

REFERENCE TITLE: **sentencing; aggravating factors; repeal**

State of Arizona
Senate
Fifty-fifth Legislature
Second Regular Session
2022

SB 1471

Introduced by
Senator Quezada

AN ACT

**AMENDING SECTIONS 13-701, 13-702 AND 13-703, 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 during the commission of the crime, except if this
38 circumstance is an essential element of the offense of conviction or has
39 been ~~utilized~~ USED to enhance the range of punishment under section
40 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.~~ 3. 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.~~ 4. At the time of the commission of the offense, the defendant
7 was a public servant and the offense involved conduct directly related to
8 the defendant's office or employment.

9 ~~9.~~ 5. The victim or, if the victim has died as a result of the
10 conduct of the defendant, the victim's immediate family suffered physical,
11 emotional or financial harm.

12 ~~10.~~ 6. During the course of the commission of the offense, the
13 death 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.~~ 7. The defendant was wearing body armor as defined in section
20 13-3116.

21 ~~13.~~ 8. The victim of the offense is at least sixty-five years of
22 age or is a person with a disability as defined in section 38-492,
23 subsection B.

24 ~~14.~~ 9. The defendant was appointed pursuant to title 14 as a
25 fiduciary and the offense involved conduct directly related to the
26 defendant's duties to the victim as fiduciary.

27 ~~15.~~ 10. Evidence that the defendant committed the crime out of
28 malice toward a victim because of the victim's identity in a group listed
29 in section 41-1750, subsection A, paragraph 3 or because of the
30 defendant's perception of the victim's identity in a group listed in
31 section 41-1750, 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.~~ 11. Lying in wait for the victim or ambushing the victim
40 during the commission of any felony.

41 ~~18.~~ 12. The offense was committed in the presence of a child and
42 any of the circumstances exists that are set forth in section 13-3601,
43 subsection A.

1 ~~19.~~ 13. The offense was committed in retaliation for a victim
2 either reporting criminal activity or being involved in an organization,
3 other than a law enforcement agency, that is established for the purpose
4 of reporting or preventing criminal activity.

5 ~~20.~~ 14. The defendant was impersonating a peace officer as defined
6 in section 1-215.

7 ~~21.~~ 15. The defendant was in violation of 8 United States Code
8 section 1323, 1324, 1325, 1326 or 1328 at the time of the commission of
9 the offense.

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

13 ~~(a) "Authorized remote stun gun" means a remote stun gun that has
14 all of the following:~~

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

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

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

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

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

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

32 ~~24.~~ 16. The defendant was convicted of a violation of section
33 13-1307 or 13-1308 or section 13-3212, subsection A, paragraph 9 or 10 and
34 the defendant recruited, enticed or obtained the victim from a shelter
35 that is designed to serve runaway youth, foster children, homeless persons
36 or victims of human trafficking, domestic violence or sexual assault.

37 ~~25.~~ 17. The defendant was convicted of a violation of section
38 13-1204 and there is evidence that the defendant committed the crime out
39 of malice toward a victim because of the victim's employment as a peace
40 officer.

41 ~~26. During or immediately following the commission of the offense,
42 the defendant used a mask or other disguise to obscure the defendant's
43 face to avoid identification.~~

1 ~~27.~~ 18. Any other factor that the state alleges is relevant to the
2 defendant's character or background or to the nature or circumstances of
3 the crime.

4 E. For the purpose of determining the sentence pursuant to
5 subsection C of this section, the court shall consider the following
6 mitigating circumstances:

7 1. The age of the defendant.

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

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

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

16 5. During or immediately following the commission of the offense,
17 the defendant complied with all duties imposed under sections 28-661,
18 28-662 and 28-663.

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

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

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

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

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

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

1 Sec. 2. Section 13-702, Arizona Revised Statutes, is amended to
2 read:

3 13-702. First time felony offenders; sentencing; definition

4 A. Unless a specific sentence is otherwise provided, the term of
5 imprisonment for a first felony offense shall be the presumptive sentence
6 determined pursuant to subsection D of this section. Except for those
7 felonies involving a dangerous offense or if a specific sentence is
8 otherwise provided, the court may increase or reduce the presumptive
9 sentence within the ranges set by subsection D of this section. Any
10 reduction or increase shall be based on the aggravating and mitigating
11 circumstances listed in section 13-701, subsections D and E and shall be
12 within the ranges prescribed in subsection D of this section.

