

REFERENCE TITLE: sexual conduct; minor; capital punishment.

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

SB 1232

Introduced by
Senators Shamp: Carroll, Gowan

AN ACT

AMENDING SECTIONS 13-751, 13-752 AND 13-1405, 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 13-751, Arizona Revised Statutes, is amended to
3 read:

4 13-751. Sentence of death or life imprisonment; aggravating
5 and mitigating circumstances; definition

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

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

16 2. Convicted of first degree murder pursuant to section 13-1105 and
17 was under eighteen years of age at the time of the commission of the
18 offense, the defendant shall be sentenced to imprisonment in the custody
19 of the state department of corrections for life or natural life, as
20 determined and in accordance with the procedures provided in section
21 13-752. A defendant who is sentenced to natural life is not eligible for
22 commutation, parole, work furlough, work release or release from
23 confinement on any basis. If the defendant is sentenced to life, the
24 defendant shall not be released on any basis until the completion of the
25 service of twenty-five calendar years if the murdered person was fifteen
26 or more years of age and thirty-five years if the murdered person was
27 under fifteen years of age or was an unborn child.

28 3. Convicted of first degree murder pursuant to section 13-1105,
29 subsection A, paragraph 2, the defendant shall be sentenced to death or
30 imprisonment in the custody of the state department of corrections for
31 life or natural life as determined and in accordance with the procedures
32 provided in section 13-752. A defendant who is sentenced to natural life
33 is not eligible for commutation, parole, work furlough, work release or
34 release from confinement on any basis. If the defendant is sentenced to
35 life, the defendant shall not be released on any basis until the
36 completion of the service of twenty-five calendar years if the murdered
37 person was fifteen or more years of age and thirty-five years if the
38 murdered person was under fifteen years of age or was an unborn child.

39 4. CONVICTED OF SEXUAL CONDUCT WITH A MINOR PURSUANT TO SECTION
40 13-1405, SUBSECTION B AND WAS AT LEAST EIGHTEEN YEARS OF AGE AT THE TIME
41 OF THE COMMISSION OF THE OFFENSE, THE DEFENDANT SHALL BE SENTENCED TO
42 DEATH OR IMPRISONMENT IN THE CUSTODY OF THE STATE DEPARTMENT OF
43 CORRECTIONS FOR NATURAL LIFE AS DETERMINED AND IN ACCORDANCE WITH THE
44 PROCEDURES PROVIDED IN SECTION 13-752. A DEFENDANT WHO IS SENTENCED TO

1 NATURAL LIFE IS NOT ELIGIBLE FOR COMMUTATION, PAROLE, WORK FURLOUGH, WORK
2 RELEASE OR RELEASE FROM CONFINEMENT ON ANY BASIS.

3 B. At the aggravation phase of the sentencing proceeding that is
4 held pursuant to section 13-752, the admissibility of information relevant
5 to any of the aggravating circumstances set forth in subsection F of this
6 section shall be governed by the rules of evidence applicable to criminal
7 trials. The burden of establishing the existence of any of the
8 aggravating circumstances set forth in subsection F of this section is on
9 the prosecution. The prosecution must prove the existence of the
10 aggravating circumstances beyond a reasonable doubt.

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

23 D. Evidence that is admitted at the trial and that relates to any
24 aggravating or mitigating circumstances shall be deemed admitted as
25 evidence at a sentencing proceeding if the trier of fact considering that
26 evidence is the same trier of fact that determined the defendant's guilt.
27 The prosecution and the defendant shall be permitted to rebut any
28 information received at the aggravation or penalty phase of the sentencing
29 proceeding and shall be given fair opportunity to present argument as to
30 whether the information is sufficient to establish the existence of any of
31 the circumstances included in subsections F and G of this section.

32 E. In determining whether to impose a sentence of death or life
33 imprisonment, the trier of fact shall take into account the aggravating
34 and mitigating circumstances that have been proven. The trier of fact
35 shall impose a sentence of death if the trier of fact finds one or more of
36 the aggravating circumstances enumerated in subsection F of this section
37 and then determines that there are no mitigating circumstances
38 sufficiently substantial to call for leniency.

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

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

44 2. The defendant has been or was previously convicted of a serious
45 offense, whether preparatory or completed. Convictions for serious

1 offenses committed on the same occasion as the homicide, or not committed
2 on the same occasion but consolidated for trial with the homicide, shall
3 be treated as a serious offense under this paragraph.

