

*Sponsorship has changed since the bill was introduced

CORRECTED Jan 30 2023

REFERENCE TITLE: **drug offenses; homicide; sentencing**

State of Arizona
House of Representatives
Fifty-sixth Legislature
First Regular Session
2023

HB 2167

*Introduced by

Representatives Nguyen: Biasiucci, Bliss, Carbone, Carter, Chaplik, Diaz,
Dunn, Gillette, Grantham, Griffin, Harris, Heap, Hendrix, Jones,
Livingston, Marshall, Martinez, McGarr, Montenegro, Parker B, Parker J,
Peña, Pingerelli, Smith, Toma, Wilmeth, Senator Bennett

AN ACT

AMENDING SECTIONS 13-705 AND 13-706, ARIZONA REVISED STATUTES; AMENDING
TITLE 13, CHAPTER 11, ARIZONA REVISED STATUTES, BY ADDING SECTION 13-1106;
RELATING TO DRUG OFFENSES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 13-705, Arizona Revised Statutes, is amended to
3 read:

4 13-705. Dangerous crimes against children; sentences;
5 definitions

6 A. A person who is at least eighteen years of age and who is
7 convicted of a dangerous crime against children in the first degree
8 involving DRUG TRAFFICKING HOMICIDE, commercial sexual exploitation of a
9 minor or child sex trafficking and the person has previously been
10 convicted of a dangerous crime against children in the first degree shall
11 be sentenced to imprisonment in the custody of the state department of
12 corrections for natural life. A person who is sentenced to natural life
13 is not eligible for commutation, parole, work furlough, work release or
14 release from confinement on any basis for the remainder of the person's
15 natural life.

16 B. A person who is at least eighteen years of age and who is
17 convicted of a dangerous crime against children in the first degree
18 involving DRUG TRAFFICKING HOMICIDE, sexual assault of a minor who is
19 twelve years of age or younger or sexual conduct with a minor who is
20 twelve years of age or younger shall be sentenced to life imprisonment and
21 is not eligible for suspension of sentence, probation, pardon or release
22 from confinement on any basis except as specifically authorized by section
23 31-233, subsection A or B until the person has served thirty-five years or
24 the sentence is commuted. This subsection does not apply to masturbatory
25 contact.

26 C. Except as otherwise provided in this section, a person who is at
27 least eighteen years of age or who has been tried as an adult and who is
28 convicted of a dangerous crime against children in the first degree
29 involving attempted first degree murder of a minor who is under twelve
30 years of age, sexual assault of a minor who is under twelve years of age,
31 sexual conduct with a minor who is under twelve years of age or
32 manufacturing methamphetamine under circumstances that cause physical
33 injury to a minor who is under twelve years of age may be sentenced to
34 life imprisonment and is not eligible for suspension of sentence,
35 probation, pardon or release from confinement on any basis except as
36 specifically authorized by section 31-233, subsection A or B until the
37 person has served thirty-five years or the sentence is commuted. If a
38 life sentence is not imposed pursuant to this subsection, the person shall
39 be sentenced to a term of imprisonment as follows:

40	<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>
41	13 years	20 years	27 years

42 D. Except as otherwise provided in this section, a person who is at
43 least eighteen years of age or who has been tried as an adult and who is
44 convicted of a dangerous crime against children in the first degree
45 involving second degree murder of a minor who is under fifteen years of

1 age may be sentenced to life imprisonment and is not eligible for
 2 suspension of sentence, probation, pardon or release from confinement on
 3 any basis except as specifically authorized by section 31-233, subsection
 4 A or B until the person has served thirty-five years or the sentence is
 5 commuted. If a life sentence is not imposed pursuant to this subsection,
 6 the person shall be sentenced to a term of imprisonment as follows:

<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>
25 years	30 years	35 years

