

REFERENCE TITLE: juveniles; maximum sentence; commutation

State of Arizona
Senate
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SB 1482

Introduced by
Senators Stahl Hamilton: Alston, Gabaldon, Hatathlie, Steele, Terán

AN ACT

AMENDING SECTIONS 13-716, 13-751, 13-752, 13-1423 AND 13-2308.01, ARIZONA
REVISED STATUTES; RELATING TO SENTENCING.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 13-716, Arizona Revised Statutes, is amended to
3 read:

4 13-716. Juvenile offenders sentence; maximum sentence; life
5 imprisonment; parole eligibility

6 A. Notwithstanding any other law, a person who is sentenced to life
7 imprisonment with the possibility of release after serving a minimum
8 number of calendar years for an offense that was committed before the
9 person attained eighteen years of age is eligible for parole on completion
10 of service of the minimum sentence, regardless of whether the offense was
11 committed on or after January 1, 1994. If granted parole, the ~~person~~
12 ~~shall remain on parole for the remainder of the person's life except that~~
13 ~~the~~ person's parole may be revoked pursuant to section 31-415.

14 B. NOTWITHSTANDING ANY OTHER LAW, A PERSON WHO IS SENTENCED TO
15 SERVE A TERM OF IMPRISONMENT, INCLUDING CONSECUTIVE SENTENCES, OF AT LEAST
16 TWENTY-FIVE CALENDAR YEARS FOR AN OFFENSE THAT WAS COMMITTED BEFORE THE
17 PERSON ATTAINED EIGHTEEN YEARS OF AGE IS ELIGIBLE FOR PAROLE ON COMPLETION
18 OF SERVICE OF TWENTY-FIVE CALENDAR YEARS. IF GRANTED PAROLE, THE PERSON'S
19 PAROLE MAY BE REVOKED PURSUANT TO SECTION 31-415.

20 Sec. 2. Section 13-751, Arizona Revised Statutes, is amended to
21 read:

22 13-751. Sentence of death or life imprisonment; aggravating
23 and mitigating circumstances; definition

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

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

34 2. Convicted of first degree murder pursuant to section 13-1105 and
35 was under eighteen years of age at the time of the commission of the
36 offense, the defendant shall be sentenced to imprisonment in the custody
37 of the state department of corrections for life ~~or natural life, as~~
38 ~~determined and in accordance with the procedures provided in section~~
39 ~~13-752.~~ A defendant who is sentenced to ~~natural~~ life ~~is not eligible for~~
40 ~~commutation, parole, work furlough, work release or release from~~
41 ~~confinement on any basis. If the defendant is sentenced to life, the~~
42 ~~defendant~~ shall not be released on any basis until the completion of the
43 service of twenty-five calendar years if the murdered person was fifteen
44 or more years of age and thirty-five years if the murdered person was
45 under fifteen years of age or was an unborn child.

1 3. Convicted of first degree murder pursuant to section 13-1105,
2 subsection A, paragraph 2, the defendant shall be sentenced to death or
3 imprisonment in the custody of the state department of corrections for
4 life or natural life as determined and in accordance with the procedures
5 provided in section 13-752. A defendant who is sentenced to natural life
6 is not eligible for commutation, parole, work furlough, work release or
7 release from confinement on any basis. If the defendant is sentenced to
8 life, the defendant shall not be released on any basis until the
9 completion of the service of twenty-five calendar years if the murdered
10 person was fifteen or more years of age and thirty-five years if the
11 murdered person was under fifteen years of age or was an unborn child.

12 B. At the aggravation phase of the sentencing proceeding that is
13 held pursuant to section 13-752, the admissibility of information relevant
14 to any of the aggravating circumstances set forth in subsection F of this
15 section shall be governed by the rules of evidence applicable to criminal
16 trials. The burden of establishing the existence of any of the
17 aggravating circumstances set forth in subsection F of this section is on
18 the prosecution. The prosecution must prove the existence of the
19 aggravating circumstances beyond a reasonable doubt.

20 C. At the penalty phase of the sentencing proceeding that is held
21 pursuant to section 13-752, the prosecution or the defendant may present
22 any information that is relevant to any of the mitigating circumstances
23 included in subsection G of this section, regardless of its admissibility
24 under the rules governing admission of evidence at criminal trials. The
25 burden of establishing the existence of the mitigating circumstances
26 included in subsection G of this section is on the defendant. The
27 defendant must prove the existence of the mitigating circumstances by a
28 preponderance of the evidence. If the trier of fact is a jury, the jurors
29 do not have to agree unanimously that a mitigating circumstance has been
30 proven to exist. Each juror may consider any mitigating circumstance
31 found by that juror in determining the appropriate penalty.

32 D. Evidence that is admitted at the trial and that relates to any
33 aggravating or mitigating circumstances shall be deemed admitted as
34 evidence at a sentencing proceeding if the trier of fact considering that
35 evidence is the same trier of fact that determined the defendant's guilt.
36 The prosecution and the defendant shall be permitted to rebut any
37 information received at the aggravation or penalty phase of the sentencing
38 proceeding and shall be given fair opportunity to present argument as to
39 whether the information is sufficient to establish the existence of any of
40 the circumstances included in subsections F and G of this section.

