence that the defendant committed the crime out of malice
8 toward a victim because of the victim's identity in a group listed in
9 section 41-1750, subsection A, paragraph 3 or because of the defendant's
10 perception of the victim's identity in a group listed in section 41-1750,
11 subsection A, paragraph 3.

12 16. The defendant was convicted of a violation of section 13-1102,
13 section 13-1103, section 13-1104, subsection A, paragraph 3 or section
14 13-1204, subsection A, paragraph 1 or 2 arising from an act that was
15 committed while driving a motor vehicle and the defendant's alcohol
16 concentration at the time of committing the offense was 0.15 or more. For
17 the purposes of this paragraph, "alcohol concentration" has the same
18 meaning prescribed in section 28-101.

19 17. Lying in wait for the victim or ambushing the victim during the
20 commission of any felony.

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

24 19. The offense was committed in retaliation for a victim either
25 reporting criminal activity or being involved in an organization, other
26 than a law enforcement agency, that is established for the purpose of
27 reporting or preventing criminal activity.

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

30 21. The defendant was in violation of 8 United States Code section
31 1323, 1324, 1325, 1326 or 1328 at the time of the commission of the
32 offense.

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

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

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

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

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

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

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

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

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

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

18 26. During or immediately following the commission of the offense,
19 the defendant used a mask or other disguise to obscure the defendant's
20 face to avoid identification.

21 27. Any other factor that the state alleges is relevant to the
22 defendant's character or background or to the nature or circumstances of
23 the crime.

24 E. For the purpose of determining the sentence pursuant to
25 subsection C of this section, the court shall consider the following
26 mitigating circumstances:

27 1. The age of the defendant.

28 2. The defendant's capacity to appreciate the wrongfulness of the
29 defendant's conduct or to conform the defendant's conduct to the
30 requirements of law was significantly impaired, but not so impaired as to
31 constitute a defense to prosecution.

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

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

36 5. During or immediately following the commission of the offense,
37 the defendant complied with all duties imposed under sections 28-661,
38 28-662 and 28-663.

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

42 F. If the trier of fact finds at least one aggravating
43 circumstance, the trial court may find by a preponderance of the evidence
44 additional aggravating circumstances. In determining what sentence to
45 impose, the court shall take into account the amount of aggravating

1 circumstances and whether the amount of mitigating circumstances is
2 sufficiently substantial to justify the lesser term. If the trier of fact
3 finds aggravating circumstances and the court does not find any mitigating
4 circumstances, the court shall impose an aggravated sentence.

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

8 H. This section does not affect any provision of law that ~~imposes~~
9 ~~the death penalty, that~~ expressly provides for imprisonment for life or
10 that authorizes or restricts the granting of probation and suspending the
11 execution of sentence.

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

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

17 Sec. 3. Section 13-706, Arizona Revised Statutes, is amended to
18 read:

19 13-706. Serious, violent or aggravated offenders; sentencing;
20 life imprisonment; definitions

21 A. A person who is at least eighteen years of age or who has been
22 tried as an adult and who is convicted of a serious offense except a drug
23 offense, first degree murder or any dangerous crime against children as
24 defined in section 13-705, whether a completed or preparatory offense, and
25 who has previously been convicted of two or more serious offenses not
26 committed on the same occasion shall be sentenced to life imprisonment and
27 is not eligible for suspension of sentence, probation, pardon or release
28 from confinement on any basis, except as specifically authorized by
29 section 31-233, subsection A or B, until the person has served at least
30 twenty-five years or the sentence is commuted.

31 B. Unless a longer term of imprisonment ~~or death~~ is the prescribed
32 penalty and notwithstanding any provision that establishes a shorter term
33 of imprisonment, a person who has been convicted of committing or
34 attempting or conspiring to commit any violent or aggravated felony and
35 who has previously been convicted on separate occasions of two or more
36 violent or aggravated felonies not committed on the same occasion shall be
37 sentenced to imprisonment for life and is not eligible for suspension of
38 sentence, probation, pardon or release on any basis except that the person
39 may be eligible for commutation after the person has served at least
40 thirty-five years.

41 C. In order for the penalty under subsection B of this section to
42 apply, both of the following must occur:

43 1. The aggravated or violent felonies that comprise the prior
44 convictions shall have been entered within fifteen years of the conviction

1 for the third offense, not including time spent in custody or on probation
2 for an offense or while the person is an absconder.

3 2. The sentence for the first aggravated or violent felony
4 conviction shall have been imposed before the conduct occurred that gave
5 rise to the second conviction, and the sentence for the second aggravated
6 or violent felony conviction shall have been imposed before the conduct
7 occurred that gave rise to the third conviction.

8 D. Chapter 3 of this title applies to all offenses under this
9 section.

10 E. For the purposes of this section, if a person has been convicted
11 of an offense committed in another jurisdiction that if committed in this
12 state would be a violation or attempted violation of any of the offenses
13 listed in this section and that has the same elements of an offense listed
14 in this section, the offense committed in another jurisdiction is
15 considered an offense committed in this state.

16 F. For the purposes of this section:

17 1. "Serious offense" means any of the following offenses if
18 committed in this state or any offense committed outside this state that
19 if committed in this state would constitute one of the following offenses:

20 (a) First degree murder.

21 (b) Second degree murder.

22 (c) Manslaughter.

23 (d) Aggravated assault resulting in serious physical injury or
24 involving the discharge, use or threatening exhibition of a deadly weapon
25 or dangerous instrument.

26 (e) Sexual assault.

27 (f) Any dangerous crime against children.

28 (g) Arson of an occupied structure.

29 (h) Armed robbery.

30 (i) Burglary in the first degree.

31 (j) Kidnapping.

32 (k) Sexual conduct with a minor under fifteen years of age.

33 (l) Child sex trafficking.

34 2. "Violent or aggravated felony" means any of the following
35 offenses:

36 (a) First degree murder.