4 3. The defendant procured the commission of the offense by payment,
5 or promise of payment, of anything of pecuniary value, or the defendant
6 committed the offense as a result of payment, or a promise of payment, of
7 anything of pecuniary value.

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

10 5. The defendant committed the offense while:

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

14 (b) On probation for a felony offense.

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

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

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

26 9. The defendant committed the offense with the intent to promote,
27 further or assist the objectives of a criminal street gang or criminal
28 syndicate or to join a criminal street gang or criminal syndicate.

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

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

39 1. The defendant's capacity to appreciate the wrongfulness of his
40 conduct or to conform his conduct to the requirements of law was
41 significantly impaired, but not so impaired as to constitute a defense to
42 prosecution.

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

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

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

5. The defendant's age.

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

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

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

1. First degree murder.
2. Second degree murder.
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.

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

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

A. If the state has filed a notice of intent to seek the death penalty and the defendant is convicted of first degree murder OR SEXUAL CONDUCT WITH A MINOR WHO IS TWELVE YEARS OF AGE OR UNDER, the trier of fact at the sentencing proceeding shall determine whether to impose a sentence of death in accordance with the procedures provided in this section. If the trier of fact determines that a sentence of death is not appropriate, or if the state has not filed a notice of intent to seek the

1 death penalty, ~~and~~ the defendant is convicted of first degree murder
2 pursuant to section 13-1105, subsection A, paragraph 1 or 3 OR SEXUAL
3 CONDUCT WITH A MINOR WHO IS TWELVE YEARS OF AGE OR UNDER PURSUANT TO
4 SECTION 13-1405, SUBSECTION B and THE DEFENDANT was at least eighteen
5 years of age at the time of the commission of the offense, the court shall
6 impose a sentence of natural life. If the defendant was under eighteen
7 years of age at the time of the commission of the offense or if the
8 defendant is convicted of first degree murder pursuant to section 13-1105,
9 subsection A, paragraph 2, the court shall determine whether to impose a
10 sentence of life or natural life.

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

13 C. If the trier of fact finds the defendant guilty of first degree
14 murder OR SEXUAL CONDUCT WITH A MINOR WHO IS TWELVE YEARS OF AGE OR UNDER,
15 the trier of fact shall then immediately determine whether one or more
16 alleged aggravating circumstances have been proven. This proceeding is
17 the aggravation phase of the sentencing proceeding.

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

22 E. At the aggravation phase, the trier of fact shall make a special
23 finding on whether each alleged aggravating circumstance has been proven
24 based on the evidence that was presented at the trial or at the
25 aggravation phase. If the trier of fact is a jury, a unanimous verdict is
26 required to find that the aggravating circumstance has been proven. If
27 the trier of fact unanimously finds that an aggravating circumstance has
28 not been proven, the defendant is entitled to a special finding that the
29 aggravating circumstance has not been proven. If the trier of fact
30 unanimously finds no aggravating circumstances, the court shall then
31 determine whether to impose a sentence of life or natural life on the
32 defendant pursuant to subsection A of this section.

33 F. The penalty phase shall be held immediately after the trier of
34 fact finds at the aggravation phase that one or more of the aggravating
35 circumstances under section 13-751, subsection F have been proven. A
36 finding by the trier of fact that any of the remaining aggravating
37 circumstances alleged has not been proven or the inability of the trier of
38 fact to agree on the issue of whether any of the remaining aggravating
39 circumstances alleged has been proven shall not prevent the holding of the
40 penalty phase.

41 G. At the penalty phase, the defendant and the state may present
42 any evidence that is relevant to the determination of whether there is
43 mitigation that is sufficiently substantial to call for leniency. In
44 order for the trier of fact to make this determination, regardless of
45 whether the defendant presents evidence of mitigation, the state may

1 present any evidence that demonstrates that the defendant should not be
2 shown leniency including any evidence regarding the defendant's character,
3 propensities, criminal record or other acts.

4 H. The trier of fact shall determine unanimously whether death is
5 the appropriate sentence. If the trier of fact is a jury and the jury
6 unanimously determines that the death penalty is not appropriate, the
7 court shall determine whether to impose a sentence of life or natural life
8 pursuant to subsection A of this section.