9 E. Except as otherwise provided in this section, a person who is
 10 at least eighteen years of age or who has been tried as an adult and who
 11 is convicted of a dangerous crime against children in the first degree
 12 involving attempted first degree murder of a minor who is twelve, thirteen
 13 or fourteen years of age, sexual assault of a minor who is twelve,
 14 thirteen or fourteen years of age, taking a child for the purpose of
 15 prostitution, child sex trafficking, commercial sexual exploitation of a
 16 minor, sexual conduct with a minor who is twelve, thirteen or fourteen
 17 years of age or manufacturing methamphetamine under circumstances that
 18 cause physical injury to a minor who is twelve, thirteen or fourteen years
 19 of age or involving or using minors in drug offenses shall be sentenced to
 20 a term of imprisonment as follows:

<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>
13 years	20 years	27 years

23 A person who has been previously convicted of one predicate felony shall
 24 be sentenced to a term of imprisonment as follows:

<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>
23 years	30 years	37 years

27 F. Except as otherwise provided in this section, a person who is at
 28 least eighteen years of age or who has been tried as an adult and who is
 29 convicted of a dangerous crime against children in the first degree
 30 involving aggravated assault, unlawful mutilation, molestation of a child,
 31 sexual exploitation of a minor, aggravated luring a minor for sexual
 32 exploitation, child abuse or kidnapping shall be sentenced to a term of
 33 imprisonment as follows:

<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>
10 years	17 years	24 years

36 A person who has been previously convicted of one predicate felony shall
 37 be sentenced to a term of imprisonment as follows:

<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>
21 years	28 years	35 years

40 G. Except as otherwise provided in this section, if a person is at
 41 least eighteen years of age or has been tried as an adult and is convicted
 42 of a dangerous crime against children involving luring a minor for sexual
 43 exploitation, sexual extortion or unlawful age misrepresentation and is
 44 sentenced to a term of imprisonment, the term of imprisonment is as
 45 follows and the person is not eligible for release from confinement on any

1 basis except as specifically authorized by section 31-233, subsection A or
2 B until the sentence imposed by the court has been served or is commuted,
3 except that if the person is convicted of unlawful age misrepresentation
4 the person is eligible for release pursuant to section 41-1604.07:

5	<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>
6	5 years	10 years	15 years

7 A person who has been previously convicted of one predicate felony shall
8 be sentenced to a term of imprisonment as follows and the person is not
9 eligible for suspension of sentence, probation, pardon or release from
10 confinement on any basis except as specifically authorized by section
11 31-233, subsection A or B until the sentence imposed by the court has been
12 served or is commuted, except that if the person is convicted of unlawful
13 age misrepresentation the person is eligible for release pursuant to
14 section 41-1604.07:

15	<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>
16	8 years	15 years	22 years

17 H. Except as otherwise provided in this section, if a person is at
18 least eighteen years of age or has been tried as an adult and is convicted
19 of a dangerous crime against children involving sexual abuse or bestiality
20 under section 13-1411, subsection A, paragraph 2 and is sentenced to a
21 term of imprisonment, the term of imprisonment is as follows and the
22 person is not eligible for release from confinement on any basis except as
23 specifically authorized by section 31-233, subsection A or B until the
24 sentence imposed by the court has been served, the person is eligible for
25 release pursuant to section 41-1604.07 or the sentence is commuted:

26	<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>
27	2.5 years	5 years	7.5 years

28 A person who has been previously convicted of one predicate felony shall
29 be sentenced to a term of imprisonment as follows and the person is not
30 eligible for suspension of sentence, probation, pardon or release from
31 confinement on any basis except as specifically authorized by section
32 31-233, subsection A or B until the sentence imposed by the court has been
33 served, the person is eligible for release pursuant to section 41-1604.07
34 or the sentence is commuted:

35	<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>
36	8 years	15 years	22 years

37 I. Except as otherwise provided in this section, a person who is at
38 least eighteen years of age or who has been tried as an adult and who is
39 convicted of a dangerous crime against children in the first degree
40 involving continuous sexual abuse of a child shall be sentenced to a term
41 of imprisonment as follows:

42	<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>
43	39 years	60 years	81 years

1 A person who has been previously convicted of one predicate felony shall
2 be sentenced to a term of imprisonment as follows:

3	<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>
4	69 years	90 years	111 years

5 J. The presumptive sentences prescribed in subsections C, D, E, ~~and~~
6 F and I of this section or subsections G and H of this section if the
7 person has previously been convicted of a predicate felony may be
8 increased or decreased pursuant to section 13-701, subsections C, D and E.