37 (b) Second degree murder.

38 (c) Aggravated assault resulting in serious physical injury or
39 involving the discharge, use or threatening exhibition of a deadly weapon
40 or dangerous instrument.

41 (d) Dangerous or deadly assault by prisoner.

42 (e) Committing assault with intent to incite to riot or participate
43 in riot.

44 (f) Drive by shooting.

- 1 (g) Discharging a firearm at a residential structure if the
- 2 structure is occupied.
- 3 (h) Kidnapping.
- 4 (i) Sexual conduct with a minor that is a class 2 felony.
- 5 (j) Sexual assault.
- 6 (k) Molestation of a child.
- 7 (l) Continuous sexual abuse of a child.
- 8 (m) Violent sexual assault.
- 9 (n) Burglary in the first degree committed in a residential
- 10 structure if the structure is occupied.
- 11 (o) Arson of an occupied structure.
- 12 (p) Arson of an occupied jail or prison facility.
- 13 (q) Armed robbery.
- 14 (r) Participating in or assisting a criminal syndicate or leading
- 15 or participating in a criminal street gang.
- 16 (s) Terrorism.
- 17 (t) Taking a child for the purpose of prostitution.
- 18 (u) Child sex trafficking.
- 19 (v) Commercial sexual exploitation of a minor.
- 20 (w) Sexual exploitation of a minor.
- 21 (x) Unlawful introduction of disease or parasite as prescribed by
- 22 section 13-2912, subsection A, paragraph 2 or 3.

23 Sec. 4. Heading change

24 The chapter heading of title 13, chapter 7.1, Arizona Revised
25 Statutes, is changed from "CAPITAL SENTENCING" to "LIFE IMPRISONMENT".

26 Sec. 5. Section 13-751, Arizona Revised Statutes, is amended to
27 read:

28 13-751. Sentence life or natural life imprisonment; victims'
29 rights

30 A. If ~~the state has filed a notice of intent to seek the death~~
31 ~~penalty and the~~ A defendant is:

32 1. Convicted of first degree murder pursuant to section 13-1105,
33 subsection A, paragraph 1 or 3 and was at least eighteen years of age at
34 the time of the commission of the offense, the defendant shall be
35 sentenced to ~~death or~~ imprisonment in the custody of the state department
36 of corrections for natural life ~~as determined and in accordance with the~~
37 ~~procedures provided in section 13-752.~~ ~~A~~ THE COURT SHALL ORDER THAT THE
38 DEFENDANT NOT BE RELEASED ON ANY BASIS FOR THE REMAINDER OF THE
39 DEFENDANT'S NATURAL LIFE, AND THE defendant ~~who is sentenced to natural~~
40 ~~life~~ is not eligible for commutation, parole, work furlough, work release
41 or release from confinement on any basis.

42 2. Convicted of first degree murder pursuant to section 13-1105 and
43 was under eighteen years of age at the time of the commission of the
44 offense, the defendant shall be sentenced to imprisonment in the custody
45 of the state department of corrections for life or natural life, ~~as~~

1 ~~determined and in accordance with the procedures provided in section~~
2 ~~13-752. IF THE COURT IMPOSES A NATURAL LIFE SENTENCE, THE COURT SHALL~~
3 ~~ORDER THAT THE DEFENDANT NOT BE RELEASED ON ANY BASIS FOR THE REMAINDER OF~~
4 ~~THE DEFENDANT'S NATURAL LIFE.~~ A defendant who is sentenced to natural
5 life is not eligible for commutation, parole, work furlough, work release
6 or release from confinement on any basis. If the defendant is sentenced
7 to life, the defendant shall not be released on any basis until the
8 completion of the service of twenty-five calendar years if the murdered
9 person was fifteen or more years of age and thirty-five years if the
10 murdered person was under fifteen years of age or was an unborn child.

11 3. Convicted of first degree murder pursuant to section 13-1105,
12 subsection A, paragraph 2, the defendant shall be sentenced to ~~death or~~
13 imprisonment in the custody of the state department of corrections for
14 life or natural life ~~as determined and in accordance with the procedures~~
15 ~~provided in section 13-752. IF THE COURT IMPOSES A NATURAL LIFE SENTENCE,~~
16 ~~THE COURT SHALL ORDER THAT THE DEFENDANT NOT BE RELEASED ON ANY BASIS FOR~~
17 ~~THE REMAINDER OF THE DEFENDANT'S NATURAL LIFE.~~ A defendant who is
18 sentenced to natural life is not eligible for commutation, parole, work
19 furlough, work release or release from confinement on any basis. If the
20 defendant is sentenced to life, the defendant shall not be released on any
21 basis until the completion of the service of twenty-five calendar years if
22 the murdered person was fifteen or more years of age and thirty-five years
23 if the murdered person was under fifteen years of age or was an unborn
24 child.

25 ~~B. At the aggravation phase of the sentencing proceeding that is~~
26 ~~held pursuant to section 13-752, the admissibility of information relevant~~
27 ~~to any of the aggravating circumstances set forth in subsection F of this~~
28 ~~section shall be governed by the rules of evidence applicable to criminal~~
29 ~~trials. The burden of establishing the existence of any of the~~
30 ~~aggravating circumstances set forth in subsection F of this section is on~~
31 ~~the prosecution. The prosecution must prove the existence of the~~
32 ~~aggravating circumstances beyond a reasonable doubt.~~

33 ~~C. At the penalty phase of the sentencing proceeding that is held~~
34 ~~pursuant to section 13-752, the prosecution or the defendant may present~~
35 ~~any information that is relevant to any of the mitigating circumstances~~
36 ~~included in subsection G of this section, regardless of its admissibility~~
37 ~~under the rules governing admission of evidence at criminal trials. The~~
38 ~~burden of establishing the existence of the mitigating circumstances~~
39 ~~included in subsection G of this section is on the defendant. The~~
40 ~~defendant must prove the existence of the mitigating circumstances by a~~
41 ~~preponderance of the evidence. If the trier of fact is a jury, the jurors~~
42 ~~do not have to agree unanimously that a mitigating circumstance has been~~
43 ~~proven to exist. Each juror may consider any mitigating circumstance~~
44 ~~found by that juror in determining the appropriate penalty.~~

