

REFERENCE TITLE: **felony murder; repeal**

State of Arizona
House of Representatives
Fifty-fifth Legislature
Second Regular Session
2022

HB 2655

Introduced by
Representatives DeGrazia: Hernandez M, Powers Hannley

AN ACT

**AMENDING SECTIONS 13-751, 13-752 AND 13-1105, ARIZONA REVISED STATUTES;
RELATING TO HOMICIDE.**

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 13-751, Arizona Revised Statutes, is amended to
3 read:

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

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

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

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

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

39 B. At the aggravation phase of the sentencing proceeding that is
40 held pursuant to section 13-752, the admissibility of information relevant
41 to any of the aggravating circumstances set forth in subsection F of this
42 section shall be governed by the rules of evidence applicable to criminal
43 trials. The burden of establishing the existence of any of the
44 aggravating circumstances set forth in subsection F of this section is on

1 the prosecution. The prosecution must prove the existence of the
2 aggravating circumstances beyond a reasonable doubt.

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

15 D. Evidence that is admitted at the trial and that relates to any
16 aggravating or mitigating circumstances shall be deemed admitted as
17 evidence at a sentencing proceeding if the trier of fact considering that
18 evidence is the same trier of fact that determined the defendant's guilt.
19 The prosecution and the defendant shall be permitted to rebut any
20 information received at the aggravation or penalty phase of the sentencing
21 proceeding and shall be given fair opportunity to present argument as to
22 whether the information is sufficient to establish the existence of any of
23 the circumstances included in subsections F and G of this section.

24 E. In determining whether to impose a sentence of death or life
25 imprisonment, the trier of fact shall take into account the aggravating
26 and mitigating circumstances that have been proven. The trier of fact
27 shall impose a sentence of death if the trier of fact finds one or more of
28 the aggravating circumstances enumerated in subsection F of this section
29 and then determines that there are no mitigating circumstances
30 sufficiently substantial to call for leniency.

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

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

36 2. The defendant has been or was previously convicted of a serious
37 offense, whether preparatory or completed. Convictions for serious
38 offenses committed on the same occasion as the homicide, or not committed
39 on the same occasion but consolidated for trial with the homicide, shall
40 be treated as a serious offense under this paragraph.

41 3. The defendant procured the commission of the offense by payment,
42 or promise of payment, of anything of pecuniary value, or the defendant
43 committed the offense as a result of payment, or a promise of payment, of
44 anything of pecuniary value.

- 1 4. The defendant committed the offense in an especially heinous,
2 cruel or depraved manner.
- 3 5. The defendant committed the offense while:
 - 4 (a) In the custody of or on authorized or unauthorized release from
5 the state department of corrections, a law enforcement agency or a county
6 or city jail.
 - 7 (b) On probation for a felony offense.
- 8 6. The defendant has been convicted of one or more other homicides,
9 as defined in section 13-1101, that were committed during the commission
10 of the offense.
- 11 7. The defendant was an adult at the time the offense was committed
12 or was tried as an adult and the murdered person was under fifteen years
13 of age, was an unborn child in the womb at any stage of its development or
14 was seventy years of age or older.
- 15 8. The murdered person was an on duty peace officer who was killed
16 in the course of performing the officer's official duties and the
17 defendant knew, or should have known, that the murdered person was a peace
18 officer.
- 19 9. The defendant committed the offense with the intent to promote,
20 further or assist the objectives of a criminal street gang or criminal
21 syndicate or to join a criminal street gang or criminal syndicate.
- 22 10. The defendant committed the offense to prevent a person's
23 cooperation with an official law enforcement investigation, to prevent a
24 person's testimony in a court proceeding, in retaliation for a person's
25 cooperation with an official law enforcement investigation or in
26 retaliation for a person's testimony in a court proceeding.
- 27 G. The trier of fact shall consider as mitigating circumstances any
28 factors proffered by the defendant or the state that are relevant in
29 determining whether to impose a sentence less than death, including any
30 aspect of the defendant's character, propensities or record and any of the
31 circumstances of the offense, including but not limited to the following:
 - 32 1. The defendant's capacity to appreciate the wrongfulness of his
33 conduct or to conform his conduct to the requirements of law was
34 significantly impaired, but not so impaired as to constitute a defense to
35 prosecution.
 - 36 2. The defendant was under unusual and substantial duress, although
37 not such as to constitute a defense to prosecution.
 - 38 3. The defendant was legally accountable for the conduct of another
39 under section 13-303, but his participation was relatively minor, although
40 not so minor as to constitute a defense to prosecution.
 - 41 4. The defendant could not reasonably have foreseen that his
42 conduct in the course of the commission of the offense for which the
43 defendant was convicted would cause, or would create a grave risk of
44 causing, death to another person.
 - 45 5. The defendant's age.

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

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

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

- 11 1. First degree murder.
- 12 2. Second degree murder.
- 13 3. Manslaughter.
- 14 4. Aggravated assault resulting in serious physical injury or
15 committed by the use, threatened use or exhibition of a deadly weapon or
16 dangerous instrument.
- 17 5. Sexual assault.
- 18 6. Any dangerous crime against children.
- 19 7. Arson of an occupied structure.
- 20 8. Robbery.
- 21 9. Burglary in the first degree.
- 22 10. Kidnapping.
- 23 11. Sexual conduct with a minor under fifteen years of age.
- 24 12. Burglary in the second degree.
- 25 13. Terrorism.

