

REFERENCE TITLE: artificial intelligence use; aggravating circumstance

State of Arizona  
Senate  
Fifty-sixth Legislature  
Second Regular Session  
2024

## **SB 1599**

Introduced by  
Senator Wadsack

AN ACT

AMENDING SECTION 13-701, 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 13-701, Arizona Revised Statutes, is amended to  
3 read:

4 13-701. Sentence of imprisonment for felony; presentence  
5 report; aggravating and mitigating factors;  
6 consecutive terms of imprisonment; definition

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

10 B. No prisoner may be transferred to the custody of the state  
11 department of corrections without a certified copy of the judgment and  
12 sentence, signed by the sentencing judge, and a copy of a recent  
13 presentence investigation report unless the court has waived preparation  
14 of the report.

15 C. The minimum or maximum term imposed pursuant to section 13-702,  
16 13-703, 13-704, 13-705, 13-708, 13-710, 13-1406, 13-3212 or 13-3419 may be  
17 imposed only if one or more of the circumstances alleged to be in  
18 aggravation of the crime are found to be true by the trier of fact beyond  
19 a reasonable doubt or are admitted by the defendant, except that an  
20 alleged aggravating circumstance under subsection D, paragraph 11 of this  
21 section shall be found to be true by the court, or in mitigation of the  
22 crime are found to be true by the court, on any evidence or information  
23 introduced or submitted to the court or the trier of fact before  
24 sentencing or any evidence presented at trial, and factual findings and  
25 reasons in support of such findings are set forth on the record at the  
26 time of sentencing.

27 D. For the purpose of determining the sentence pursuant to  
28 subsection C of this section, the trier of fact shall determine and the  
29 court shall consider the following aggravating circumstances, except that  
30 the court shall determine an aggravating circumstance under paragraph 11  
31 of this subsection:

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

36 2. Use, threatened use or possession of a deadly weapon or  
37 dangerous instrument, **INCLUDING ARTIFICIAL INTELLIGENCE**, during the  
38 commission of the crime, except if this circumstance is an essential  
39 element of the offense of conviction or has been ~~utilized~~ USED to enhance  
40 the range of punishment under section 13-704.

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

43 4. Presence of an accomplice.

44 5. Especially heinous, cruel or depraved manner in which the  
45 offense was committed.

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

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

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

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

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

14           11. The defendant was previously convicted of a felony within the  
15 ten years immediately preceding the date of the offense. A conviction  
16 outside the jurisdiction of this state for an offense that if committed in  
17 this state would be punishable as a felony is a felony conviction for the  
18 purposes of this paragraph.

19           12. The defendant was wearing body armor as defined in section  
20 13-3116.

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

24           14. The defendant was appointed pursuant to title 14 as a fiduciary  
25 and the offense involved conduct directly related to the defendant's  
26 duties to the victim as fiduciary.

27           15. Evidence that the defendant committed the crime out of malice  
28 toward a victim because of the victim's identity in a group listed in  
29 section 41-1750, subsection A, paragraph 3 or because of the defendant's  
30 perception of the victim's identity in a group listed in section 41-1750,  
31 subsection A, paragraph 3.

32           16. The defendant was convicted of a violation of section 13-1102,  
33 section 13-1103, section 13-1104, subsection A, paragraph 3 or section  
34 13-1204, subsection A, paragraph 1 or 2 arising from an act that was  
35 committed while driving a motor vehicle and the defendant's alcohol  
36 concentration at the time of committing the offense was 0.15 or more. For  
37 the purposes of this paragraph, "alcohol concentration" has the same  
38 meaning prescribed in section 28-101.

39           17. Lying in wait for the victim or ambushing the victim during the  
40 commission of any felony.

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

44           19. The offense was committed in retaliation for a victim either  
45 reporting criminal activity or being involved in an organization, other

1 than a law enforcement agency, that is established for the purpose of  
2 reporting or preventing criminal activity.

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

5 21. The defendant was in violation of 8 United States Code section  
6 1323, 1324, 1325, 1326 or 1328 at the time of the commission of the  
7 offense.

8 22. The defendant used a remote stun gun or an authorized remote  
9 stun gun in the commission of the offense. For the purposes of this  
10 paragraph:

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

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

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

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

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

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

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

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

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

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

41 27. THE DEFENDANT COMMITTED THE OFFENSE USING ARTIFICIAL  
42 INTELLIGENCE.

43 ~~27.~~ 28. Any other factor that the state alleges is relevant to the  
44 defendant's character or background or to the nature or circumstances of  
45 the crime.

1 E. For the purpose of determining the sentence pursuant to  
2 subsection C of this section, the court shall consider the following  
3 mitigating circumstances:

4 1. The age of the defendant.

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

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

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

13 5. During or immediately following the commission of the offense,  
14 the defendant complied with all duties imposed under sections 28-661,  
15 28-662 and 28-663.

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

19 F. If the trier of fact finds at least one aggravating  
20 circumstance, the trial court may find by a preponderance of the evidence  
21 additional aggravating circumstances. In determining what sentence to  
22 impose, the court shall take into account the amount of aggravating  
23 circumstances and whether the amount of mitigating circumstances is  
24 sufficiently substantial to justify the lesser term. If the trier of fact  
25 finds aggravating circumstances and the court does not find any mitigating  
26 circumstances, the court shall impose an aggravated sentence.

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

30 H. This section does not affect any provision of law that imposes  
31 the death penalty, that expressly provides for imprisonment for life or  
32 that authorizes or restricts the granting of probation and suspending the  
33 execution of sentence.

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

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