1 ~~D. Evidence that is admitted at the trial and that relates to any~~
2 ~~aggravating or mitigating circumstances shall be deemed admitted as~~
3 ~~evidence at a sentencing proceeding if the trier of fact considering that~~
4 ~~evidence is the same trier of fact that determined the defendant's guilt.~~
5 ~~The prosecution and the defendant shall be permitted to rebut any~~
6 ~~information received at the aggravation or penalty phase of the sentencing~~
7 ~~proceeding and shall be given fair opportunity to present argument as to~~
8 ~~whether the information is sufficient to establish the existence of any of~~
9 ~~the circumstances included in subsections F and G of this section.~~

10 ~~E. In determining whether to impose a sentence of death or life~~
11 ~~imprisonment, the trier of fact shall take into account the aggravating~~
12 ~~and mitigating circumstances that have been proven. The trier of fact~~
13 ~~shall impose a sentence of death if the trier of fact finds one or more of~~
14 ~~the aggravating circumstances enumerated in subsection F of this section~~
15 ~~and then determines that there are no mitigating circumstances~~
16 ~~sufficiently substantial to call for leniency.~~

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

19 ~~1. The defendant has been convicted of another offense in the~~
20 ~~United States for which under Arizona law a sentence of life imprisonment~~
21 ~~or death was imposable.~~

22 ~~2. The defendant has been or was previously convicted of a serious~~
23 ~~offense, whether preparatory or completed. Convictions for serious~~
24 ~~offenses committed on the same occasion as the homicide, or not committed~~
25 ~~on the same occasion but consolidated for trial with the homicide, shall~~
26 ~~be treated as a serious offense under this paragraph.~~

27 ~~3. The defendant procured the commission of the offense by payment,~~
28 ~~or promise of payment, of anything of pecuniary value, or the defendant~~
29 ~~committed the offense as a result of payment, or a promise of payment, of~~
30 ~~anything of pecuniary value.~~

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

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

34 ~~(a) In the custody of or on authorized or unauthorized release from~~
35 ~~the state department of corrections, a law enforcement agency or a county~~
36 ~~or city jail.~~

37 ~~(b) On probation for a felony offense.~~

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

41 ~~7. The defendant was an adult at the time the offense was committed~~
42 ~~or was tried as an adult and the murdered person was under fifteen years~~
43 ~~of age, was an unborn child in the womb at any stage of its development or~~
44 ~~was seventy years of age or older.~~

1 ~~8. The murdered person was an on duty peace officer who was killed~~
2 ~~in the course of performing the officer's official duties and the~~
3 ~~defendant knew, or should have known, that the murdered person was a peace~~
4 ~~officer.~~

5 ~~9. The defendant committed the offense with the intent to promote,~~
6 ~~further or assist the objectives of a criminal street gang or criminal~~
7 ~~syndicate or to join a criminal street gang or criminal syndicate.~~

8 ~~10. The defendant committed the offense to prevent a person's~~
9 ~~cooperation with an official law enforcement investigation, to prevent a~~
10 ~~person's testimony in a court proceeding, in retaliation for a person's~~
11 ~~cooperation with an official law enforcement investigation or in~~
12 ~~retaliation for a person's testimony in a court proceeding.~~

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

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

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

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

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

31 ~~5. The defendant's age.~~

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

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

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

42 ~~1. First degree murder.~~

43 ~~2. Second degree murder.~~

44 ~~3. Manslaughter.~~

- ~~4. Aggravated assault resulting in serious physical injury or committed by the use, threatened use or exhibition of a deadly weapon or dangerous instrument.~~
- ~~5. Sexual assault.~~
- ~~6. Any dangerous crime against children.~~
- ~~7. Arson of an occupied structure.~~
- ~~8. Robbery.~~
- ~~9. Burglary in the first degree.~~
- ~~10. Kidnapping.~~
- ~~11. Sexual conduct with a minor under fifteen years of age.~~
- ~~12. Burglary in the second degree.~~
- ~~13. Terrorism.~~

B. THE VICTIM HAS THE RIGHT TO BE PRESENT AT ANY SENTENCING PROCEEDING AND TO PRESENT ANY INFORMATION THAT IS RELEVANT TO THE PROCEEDING. THE VICTIM MAY PRESENT INFORMATION ABOUT THE MURDERED PERSON AND THE IMPACT OF THE MURDER ON THE VICTIM AND OTHER FAMILY MEMBERS AND MAY SUBMIT A VICTIM IMPACT STATEMENT IN ANY FORMAT. FOR THE PURPOSES OF THIS SUBSECTION, "VICTIM" MEANS THE MURDERED PERSON'S SPOUSE, PARENT, CHILD OR OTHER LAWFUL REPRESENTATIVE, EXCEPT IF THE SPOUSE, PARENT, CHILD OR OTHER LAWFUL REPRESENTATIVE IS IN CUSTODY FOR AN OFFENSE OR IS THE ACCUSED.

Sec. 6. Repeal

Sections 13-752, 13-753, 13-754, 13-755, 13-756, 13-757, 13-758 and 13-759, Arizona Revised Statutes, are repealed.

Sec. 7. Section 13-1105, Arizona Revised Statutes, is amended to read:

13-1105. First degree murder; classification

A. A person commits first degree murder if:

1. Intending or knowing that the person's conduct will cause death, the person causes the death of another person, including an unborn child, with premeditation or, as a result of causing the death of another person with premeditation, causes the death of an unborn child.