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

28 13-752. Sentences of death, life imprisonment or natural
29 life; imposition; sentencing proceedings;
30 definitions

31 A. If the state has filed a notice of intent to seek the death
32 penalty and the defendant is convicted of first degree murder, the trier
33 of fact at the sentencing proceeding shall determine whether to impose a
34 sentence of death in accordance with the procedures provided in this
35 section. If the trier of fact determines that a sentence of death is not
36 appropriate, or if the state has not filed a notice of intent to seek the
37 death penalty, and the defendant is convicted of first degree murder
38 pursuant to section 13-1105, subsection A, ~~paragraph 1 or 3~~ and was at
39 least eighteen years of age at the time of the commission of the offense,
40 the court shall impose a sentence of natural life. If the defendant was
41 under eighteen years of age at the time of the commission of the offense
42 ~~or if the defendant is convicted of first degree murder pursuant to~~
43 ~~section 13-1105, subsection A, paragraph 2,~~ the court shall determine
44 whether to impose a sentence of life or natural life.

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

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

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

11 E. At the aggravation phase, the trier of fact shall make a special
12 finding on whether each alleged aggravating circumstance has been proven
13 based on the evidence that was presented at the trial or at the
14 aggravation phase. If the trier of fact is a jury, a unanimous verdict is
15 required to find that the aggravating circumstance has been proven. If
16 the trier of fact unanimously finds that an aggravating circumstance has
17 not been proven, the defendant is entitled to a special finding that the
18 aggravating circumstance has not been proven. If the trier of fact
19 unanimously finds no aggravating circumstances, the court shall then
20 determine whether to impose a sentence of life or natural life on the
21 defendant pursuant to subsection A of this section.

22 F. The penalty phase shall be held immediately after the trier of
23 fact finds at the aggravation phase that one or more of the aggravating
24 circumstances under section 13-751, subsection F have been proven. A
25 finding by the trier of fact that any of the remaining aggravating
26 circumstances alleged has not been proven or the inability of the trier of
27 fact to agree on the issue of whether any of the remaining aggravating
28 circumstances alleged has been proven shall not prevent the holding of the
29 penalty phase.

30 G. At the penalty phase, the defendant and the state may present
31 any evidence that is relevant to the determination of whether there is
32 mitigation that is sufficiently substantial to call for leniency. In
33 order for the trier of fact to make this determination, regardless of
34 whether the defendant presents evidence of mitigation, the state may
35 present any evidence that demonstrates that the defendant should not be
36 shown leniency including any evidence regarding the defendant's character,
37 propensities, criminal record or other acts.

38 H. The trier of fact shall determine unanimously whether death is
39 the appropriate sentence. If the trier of fact is a jury and the jury
40 unanimously determines that the death penalty is not appropriate, the
41 court shall determine whether to impose a sentence of life or natural life
42 pursuant to subsection A of this section.

43 I. If the trier of fact at any prior phase of the trial is the same
44 trier of fact at the subsequent phase, any evidence that was presented at

1 any prior phase of the trial shall be deemed admitted as evidence at any
 2 subsequent phase of the trial.

3 J. At the aggravation phase, if the trier of fact is a jury, the
 4 jury is unable to reach a verdict on any of the alleged aggravating
 5 circumstances and the jury has not found that at least one of the alleged
 6 aggravating circumstances has been proven, the court shall dismiss the
 7 jury and shall impanel a new jury. The new jury shall not retry the issue
 8 of the defendant's guilt or the issue regarding any of the aggravating
 9 circumstances that the first jury found not proved by unanimous
 10 verdict. If the new jury is unable to reach a unanimous verdict, the
 11 court shall impose a sentence of life or natural life on the defendant.

12 K. At the penalty phase, if the trier of fact is a jury and the
 13 jury is unable to reach a verdict, the court shall dismiss the jury and
 14 shall impanel a new jury. The new jury shall not retry the issue of the
 15 defendant's guilt or the issue regarding any of the aggravating
 16 circumstances that the first jury found by unanimous verdict to be proved
 17 or not proved. If the new jury is unable to reach a unanimous verdict,
 18 the court shall impose a sentence of life or natural life on the
 19 defendant.

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

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

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

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

44 P. The trier of fact shall make all factual determinations required
 45 by this section or the Constitution of the United States or this state to

1 impose a death sentence. If the defendant bears the burden of proof, the
2 issue shall be determined in the penalty phase. If the state bears the
3 burden of proof, the issue shall be determined in the aggravation phase.

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

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

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

12 R. Subject to section 13-751, subsection B, a victim has the right
13 to be present at the aggravation phase and to present any information that
14 is relevant to the proceeding. A victim has the right to be present and
15 to present information at the penalty phase. At the penalty phase, the
16 victim may present information about the murdered person and the impact of
17 the murder on the victim and other family members and may submit a victim
18 impact statement in any format to the trier of fact.