13 B. If a person is convicted of a felony without having previously
14 been convicted of any felony and if at least two of the aggravating
15 factors listed in section 13-701, subsection D apply, the court may
16 increase the maximum term of imprisonment otherwise authorized for that
17 offense to an aggravated term. If a person is convicted of a felony
18 without having previously been convicted of any felony and if the court
19 finds at least two mitigating factors listed in section 13-701, subsection
20 E apply, the court may decrease the minimum term of imprisonment otherwise
21 authorized for that offense to a mitigated term.

22 C. The aggravated or mitigated term imposed pursuant to subsection
23 D of this section may be imposed only if at least two of the aggravating
24 circumstances are found beyond a reasonable doubt to be true by the trier
25 of fact or are admitted by the defendant, ~~except that an aggravating~~
26 ~~circumstance under section 13-701, subsection D, paragraph 11 shall be~~
27 ~~found to be true by the court,~~ or in mitigation of the crime are found to
28 be true by the court, on any evidence or information introduced or
29 submitted to the court or the trier of fact before sentencing or any
30 evidence presented at trial, and factual findings and reasons in support
31 of these findings are set forth on the record at the time of sentencing.

32 D. The term of imprisonment for a presumptive, minimum, maximum,
33 mitigated or aggravated sentence shall be within the range prescribed
34 under this subsection. The terms are as follows:

<u>Felony</u>	<u>Mitigated</u>	<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>	<u>Aggravated</u>
Class 2	3 years	4 years	5 years	10 years	12.5 years
Class 3	2 years	2.5 years	3.5 years	7 years	8.75 years
Class 4	1 year	1.5 years	2.5 years	3 years	3.75 years
Class 5	.5 years	.75 years	1.5 years	2 years	2.5 years
Class 6	.33 years	.5 years	1 year	1.5 years	2 years

41 E. The court shall inform all of the parties before sentencing
42 occurs of its intent to increase or decrease a sentence to the aggravated
43 or mitigated sentence pursuant TO this section. If the court fails to
44 inform the parties, a party waives its right to be informed unless the
45 party timely objects at the time of sentencing.

1 F. For the purposes of this section, "trier of fact" means a jury,
2 unless the defendant and the state waive a jury in which case the trier of
3 fact means the court.

4 Sec. 3. Section 13-703, Arizona Revised Statutes, is amended to
5 read:

6 13-703. Repetitive offenders; sentencing

7 A. If a person is convicted of multiple felony offenses that were
8 not committed on the same occasion but that either are consolidated for
9 trial purposes or are not historical prior felony convictions, the person
10 shall be sentenced as a first time felony offender pursuant to section
11 13-702 for the first offense and as a category one repetitive offender for
12 the second and subsequent offenses.

13 B. Except as provided in section 13-704 or 13-705, a person shall
14 be sentenced as a category two repetitive offender if the person is at
15 least eighteen years of age or has been tried as an adult and stands
16 convicted of a felony and has one historical prior felony conviction.

17 C. Except as provided in section 13-704 or 13-705, a person shall
18 be sentenced as a category three repetitive offender if the person is at
19 least eighteen years of age or has been tried as an adult and stands
20 convicted of a felony and has two or more historical prior felony
21 convictions.

22 D. The presumptive term set by this section may be aggravated or
23 mitigated within the range under this section pursuant to section 13-701,
24 subsections C, D and E.

25 E. If a person is sentenced as a category one repetitive offender
26 pursuant to subsection A of this section and if at least two aggravating
27 circumstances listed in section 13-701, subsection D apply or at least two
28 mitigating circumstances listed in section 13-701, subsection E apply, the
29 court may impose a mitigated or aggravated sentence pursuant to subsection
30 H of this section.

31 F. If a person is sentenced as a category two repetitive offender
32 pursuant to subsection B of this section and if at least two aggravating
33 circumstances listed in section 13-701, subsection D apply or at least two
34 mitigating circumstances listed in section 13-701, subsection E apply, the
35 court may impose a mitigated or aggravated sentence pursuant to subsection
36 I of this section.

37 G. If a person is sentenced as a category three repetitive offender
38 pursuant to subsection C of this section and at least two aggravating
39 circumstances listed in section 13-701, subsection D or at least two
40 mitigating circumstances listed in section 13-701, subsection E apply, the
41 court may impose a mitigated or aggravated sentence pursuant to subsection
42 J of this section.