2. Acting either alone or with one or more other persons the person commits or attempts to commit sexual conduct with a minor under section 13-1405, sexual assault under section 13-1406, molestation of a child under section 13-1410, terrorism under section 13-2308.01, marijuana offenses under section 13-3405, subsection A, paragraph 4, dangerous drug offenses under section 13-3407, subsection A, paragraphs 4 and 7, narcotics offenses under section 13-3408, subsection A, paragraph 7 that equal or exceed the statutory threshold amount for each offense or combination of offenses, involving or using minors in drug offenses under section 13-3409, drive by shooting under section 13-1209, kidnapping under section 13-1304, burglary under section 13-1506, 13-1507 or 13-1508, arson under section 13-1703 or 13-1704, robbery under section 13-1902, 13-1903 or 13-1904, escape under section 13-2503 or 13-2504, child abuse under

1 section 13-3623, subsection A, paragraph 1 or unlawful flight from a
2 pursuing law enforcement vehicle under section 28-622.01 and, in the
3 course of and in furtherance of the offense or immediate flight from the
4 offense, the person or another person causes the death of any person.

5 3. Intending or knowing that the person's conduct will cause death
6 to a law enforcement officer, the person causes the death of a law
7 enforcement officer who is in the line of duty.

8 B. Homicide, as prescribed in subsection A, paragraph 2 of this
9 section, requires no specific mental state other than what is required for
10 the commission of any of the enumerated felonies.

11 C. An offense under subsection A, paragraph 1 of this section
12 applies to an unborn child in the womb at any stage of its development. A
13 person shall not be prosecuted under subsection A, paragraph 1 of this
14 section if any of the following applies:

15 1. The person was performing an abortion for which the consent of
16 the pregnant woman, or a person authorized by law to act on the pregnant
17 woman's behalf, has been obtained or for which the consent was implied or
18 authorized by law.

19 2. The person was performing medical treatment on the pregnant
20 woman or the pregnant woman's unborn child.

21 3. The person was the unborn child's mother.

22 D. First degree murder is a class 1 felony and is punishable by
23 ~~death or~~ life OR NATURAL LIFE imprisonment as provided by ~~sections~~ SECTION
24 13-751 ~~and 13-752~~.

25 Sec. 8. Section 13-3841, Arizona Revised Statutes, is amended to
26 read:

27 13-3841. Definitions

28 In this article, unless the context otherwise requires:

29 1. "Charged with crime", "criminal charge" or "criminal offense"
30 includes any of the following:

31 (a) A felony or misdemeanor offense.

32 (b) Escape from confinement or the custody of any of the following:

33 (i) A law enforcement officer.

34 (ii) A custodial official.

35 (iii) A custodial agency.

36 (iv) A custodial institution.

37 (c) Being accused on a warrant of violating the terms of federal or
38 state supervision.

39 (d) Being accused of violating bail or conditions of release.

40 (e) ~~The conviction~~ BEING CONVICTED of a crime.

41 (f) Having an unserved remaining criminal sentence.

42 ~~(g) Being subject to the death penalty on criminal conviction.~~

43 ~~3.~~ 2. "Executive authority" includes the governor, and any person
44 performing the functions of governor in a state other than this state.

1 ~~2.~~ 3. "Governor" includes any person performing the functions of
2 governor by authority of the law of this state.

3 4. "State," when referring to a state other than this state,
4 means any other state or territory, organized or unorganized, of the
5 United States.

6 Sec. 9. Section 13-3859.02, Arizona Revised Statutes, is amended to
7 read:

8 13-3859.02. Imprisonment; alternative methods of extradition

9 If after a local criminal prosecution a fugitive defendant is
10 sentenced to serve a term of imprisonment in a correctional facility or a
11 county jail, the court shall vacate the fugitive proceedings and shall
12 exonerate the fugitive bond. After the proceedings are vacated and the
13 bond is exonerated, ~~except for death penalty cases,~~ sections 31-481 and
14 31-482 apply. If sections 31-481 and 31-482 do not apply, the fugitive
15 matter is governed by any other applicable procedure for the rendition or
16 extradition of fugitives, subject to section 13-3859. The defendant's
17 fugitive status is not extinguished by the sentence of imprisonment.

18 Sec. 10. Section 13-3870, Arizona Revised Statutes, is amended to
19 read:

20 13-3870. Executive agreements

21 A. If this state wishes to obtain custody of a person WHO IS
22 charged in this state with a criminal offense and the person was convicted
23 or is imprisoned or held under criminal proceedings then pending against
24 him in another state, the governor of this state and the executive
25 authority of the other state may agree on the extradition of the person
26 before the criminal proceedings against the person have terminated or the
27 person's sentence has been served in the other state.

28 B. Any executive agreement entered into pursuant to subsection A of
29 this section shall be conditioned on the return of the person to the other
30 state at this state's expense as soon as the prosecution in this state is
31 terminated, ~~unless the person is sentenced to death under the laws of this~~
32 ~~state.~~

33 C. On demand of the executive authority of another state the
34 governor may surrender a person in this state who was returned to this
35 state pursuant to section 13-3863 and who has been charged with a criminal
36 offense in the demanding state. The person may be surrendered even if the
37 person left the demanding state involuntarily.

38 Sec. 11. Section 13-3906, Arizona Revised Statutes, is amended to
39 read:

40 13-3906. Processing arrestees; citizenship determination;
41 notice

42 A. Within twenty-four hours after a person is brought to a law
43 enforcement agency for incarceration, the law enforcement agency shall
44 inquire of the person and determine that person's country of

1 citizenship. If the person is not a United States citizen, the law
2 enforcement agency shall:

3 1. Notify the person's country of citizenship of the person's
4 detention if the person does not waive notification or if the person's
5 country of citizenship requires notification regardless of the person's
6 waiver of notification.

7 2. Document the notification to the person's country of citizenship
8 and any waiver of notification.