9 I. If the trier of fact at any prior phase of the trial is the same
10 trier of fact at the subsequent phase, any evidence that was presented at
11 any prior phase of the trial shall be deemed admitted as evidence at any
12 subsequent phase of the trial.

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

22 K. At the penalty phase, if the trier of fact is a jury and the
23 jury is unable to reach a verdict, the court shall dismiss the jury and
24 shall impanel a new jury. The new jury shall not retry the issue of the
25 defendant's guilt or the issue regarding any of the aggravating
26 circumstances that the first jury found by unanimous verdict to be proved
27 or not proved. If the new jury is unable to reach a unanimous verdict,
28 the court shall impose a sentence of life or natural life on the
29 defendant.

30 L. If the jury that rendered a verdict of guilty is not the jury
31 first impaneled for the aggravation phase, the jury impaneled in the
32 aggravation phase shall not retry the issue of the defendant's guilt. If
33 the jury impaneled in the aggravation phase is unable to reach a verdict
34 on any of the alleged aggravating circumstances and the jury has not found
35 that at least one of the alleged aggravating circumstances has been
36 proven, the court shall dismiss the jury and shall impanel a new jury.
37 The new jury shall not retry the issue of the defendant's guilt or the
38 issue regarding any of the aggravating circumstances that the first jury
39 found not proved by unanimous verdict. If the new jury is unable to reach
40 a unanimous verdict, the court shall impose a sentence of life or natural
41 life on the defendant.

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

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

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

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

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

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

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

R. Subject to section 13-751, subsection B, a victim has the right to be present at the aggravation phase and to present any information that is relevant to the proceeding. A victim has the right to be present and to present information at the penalty phase. At the penalty phase, 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 to the trier of fact.

S. For the purposes of this section:

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

2. "Victim" means BOTH OF THE FOLLOWING:

(a) The murdered person's spouse, parent, child, grandparent or sibling, any other person related to the murdered person by consanguinity or affinity to the second degree or any other lawful representative of the murdered person, except if the spouse, parent, child, grandparent, sibling, other person related to the murdered person by consanguinity or affinity to the second degree or other lawful representative is in custody for an offense or is the accused.

(b) THE MINOR VICTIM OF AN OFFENSE INVOLVING SEXUAL CONDUCT WITH A MINOR WHO IS TWELVE YEARS OF AGE OR UNDER AND THE MINOR'S PARENT, GRANDPARENT OR SIBLING, ANY PERSON RELATED TO THE MINOR BY CONSANGUINITY OR AFFINITY TO THE SECOND DEGREE OR ANY OTHER LAWFUL REPRESENTATIVE OF THE MINOR, EXCEPT IF THE PARENT, GRANDPARENT, SIBLING, OTHER PERSON RELATED TO

1 THE MINOR BY CONSANGUINITY OR AFFINITY TO THE SECOND DEGREE OR OTHER
2 LAWFUL REPRESENTATIVE IS IN CUSTODY FOR AN OFFENSE OR IS THE ACCUSED.

3 Sec. 3. Section 13-1405, Arizona Revised Statutes, is amended to
4 read:

5 13-1405. Sexual conduct with a minor; classification

6 A. A person commits sexual conduct with a minor by intentionally or
7 knowingly engaging in sexual intercourse or oral sexual contact with any
8 person who is under eighteen years of age.

9 B. SEXUAL CONDUCT WITH A MINOR WHO IS TWELVE YEARS OF AGE OR UNDER
10 AND WHO SUFFERS SERIOUS PHYSICAL INJURY IS A CLASS 1 FELONY AND IS
11 PUNISHABLE BY DEATH OR LIFE IMPRISONMENT AS PROVIDED IN SECTIONS 13-751
12 AND 13-752. Sexual conduct with a minor who is under fifteen years of age
13 is a class 2 felony and is punishable pursuant to section 13-705. Sexual
14 conduct with a minor who is at least fifteen years of age is a class 6
15 felony. Sexual conduct with a minor who is at least fifteen years of age
16 is a class 2 felony if the person is or was in a position of trust and the
17 convicted person is not eligible for suspension of sentence, probation,
18 pardon or release from confinement on any basis except as specifically
19 authorized by section 31-233, subsection A or B until the sentence imposed
20 has been served or commuted.