41 E. In determining whether to impose a sentence of death or life
42 imprisonment, the trier of fact shall take into account the aggravating
43 and mitigating circumstances that have been proven. The trier of fact
44 shall impose a sentence of death if the trier of fact finds one or more of
45 the aggravating circumstances enumerated in subsection F of this section

1 and then determines that there are no mitigating circumstances
2 sufficiently substantial to call for leniency.

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

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

8 2. The defendant has been or was previously convicted of a serious
9 offense, whether preparatory or completed. Convictions for serious
10 offenses committed on the same occasion as the homicide, or not committed
11 on the same occasion but consolidated for trial with the homicide, shall
12 be treated as a serious offense under this paragraph.

13 3. The defendant procured the commission of the offense by payment,
14 or promise of payment, of anything of pecuniary value, or the defendant
15 committed the offense as a result of payment, or a promise of payment, of
16 anything of pecuniary value.

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

19 5. The defendant committed the offense while:

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

23 (b) On probation for a felony offense.

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

27 7. The defendant was an adult at the time the offense was committed
28 or was tried as an adult and the murdered person was under fifteen years
29 of age, was an unborn child in the womb at any stage of its development or
30 was seventy years of age or older.

31 8. The murdered person was an on duty peace officer who was killed
32 in the course of performing the officer's official duties and the
33 defendant knew, or should have known, that the murdered person was a peace
34 officer.

35 9. The defendant committed the offense with the intent to promote,
36 further or assist the objectives of a criminal street gang or criminal
37 syndicate or to join a criminal street gang or criminal syndicate.

38 10. The defendant committed the offense to prevent a person's
39 cooperation with an official law enforcement investigation, to prevent a
40 person's testimony in a court proceeding, in retaliation for a person's
41 cooperation with an official law enforcement investigation or in
42 retaliation for a person's testimony in a court proceeding.

43 G. The trier of fact shall consider as mitigating circumstances any
44 factors proffered by the defendant or the state that are relevant in
45 determining whether to impose a sentence less than death, including any

1 aspect of the defendant's character, propensities or record and any of the
2 circumstances of the offense, including but not limited to the following:

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

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

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

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

16 5. The defendant's age.

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

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

23 J. For the purposes of this section, "serious offense" means any of
24 the following offenses if committed in this state or any offense committed
25 outside this state that if committed in this state would constitute one of
26 the following offenses:

27 1. First degree murder.

28 2. Second degree murder.

29 3. Manslaughter.

30 4. Aggravated assault resulting in serious physical injury or
31 committed by the use, threatened use or exhibition of a deadly weapon or
32 dangerous instrument.

33 5. Sexual assault.

34 6. Any dangerous crime against children.

35 7. Arson of an occupied structure.

36 8. Robbery.

37 9. Burglary in the first degree.

38 10. Kidnapping.

39 11. Sexual conduct with a minor under fifteen years of age.

40 12. Burglary in the second degree.

41 13. Terrorism.

1 Sec. 3. Section 13-752, Arizona Revised Statutes, is amended to
2 read:

3 13-752. Sentences of death, life imprisonment or natural
4 life; imposition; sentencing proceedings;
5 definitions

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

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

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

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

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

41 F. The penalty phase shall be held immediately after the trier of
42 fact finds at the aggravation phase that one or more of the aggravating
43 circumstances under section 13-751, subsection F have been proven. A
44 finding by the trier of fact that any of the remaining aggravating
45 circumstances alleged has not been proven or the inability of the trier of
46 fact to agree on the issue of whether any of the remaining aggravating

1 circumstances alleged has been proven shall not prevent the holding of the
2 penalty phase.

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

11 H. The trier of fact shall determine unanimously whether death is
12 the appropriate sentence. If the trier of fact is a jury and the jury
13 unanimously determines that the death penalty is not appropriate, the
14 court shall determine whether to impose a sentence of life or natural life
15 pursuant to subsection A of this section.

16 I. If the trier of fact at any prior phase of the trial is the same
17 trier of fact at the subsequent phase, any evidence that was presented at
18 any prior phase of the trial shall be deemed admitted as evidence at any
19 subsequent phase of the trial.

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

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

37 L. If the jury that rendered a verdict of guilty is not the jury
38 first impaneled for the aggravation phase, the jury impaneled in the
39 aggravation phase shall not retry the issue of the defendant's guilt. If
40 the jury impaneled in the aggravation phase is unable to reach a verdict
41 on any of the alleged aggravating circumstances and the jury has not found
42 that at least one of the alleged aggravating circumstances has been
43 proven, the court shall dismiss the jury and shall impanel a new jury.
44 The new jury shall not retry the issue of the defendant's guilt or the
45 issue regarding any of the aggravating circumstances that the first jury
46 found not proved by unanimous verdict. If the new jury is unable to reach

1 a unanimous verdict, the court shall impose a sentence of life or natural
2 life on the defendant.