9 3. Transmit any information obtained pursuant to this section to
10 the court and the prosecuting agency for the purpose of making a
11 determination pursuant to section 13-3961, subsection A, paragraph ~~5~~ 4 or
12 section 13-3967, subsection B, paragraph 14 or for any other lawful
13 purpose.

14 B. The failure or inability of a law enforcement agency to provide
15 the notice required by this section does not:

16 1. Affect the admissibility of any statements, the voluntariness of
17 a guilty plea or the validity of a conviction.

18 2. Afford a defendant any rights in any proceeding related to
19 deportation, exclusion or denial of naturalization.

20 Sec. 12. Section 13-3961, Arizona Revised Statutes, is amended to
21 read:

22 13-3961. Offenses not bailable; purpose; preconviction;
23 exceptions

24 A. A person who is in custody shall not be admitted to bail if the
25 proof is evident or the presumption great that the person is guilty of the
26 offense charged and the offense charged is one of the following:

27 ~~1. A capital offense.~~

28 ~~2.~~ 1. Sexual assault.

29 ~~3.~~ 2. Sexual conduct with a minor under either of the following
30 circumstances:

31 (a) At the time of the offense, the person was at least eighteen
32 years of age and the victim was under thirteen years of age.

33 (b) At the time of the offense, the victim was thirteen or fourteen
34 years of age and the person was at least ten years older than the victim.

35 ~~4.~~ 3. Molestation of a child under either of the following
36 circumstances:

37 (a) At the time of the offense, the person was at least eighteen
38 years of age and the victim was under thirteen years of age.

39 (b) At the time of the offense, the victim was thirteen or fourteen
40 years of age and the person was at least ten years older than the victim.

41 ~~5.~~ 4. A serious felony offense if there is probable cause to
42 believe that the person has entered or remained in the United States
43 illegally. For the purposes of this paragraph:

1 (a) The court shall consider all of the following in making a
2 determination that a person has entered or remained in the United States
3 illegally:

4 (i) Whether a hold has been placed on the arrested person by the
5 United States immigration and customs enforcement.

6 (ii) Any indication by a law enforcement agency that the person is
7 in the United States illegally.

8 (iii) Whether an admission by the arrested person has been obtained
9 by the court or a law enforcement agency that the person has entered or
10 remained in the United States illegally.

11 (iv) Any information received from a law enforcement agency
12 pursuant to section 13-3906.

13 (v) Any evidence that the person has recently entered or remained
14 in the United States illegally.

15 (vi) Any other relevant information that is obtained by the court
16 or that is presented to the court by a party or any other person.

17 (b) "Serious felony offense" means any class 1, 2, 3 or 4 felony or
18 any violation of section 28-1383.

19 B. The purposes of bail and any conditions of release that are set
20 by a judicial officer include:

- 21 1. Assuring the appearance of the accused.
- 22 2. Protecting against the intimidation of witnesses.
- 23 3. Protecting the safety of the victim, any other person or the
24 community.

25 C. The initial determination of whether an offense is bailable
26 pursuant to subsection A of this section shall be made by the magistrate
27 or judicial officer at the time of the person's initial appearance.

28 D. Except as provided in subsection A of this section, a person who
29 is in custody shall not be admitted to bail if the person is charged with
30 a felony offense and the state certifies by motion and the court finds
31 after a hearing on the matter that there is clear and convincing evidence
32 that the person charged poses a substantial danger to another person or
33 the community or engaged in conduct constituting a violent offense, that
34 no condition or combination of conditions of release may be imposed that
35 will reasonably assure the safety of the other person or the community and
36 that the proof is evident or the presumption great that the person
37 committed the offense for which the person is charged. For the purposes
38 of this subsection, "violent offense" means either of the following:

- 39 1. A dangerous crime against children.
- 40 2. Terrorism.

41 E. On oral motion of the state, the court shall order the hearing
42 required by subsection D of this section at or within twenty-four hours of
43 the initial appearance unless the person who is subject to detention or
44 the state moves for a continuance. A continuance that is granted on the
45 motion of the person shall not exceed five calendar days unless there are

1 extenuating circumstances. A continuance on the motion of the state shall
2 be granted on good cause shown and shall not exceed twenty-four hours.
3 The prosecutor shall provide reasonable notice and an opportunity for
4 victims and witnesses to be present and heard at any hearing. The person
5 may be detained pending the hearing. The person is entitled to
6 representation by counsel and is entitled to present information by
7 proffer or otherwise, to testify and to present witnesses in the person's
8 own behalf. Testimony of the person charged that is given during the
9 hearing shall not be admissible on the issue of guilt in any subsequent
10 judicial proceeding, except as it might relate to the compliance with or
11 violation of any condition of release subsequently imposed or the
12 imposition of appropriate sentence or in perjury proceedings, or for the
13 purposes of impeachment. The case of the person shall be placed on an
14 expedited calendar and, consistent with the sound administration of
15 justice, the person's trial shall be given priority. The person may be
16 admitted to bail in accordance with the Arizona rules of criminal
17 procedure whenever a judicial officer finds that a subsequent event has
18 eliminated the basis for detention.

19 F. The finding of an indictment or the filing of an information
20 does not add to the strength of the proof or the presumption to be drawn.

21 G. In a hearing pursuant to subsection D of this section, proof
22 that the person is a criminal street gang member may give rise to the
23 inference that the person poses a substantial danger to another person or
24 the community and that no condition or combination of conditions of
25 release may be imposed that will reasonably assure the safety of the other
26 person or the community.

27 Sec. 13. Repeal

28 Title 13, chapter 38, article 17, Arizona Revised Statutes, is
29 repealed.

30 Sec. 14. Section 13-4031, Arizona Revised Statutes, is amended to
31 read:

32 13-4031. Right of appeal

33 The state, or any party to a prosecution by indictment, information
34 or complaint, may appeal as prescribed by law and in the manner provided
35 by the ARIZONA rules of criminal procedure, ~~except criminal actions~~
36 ~~involving crimes for which a sentence of death has actually been imposed~~
37 ~~may only be appealed to the supreme court.~~

38 Sec. 15. Section 13-4033, Arizona Revised Statutes, is amended to
39 read:

40 13-4033. Appeal by defendant

41 A. An appeal may be taken by the defendant only from:

42 1. A final judgment of conviction or verdict of guilty except
43 insane.