1 H. A category one repetitive offender shall be sentenced within the
 2 following ranges:

3 <u>Felony</u>	<u>Mitigated</u>	<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>	<u>Aggravated</u>
4 Class 2	3 years	4 years	5 years	10 years	12.5 years
5 Class 3	2 years	2.5 years	3.5 years	7 years	8.75 years
6 Class 4	1 year	1.5 years	2.5 years	3 years	3.75 years
7 Class 5	.5 years	.75 years	1.5 years	2 years	2.5 years
8 Class 6	.25 years	.5 years	1 year	1.5 years	2 years

9 I. A category two repetitive offender shall be sentenced within the
 10 following ranges:

11 <u>Felony</u>	<u>Mitigated</u>	<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>	<u>Aggravated</u>
12 Class 2	4.5 years	6 years	9.25 years	18.5 years	23 years
13 Class 3	3.25 years	4.5 years	6.5 years	13 years	16.25 years
14 Class 4	2.25 years	3 years	4.5 years	6 years	7.5 years
15 Class 5	1 year	1.5 years	2.25 years	3 years	3.75 years
16 Class 6	.75 years	1 year	1.75 years	2.25 years	2.75 years

17 J. A category three repetitive offender shall be sentenced within
 18 the following ranges:

19 <u>Felony</u>	<u>Mitigated</u>	<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>	<u>Aggravated</u>
20 Class 2	10.5 years	14 years	15.75 years	28 years	35 years
21 Class 3	7.5 years	10 years	11.25 years	20 years	25 years
22 Class 4	6 years	8 years	10 years	12 years	15 years
23 Class 5	3 years	4 years	5 years	6 years	7.5 years
24 Class 6	2.25 years	3 years	3.75 years	4.5 years	5.75 years

25 K. The aggravated or mitigated term imposed pursuant to subsection
 26 H, I or J of this section may be imposed only if at least two of the
 27 aggravating circumstances are found beyond a reasonable doubt to be true
 28 by the trier of fact or are admitted by the defendant, ~~except that an~~
 29 ~~aggravating circumstance under section 13-701, subsection D, paragraph 11~~
 30 ~~shall be found to be true by the court,~~ or in mitigation of the crime are
 31 found to be true by the court, on any evidence or information introduced
 32 or submitted to the court or the trier of fact before sentencing or any
 33 evidence presented at trial, and factual findings and reasons in support
 34 of these findings are set forth on the record at the time of sentencing.

35 L. Convictions for two or more offenses committed on the same
 36 occasion shall be counted as only one conviction for the purposes of
 37 subsections B and C of this section.

38 M. A person who has been convicted in any court outside the
 39 jurisdiction of this state of an offense that was punishable by that
 40 jurisdiction as a felony is subject to this section. A person who has
 41 been convicted as an adult of an offense punishable as a felony under the
 42 provisions of any prior code in this state or the jurisdiction in which
 43 the offense was committed is subject to this section. A person who has
 44 been convicted of a felony weapons possession violation in any court
 45 outside the jurisdiction of this state that would not be punishable as a

1 felony under the laws of this state is not subject to this section.

2 N. The penalties prescribed by this section shall be substituted
3 for the penalties otherwise authorized by law if an allegation of prior
4 conviction is charged in the indictment or information and admitted or
5 found by the court. The release provisions prescribed by this section
6 shall not be substituted for any penalties required by the substantive
7 offense or a provision of law that specifies a later release or completion
8 of the sentence imposed before release. The court shall allow the
9 allegation of a prior conviction at any time before the date the case is
10 actually tried unless the allegation is filed fewer than twenty days
11 before the case is actually tried and the court finds on the record that
12 the person was in fact prejudiced by the untimely filing and states the
13 reasons for these findings. If the allegation of a prior conviction is
14 filed, the state must make available to the person a copy of any material
15 or information obtained concerning the prior conviction. The charge of
16 previous conviction shall not be read to the jury. For the purposes of
17 this subsection, "substantive offense" means the felony offense that the
18 trier of fact found beyond a reasonable doubt the person committed.
19 Substantive offense does not include allegations that, if proven, would
20 enhance the sentence of imprisonment or fine to which the person otherwise
21 would be subject.

22 O. A person who is sentenced pursuant to this section is not
23 eligible for suspension of sentence, probation, pardon or release from
24 confinement on any basis, except as specifically authorized by section
25 31-233, subsection A or B, until the sentence imposed by the court has
26 been served, the person is eligible for release pursuant to section
27 41-1604.07 or the sentence is commuted.

28 P. The court shall inform all of the parties before sentencing
29 occurs of its intent to impose an aggravated or mitigated sentence
30 pursuant to subsection H, I or J of this section. If the court fails to
31 inform the parties, a party waives its right to be informed unless the
32 party timely objects at the time of sentencing.

33 Q. The court in imposing a sentence shall consider the evidence and
34 opinions presented by the victim or the victim's immediate family at any
35 aggravation or mitigation proceeding or in the presentence report.