19 S. For the purposes of this section:

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

22 2. "Victim" means the murdered person's spouse, parent, child,
23 grandparent or sibling, any other person related to the murdered person by
24 consanguinity or affinity to the second degree or any other lawful
25 representative of the murdered person, except if the spouse, parent,
26 child, grandparent, sibling, other person related to the murdered person
27 by consanguinity or affinity to the second degree or other lawful
28 representative is in custody for an offense or is the accused.

29 Sec. 3. Section 13-1105, Arizona Revised Statutes, is amended to
30 read:

31 13-1105. First degree murder: classification

32 A. A person commits first degree murder if:

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

37 ~~2. Acting either alone or with one or more other persons the person~~
38 ~~commits or attempts to commit sexual conduct with a minor under section~~
39 ~~13-1405, sexual assault under section 13-1406, molestation of a child~~
40 ~~under section 13-1410, terrorism under section 13-2308.01, marijuana~~
41 ~~offenses under section 13-3405, subsection A, paragraph 4, dangerous drug~~
42 ~~offenses under section 13-3407, subsection A, paragraphs 4 and 7,~~
43 ~~narcotics offenses under section 13-3408, subsection A, paragraph 7 that~~
44 ~~equal or exceed the statutory threshold amount for each offense or~~
45 ~~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 section 13-3623, subsection A, paragraph 1 or unlawful flight from a pursuing law enforcement vehicle under section 28-622.01 and, in the course of and in furtherance of the offense or immediate flight from the offense, the person or another person causes the death of any person.~~

~~2.~~ 2. Intending or knowing that the person's conduct will cause death to a law enforcement officer, the person causes the death of a law enforcement officer who is in the line of duty.

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

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

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

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

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

~~C.~~ C. First degree murder is a class 1 felony and is punishable by death or life imprisonment as provided by sections 13-751 and 13-752.

Sec. 4. Postconviction relief proceedings; resentencing

A. A person who is serving a sentence in the state department of corrections on the effective date of this act for a violation of section 13-1105, subsection A, paragraph 2, Arizona Revised Statutes, in effect before the effective date of this act, committed before the effective date of this act may institute a postconviction relief proceeding pursuant to section 13-4231, paragraph 7, Arizona Revised Statutes, and is eligible to be resentenced pursuant to subsection B of this section.

B. Notwithstanding any other law, in a postconviction relief proceeding instituted pursuant to subsection A of this section, if the court finds that a person was convicted under section 13-1105, subsection A, paragraph 2, Arizona Revised Statutes, in effect before the effective date of this act, for a violation that occurred before the effective date of this act, the court shall determine the felony offense that the conviction was predicated on from the following list of offenses and the amount of time that the person has already served on the sentence, shall resentence the person to a term of imprisonment that does not exceed the presumptive sentence that was in effect on the date that the person

1 committed the offense and shall credit the person with the amount of time
2 that the person has already served under the previous sentence:

3 1. Sexual conduct with a minor under section 13-1405, Arizona
4 Revised Statutes.

5 2. Sexual assault under section 13-1406, Arizona Revised Statutes.

6 3. Molestation of a child under section 13-1410, Arizona Revised
7 Statutes.

8 4. Terrorism under section 13-2308.01, Arizona Revised Statutes.

9 5. Marijuana offenses under section 13-3405, subsection A,
10 paragraph 4, Arizona Revised Statutes.

11 6. Dangerous drug offenses under section 13-3407, subsection A,
12 paragraphs 4 and 7, Arizona Revised Statutes.

13 7. Narcotics offenses under section 13-3408, subsection A,
14 paragraph 7, Arizona Revised Statutes, that equal or exceed the statutory
15 threshold amount for each offense or combination of offenses.

16 8. Involving or using minors in drug offenses under section
17 13-3409, Arizona Revised Statutes.

18 9. Drive by shooting under section 13-1209, Arizona Revised
19 Statutes.

20 10. Kidnapping under section 13-1304, Arizona Revised Statutes.

21 11. Burglary under section 13-1506, 13-1507 or 13-1508, Arizona
22 Revised Statutes.

23 12. Arson under section 13-1703 or 13-1704, Arizona Revised
24 Statutes.

25 13. Robbery under section 13-1902, 13-1903 or 13-1904, Arizona
26 Revised Statutes.

27 14. Escape under section 13-2503 or 13-2504, Arizona Revised
28 Statutes.

29 15. Child abuse under section 13-3623, subsection A, paragraph 1,
30 Arizona Revised Statutes.

31 16. Unlawful flight from a pursuing law enforcement vehicle under
32 section 28-622.01, Arizona Revised Statutes.

33 Sec. 5. Retroactive application

34 Section 13-1105, Arizona Revised Statutes, as amended by this act,
35 applies retroactively to any case that involves a person who is serving a
36 sentence in the state department of corrections on the effective date of
37 this act for a violation of only section 13-1105, subsection A, paragraph
38 2, Arizona Revised Statutes, in effected before the effective date of this
39 act, that was committed before the effective date of this act.