44 2. An order denying a motion for a new trial.

1 3. An order made after judgment affecting the substantial rights of
2 the party.

3 4. A sentence on the grounds that it is illegal or excessive.

4 B. ~~In noncapital cases~~ A defendant may not appeal from a judgment
5 or sentence that is entered pursuant to a plea agreement or an admission
6 to a probation violation.

7 C. A defendant may not appeal under subsection A, paragraph 1 or 2
8 if the defendant's absence prevents sentencing from occurring within
9 ninety days after conviction and the defendant fails to prove by clear and
10 convincing evidence at the time of sentencing that the absence was
11 involuntary.

12 Sec. 16. Section 13-4040, Arizona Revised Statutes, is amended to
13 read:

14 13-4040. Divestiture of jurisdiction of supreme court after
15 remission of minute entry and decision; exception

16 After a certified copy of the minute entry and a copy of the
17 decision of the supreme court in a criminal appeal ~~has~~ HAVE been remitted
18 to the trial court from which the appeal was taken, the supreme court
19 shall have no further jurisdiction of the appeal, or of the proceedings
20 thereon. All orders ~~which~~ THAT may be necessary to carry the decision of
21 the supreme court into effect shall be made by the court to which the copy
22 of the minute entry and ~~THE COPY OF THE~~ decision ~~is~~ ARE remitted, ~~except~~
23 ~~when a judgment or sentence of death has been affirmed on appeal after the~~
24 ~~time appointed for the execution of the sentence and the supreme court has~~
25 ~~fixed a new time for execution and issued a warrant to the director of the~~
26 ~~department of corrections to execute the sentence at the time designated~~
27 ~~in the warrant.~~

28 Sec. 17. Section 13-4041, Arizona Revised Statutes, is amended to
29 read:

30 13-4041. Fee of counsel assigned in criminal proceeding or
31 insanity hearing on appeal or in postconviction
32 relief proceedings

33 A. ~~Except pursuant to subsection G of this section,~~ If counsel is
34 appointed by the court to represent the defendant in either a criminal
35 proceeding or insanity hearing on appeal, the county in which the court
36 from which the appeal is taken presides shall pay counsel, except that in
37 those appeals where the defendant is represented by a public defender or
38 other publicly funded office, ~~THE COUNTY SHALL NOT SET OR PAY~~ compensation
39 ~~shall not be set or paid.~~ Compensation for services rendered on appeal
40 shall be in an amount as the supreme court in its discretion deems
41 reasonable, considering the services performed.

42 B. ~~After the supreme court has affirmed a defendant's conviction~~
43 ~~and sentence in a capital case, the supreme court or, if authorized by the~~
44 ~~supreme court, the presiding judge of the county from which the case~~

1 ~~originated shall appoint counsel to represent the capital defendant in the~~
2 ~~state postconviction relief proceeding.~~

3 ~~C. The supreme court shall establish and maintain a list of persons~~
4 ~~who are qualified to represent capital defendants in postconviction~~
5 ~~proceedings. The supreme court may establish by rule more stringent~~
6 ~~standards of competency for the appointment of postconviction counsel in~~
7 ~~capital cases than are provided by this subsection. The supreme court may~~
8 ~~refuse to certify an attorney on the list who meets the qualifications~~
9 ~~established under this subsection or may remove an attorney from the list~~
10 ~~who meets the qualifications established under this subsection if the~~
11 ~~supreme court determines that the attorney is incapable or unable to~~
12 ~~adequately represent a capital defendant. The court shall appoint counsel~~
13 ~~from the list. Counsel who are appointed from the list shall meet the~~
14 ~~following qualifications:~~

15 ~~1. Be a member in good standing of the state bar of Arizona for at~~
16 ~~least five years immediately preceding the appointment.~~

17 ~~2. Have practiced in the area of state criminal appeals or~~
18 ~~postconviction proceedings for at least three years immediately preceding~~
19 ~~the appointment.~~

20 ~~3. Not previously have represented the capital defendant in the~~
21 ~~case either in the trial court or in the direct appeal, unless the~~
22 ~~defendant and counsel expressly request continued representation and waive~~
23 ~~all potential issues that are foreclosed by continued representation.~~

24 ~~D. Before filing a petition, the capital defendant may personally~~
25 ~~appear before the trial court and waive counsel. If the trial court finds~~
26 ~~that the waiver is knowing and voluntary, appointed counsel may withdraw.~~
27 ~~The time limits in which to file a petition shall not be extended due~~
28 ~~solely to the change from appointed counsel to self-representation.~~

29 ~~E. If at any time the trial court determines that the capital~~
30 ~~defendant is not indigent, appointed counsel shall no longer be~~
31 ~~compensated by public monies and may withdraw.~~

32 ~~F. Unless counsel is employed by a publicly funded office, counsel~~
33 ~~appointed to represent a capital defendant in state postconviction relief~~
34 ~~proceedings shall be paid an hourly rate of not to exceed one hundred~~
35 ~~dollars per hour. Monies shall not be paid to court appointed counsel~~
36 ~~unless either:~~

37 ~~1. A petition is timely filed.~~

38 ~~2. If a petition is not filed, a notice is timely filed stating~~
39 ~~that counsel has reviewed the record and found no meritorious claim.~~

40 ~~G. B.~~ B. The trial court shall compensate appointed counsel from
41 county funds. The court or the court's designee shall review and approve
42 all reasonable fees and costs. If the attorney believes that the court
43 has set an unreasonably low hourly rate or if the court finds that the
44 hours the attorney spent are unreasonable, the attorney may file a special
45 action with the Arizona supreme court. If counsel is appointed in