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

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

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

15 P. The trier of fact shall make all factual determinations required
16 by this section or the Constitution of the United States or this state to
17 impose a death sentence. If the defendant bears the burden of proof, the
18 issue shall be determined in the penalty phase. If the state bears the
19 burden of proof, the issue shall be determined in the aggravation phase.

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

24 1. May consider any evidence introduced before sentencing or at any
25 other sentencing proceeding.

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

28 R. Subject to section 13-751, subsection B, a victim has the right
29 to be present at the aggravation phase and to present any information that
30 is relevant to the proceeding. A victim has the right to be present and
31 to present information at the penalty phase. At the penalty phase, the
32 victim may present information about the murdered person and the impact of
33 the murder on the victim and other family members and may submit a victim
34 impact statement in any format to the trier of fact.

35 S. For the purposes of this section:

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

38 2. "Victim" means the murdered person's spouse, parent, child,
39 grandparent or sibling, any other person related to the murdered person by
40 consanguinity or affinity to the second degree or any other lawful
41 representative of the murdered person, except if the spouse, parent,
42 child, grandparent, sibling, other person related to the murdered person
43 by consanguinity or affinity to the second degree or other lawful
44 representative is in custody for an offense or is the accused.

1 Sec. 4. Section 13-1423, Arizona Revised Statutes, is amended to
2 read:

3 13-1423. Violent sexual assault; natural life sentence

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

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

18 Sec. 5. Section 13-2308.01, Arizona Revised Statutes, is amended to
19 read:

20 13-2308.01. Terrorism; classification

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

23 1. Engage in an act of terrorism.

24 2. Organize, manage, direct, supervise or finance an act of
25 terrorism.

26 3. Solicit, incite or induce others to promote or further an act of
27 terrorism.

28 4. Without lawful authority or when exceeding lawful authority,
29 manufacture, sell, deliver, display, use, make accessible to others,
30 possess or exercise control over a weapon of mass destruction knowing or
31 having reason to know that the device or object involved is a weapon of
32 mass destruction.

33 5. Make property available to another, by transaction,
34 transportation or otherwise, knowing or having reason to know that the
35 property is intended to facilitate an act of terrorism.

36 6. Provide advice, assistance or direction in the conduct,
37 financing or management of an act of terrorism knowing or having reason to
38 know that an act of terrorism has occurred or may result by:

39 (a) Harboring or concealing any person or property.

40 (b) Warning any person of impending discovery, apprehension,
41 prosecution or conviction. This subdivision does not apply to a warning
42 that is given in connection with an effort to bring another person into
43 compliance with the law.

44 (c) Providing any person with material support or resources or any
45 other means of avoiding discovery, apprehension, prosecution or
46 conviction.

1 (d) Concealing or disguising the nature, location, source,
2 ownership or control of material support or resources.

3 (e) Preventing or obstructing by means of force, deception or
4 intimidation anyone from performing an act that might aid in the
5 discovery, apprehension, prosecution or conviction of any person or that
6 might aid in the prevention of an act of terrorism.

7 (f) Suppressing by any act of concealment, alteration or
8 destruction any physical evidence that might aid in the discovery,
9 apprehension, prosecution or conviction of any person or that might aid in
10 the prevention of an act of terrorism.

11 (g) Concealing the identity of any person.

12 7. Provide advice, assistance or direction in the conduct,
13 financing or management of a terrorist organization.

14 B. A violation of this section is a class 2 felony.

15 C. A person who is convicted of a violation of this section may be
16 sentenced to imprisonment in the custody of the state department of
17 corrections for life or, IF THE PERSON WAS AT LEAST EIGHTEEN YEARS OF AGE
18 AT THE TIME OF THE COMMISSION OF THE OFFENSE, natural life. A defendant
19 who is sentenced to natural life is not eligible for commutation, parole,
20 work furlough, work release or release from confinement on any basis for
21 the remainder of the defendant's natural life. A defendant who is
22 sentenced to life is not eligible for suspension of sentence, probation,
23 pardon or release from confinement on any basis except as specifically
24 authorized by section 13-716 or section 31-233, subsection A or B until
25 the completion of the service of twenty-five calendar years or the
26 sentence is commuted. If the defendant is not sentenced to life or
27 natural life, the defendant shall be sentenced to a term of imprisonment
28 as follows:

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

31 Sec. 6. Juveniles sentenced to natural life or at least
32 twenty-five calendar years; commutation

33 The supreme court shall remand to the original sentencing court each
34 case in which a person was sentenced before the effective date of this act
35 to natural life or to a term of imprisonment, including consecutive
36 sentences, of at least twenty-five calendar years for an offense that was
37 committed before the person attained eighteen years of age. The original
38 sentencing court shall strike the sentence and enter in its place a
39 sentence of either:

40 1. If the sentence was for natural life, life with the possibility
41 for parole after serving twenty-five calendars years.

42 2. If the original sentence, including consecutive sentences, was
43 for a term of at least twenty-five calendar years, a sentence with parole
44 eligibility on completion of the service of twenty-five calendar years.