1 successive postconviction relief proceedings, compensation shall be paid
2 pursuant to section 13-4013, ~~subsection A.~~

3 ~~H. The county shall request reimbursement for fees it incurs~~
4 ~~pursuant to subsections F, G and I of this section arising out of the~~
5 ~~appointment of counsel to represent an indigent capital defendant in a~~
6 ~~state postconviction relief proceeding. The state shall pay a portion of~~
7 ~~the fees incurred by the county out of monies appropriated to the supreme~~
8 ~~court for these purposes. The total amount that may be spent in any~~
9 ~~fiscal year by this state for indigent capital defense in a state~~
10 ~~postconviction relief proceeding may not exceed the amount appropriated in~~
11 ~~the general appropriations act for this purpose, together with additional~~
12 ~~amounts appropriated by any special legislative appropriation for indigent~~
13 ~~capital defense. The supreme court shall approve county requests for~~
14 ~~reimbursement after certification that the amount requested is owed.~~

15 ~~f. C.~~ C. The trial court may authorize additional monies to pay for
16 investigative and expert services that are reasonably necessary to
17 adequately litigate those claims that are not precluded by section
18 13-4232.

19 Sec. 18. Repeal

20 Section 13-4042, Arizona Revised Statutes, is repealed.

21 Sec. 19. Section 13-4234, Arizona Revised Statutes, is amended to
22 read:

23 13-4234. Commencement of proceedings; notice; assignment of
24 judge

25 A. A proceeding is commenced by timely filing a notice of
26 postconviction relief with the clerk of the court in which the conviction
27 occurred. The clerk of the trial court shall provide notice forms for
28 commencement of first and successive postconviction relief proceedings.
29 The notice shall bear the caption of the original criminal action to which
30 it pertains. The notice in successive postconviction relief proceedings
31 shall comply with section 13-4232, subsection B. On receipt of the
32 notice, the clerk of the trial court shall file a copy of the notice in
33 the case file of each original action and promptly send copies to the
34 defendant, the defendant's attorney, if known, the county attorney and the
35 attorney general, noting the date and manner of sending the copies in the
36 record. The state shall notify the victim on request.

37 B. If an appeal of the defendant's conviction or sentence, or both,
38 is pending, the clerk, within five days after the filing of the notice for
39 postconviction relief, shall send a copy of the notice to the appropriate
40 appellate court, noting the date and manner of sending the copy in the
41 record.

42 C. ~~In noncapital cases,~~ The notice shall be filed within ninety
43 days after the judgment and sentence are entered or within thirty days
44 after the order and mandate affirming the judgment and sentence is issued
45 on direct appeal, whichever is later. A defendant has sixty days from the

1 filing of the notice in which to file a petition. On the filing of a
 2 successive notice, a defendant has thirty days from the filing of the
 3 notice in which to file a petition.

4 ~~D. In capital cases, on the issuance of a mandate affirming the~~
 5 ~~defendant's conviction and sentence on direct appeal, the clerk of the~~
 6 ~~supreme court expeditiously shall file a notice of postconviction relief~~
 7 ~~with the trial court. On the first notice in capital cases, a defendant~~
 8 ~~has sixty days from the filing of the notice in which to file a~~
 9 ~~petition. The supreme court shall appoint counsel pursuant to section~~
 10 ~~13-4041, subsection B. All indigent state prisoners under a capital~~
 11 ~~sentence are entitled to the appointment of counsel to represent them in~~
 12 ~~state postconviction proceedings. A competent indigent defendant may~~
 13 ~~reject the offer of counsel with an understanding of its legal~~
 14 ~~consequence. On successive notice in capital cases, the trial court shall~~
 15 ~~appoint the previous postconviction relief counsel of the capital~~
 16 ~~defendant unless counsel is waived pursuant to section 13-4041, subsection~~
 17 ~~D or good cause exists to appoint another qualified attorney pursuant to~~
 18 ~~section 13-4041, subsection B. On the filing of a successive notice, a~~
 19 ~~capital defendant or an appointed attorney has thirty days from the filing~~
 20 ~~of the notice in which to file a petition.~~

21 ~~E.~~ D. A defendant who has pled guilty and who is precluded from
 22 filing a direct appeal pursuant to section 13-4033 may be granted an
 23 additional thirty day extension of time in which to file the petition if
 24 the defendant's counsel refuses to raise issues and leaves the defendant
 25 insufficient time to file a petition within the time limits.

26 ~~F.~~ E. On a specific and detailed showing of good cause, a
 27 defendant ~~in a noncapital case~~ may be granted up to a sixty day extension
 28 of time in which to file the petition. ~~On a specific and detailed showing~~
 29 ~~of good cause, a defendant in a capital case may be granted one thirty day~~
 30 ~~extension of time in which to file the petition.~~

31 ~~G.~~ F. The time limits are jurisdictional, and an untimely filed
 32 notice or petition shall be dismissed with prejudice.

33 ~~H.~~ G. If the record of the trial proceeding has not been
 34 transcribed, the defendant may request on a form provided by the clerk of
 35 the superior court that the record be prepared. The court shall order
 36 that those portions of the record be prepared that it deems necessary to
 37 resolve the issues to be raised in the petition. The preparation of the
 38 record is a county expense if the defendant is indigent. The time for
 39 filing the petition is tolled from the time a request for the record is
 40 made until the record is prepared or the request is denied.

41 ~~I.~~ H. The proceeding shall be assigned to the sentencing judge if
 42 it is possible. If it appears that the sentencing judge's testimony is
 43 relevant, the sentencing judge shall transfer the case to another judge.

~~J. If the defendant has received a sentence of death and the supreme court has fixed the time for execution of the sentence, a stay of execution shall not be granted on the filing of a second or subsequent petition except on separate application for a stay to the supreme court setting forth with particularity those issues raised which are not precluded under section 13-4232. The warrant shall not be stayed to allow for the filing of a petition.~~

Sec. 20. Repeal

Section 13-4234.01, Arizona Revised Statutes, is repealed.

Sec. 21. Section 21-102, Arizona Revised Statutes, is amended to read:

21-102. Juries; size; degree of unanimity required; waiver

A. A jury for trial of a criminal case in which a sentence of ~~death~~ or imprisonment for thirty years or more is authorized by law shall consist of twelve persons, and the concurrence of all shall be necessary to render a verdict.

B. A jury for trial in any court of record of any other criminal case shall consist of eight persons, and the concurrence of all shall be necessary to render a verdict.

C. A jury for trial in any court of record of a civil case shall consist of eight persons, and the concurrence of all but two shall be necessary to render a verdict.

D. In a court not of record, a jury for trial of any case shall consist of six persons. The concurrence of all in a criminal case and all but one in a civil case shall be necessary to render a verdict.

E. The parties in a civil case, and the parties with the consent of the court in a criminal case, may waive trial by jury, or at any time before a verdict is returned consent to try the case with or receive a verdict concurred in by a lesser number of jurors than that specified above.

Sec. 22. Section 31-240, Arizona Revised Statutes, is amended to read:

31-240. Prisoner education services budget; prohibited uses

A. The director shall establish and maintain a dedicated prisoner education services budget for each state prison to identify the monies appropriated to the department and expended for the following education programs:

1. The functional literacy program established pursuant to section 31-229.
2. Adult basic education.
3. General equivalency diploma preparation.
4. Vocational and technical education.

B. The director shall determine the amount of the education services budget monies that are allocated for education programs dedicated to prisoners incarcerated in a special management unit.

1 C. The director shall not spend the education services budget
2 monies for education programs dedicated to prisoners who are sentenced to
3 ~~death or~~ life imprisonment or who are classified as maximum custody.

4 D. Subsection C of this section does not apply to prisoners who are
5 under eighteen years of age and prisoners with disabilities who are under
6 twenty-two years of age.

7 Sec. 23. Section 31-403, Arizona Revised Statutes, is amended to
8 read:

9 31-403. Commutation; restrictions on consideration

10 A. A person who is otherwise eligible for commutation and who is
11 denied a commutation of sentence recommendation shall not petition or be
12 considered by the board for commutation of that sentence for a period of
13 five years following the date of the board's denial of the commutation
14 recommendation if the offense for which the commutation recommendation was
15 denied involved any of the following:

- 16 1. Death in violation of section 13-1104 or 13-1105.
- 17 2. Serious physical injury if the person was sentenced pursuant to
18 section 13-704.
- 19 3. A dangerous crime against children as defined in section 13-705.
- 20 4. A felony offense in violation of title 13, chapter 14 or 35.1.

21 B. Notwithstanding subsection A, paragraph 2 of this section, if,
22 in its sole discretion, the board determines that the person committed an
23 offense that involved serious physical injury as defined in section 13-105
24 and that the person was not sentenced pursuant to section 13-704, the
25 board may order that the person shall not petition or be considered by the
26 board for commutation of that sentence for a period of five years
27 following the date of the board's denial of the commutation
28 recommendation.

29 C. Notwithstanding subsection A or B of this section, the board, at
30 the time of denial, may lengthen the five year period of time prescribed
31 in subsection A or B of this section to a period of up to ten years,
32 except that if the offense for which commutation was denied involved a
33 violation of an offense listed in subsection A, paragraph 1 of this
34 section, the board may lengthen the period of time to a period of time
35 that is greater than ten years and that is specified by the board by one
36 of the following votes:

- 37 1. A majority affirmative vote if four or more members consider the
38 action.
- 39 2. A unanimous affirmative vote if three members consider the
40 action.
- 41 3. A unanimous affirmative vote if two members consider the action
42 pursuant to section 31-401, subsection I and the chairman concurs after
43 reviewing the information considered by the two members. If the chairman
44 is one of the two members constituting a two member quorum under section
45 31-401, subsection I, and both the chairman and the other member vote to

1 lengthen the five year period to a period of time greater than ten years,
2 no further action shall be taken and the decision on whether to lengthen
3 the five year period shall be considered by the board at a meeting at
4 which at least three members are present and voting.

5 D. The board may waive the provisions of subsections A, B and C of
6 this section if any of the following applies:

7 1. The person is in imminent danger of death due to a medical
8 condition, as determined by the board.

9 ~~2. The person is the subject of a warrant of execution.~~

10 ~~3.~~ 2. The sentence for which commutation is sought is the subject
11 of a special order issued by the court pursuant to section 13-603,
12 subsection L.

13 E. This section applies only to offenses that are committed on or
14 after January 1, 2006.

15 Sec. 24. Section 31-445, Arizona Revised Statutes, is amended to
16 read:

17 31-445. Publication of reasons for granting a commutation,
18 pardon or reprieve

19 ~~When the governor grants a commutation, pardon, reprieve or stay or~~
20 ~~suspends execution of sentence in a case where a sentence of death is~~
21 ~~imposed, he shall, Within ten days after granting the A commutation,~~
22 ~~pardon, OR reprieve, or stay or suspension of execution, cause to be~~
23 ~~published~~ **THE GOVERNOR SHALL PUBLISH** in bold type, in a newspaper of
24 general circulation, ~~THAT IS~~ published in the county where the conviction
25 was had, and shall file with the secretary of state for publication in the
26 Arizona administrative register, a statement setting forth ~~his~~ **THE**
27 **GOVERNOR'S** reasons for granting the commutation, pardon, ~~OR~~ reprieve ~~or~~
28 ~~for staying or suspending such execution.~~ A further reprieve shall not be
29 granted except ~~upon~~ **ON** the same procedure.