9 K. Except as provided in subsections G, H, M and N of this section,
10 a person who is sentenced for a dangerous crime against children in the
11 first degree pursuant to this section is not eligible for suspension of
12 sentence, probation, pardon or release from confinement on any basis
13 except as specifically authorized by section 31-233, subsection A or B
14 until the sentence imposed by the court has been served or commuted.

15 L. A person who is convicted of any dangerous crime against
16 children in the first degree pursuant to subsection C, D, E, ~~or~~ F or I of
17 this section and who has been previously convicted of two or more
18 predicate felonies shall be sentenced to life imprisonment and is not
19 eligible for suspension of sentence, probation, pardon or release from
20 confinement on any basis except as specifically authorized by section
21 31-233, subsection A or B until the person has served not fewer than
22 thirty-five years or the sentence is commuted.

23 M. Notwithstanding chapter 10 of this title, a person who is at
24 least eighteen years of age or who has been tried as an adult and who is
25 convicted of a dangerous crime against children in the second degree
26 pursuant to subsection B, C, E, ~~or~~ F or I of this section is guilty of a
27 class 3 felony and if the person is sentenced to a term of imprisonment,
28 the term of imprisonment is as follows and the person is not eligible for
29 release from confinement on any basis except as specifically authorized by
30 section 31-233, subsection A or B until the person has served the sentence
31 imposed by the court, the person is eligible for release pursuant to
32 section 41-1604.07 or the sentence is commuted:

33	<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>
34	5 years	10 years	15 years

35 N. A person who is convicted of any dangerous crime against
36 children in the second degree and who has been previously convicted of one
37 or more predicate felonies is not eligible for suspension of sentence,
38 probation, pardon or release from confinement on any basis except as
39 specifically authorized by section 31-233, subsection A or B until the
40 sentence imposed by the court has been served, the person is eligible for
41 release pursuant to section 41-1604.07 or the sentence is commuted.

42 O. Section 13-704, subsection J and section 13-707, subsection B
43 apply to the determination of prior convictions.

44 P. The sentence imposed on a person by the court for a dangerous
45 crime against children under subsection H of this section involving sexual

1 abuse may be served concurrently with other sentences if the offense
2 involved only one victim. The sentence imposed on a person for any other
3 dangerous crime against children in the first or second degree shall be
4 consecutive to any other sentence imposed on the person at any time,
5 including sexual abuse of the same victim.

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

8 R. A dangerous crime against children is in the first degree if it
9 is a completed offense and is in the second degree if it is a preparatory
10 offense, except attempted first degree murder is a dangerous crime against
11 children in the first degree.

12 S. It is not a defense to a dangerous crime against children that
13 the minor is a person posing as a minor or is otherwise fictitious if the
14 defendant knew or had reason to know the purported minor was under fifteen
15 years of age.

16 T. For the purposes of this section:

17 1. "Dangerous crime against children" means any of the following
18 that is committed against a minor who is under fifteen years of age:

19 (a) Second degree murder.

20 (b) Aggravated assault resulting in serious physical injury or
21 involving the discharge, use or threatening exhibition of a deadly weapon
22 or dangerous instrument.

23 (c) Sexual assault.

24 (d) Molestation of a child.

25 (e) Sexual conduct with a minor.

26 (f) Commercial sexual exploitation of a minor.

27 (g) Sexual exploitation of a minor.

28 (h) Child abuse as prescribed in section 13-3623, subsection A,
29 paragraph 1.

30 (i) Kidnapping.

31 (j) Sexual abuse.

32 (k) Taking a child for the purpose of prostitution as prescribed in
33 section 13-3206.

34 (l) Child sex trafficking as prescribed in section 13-3212.

35 (m) Involving or using minors in drug offenses.

36 (n) Continuous sexual abuse of a child.

37 (o) Attempted first degree murder.

38 (p) Sex trafficking.

39 (q) Manufacturing methamphetamine under circumstances that cause
40 physical injury to a minor.

41 (r) Bestiality as prescribed in section 13-1411, subsection A,
42 paragraph 2.

43 (s) Luring a minor for sexual exploitation.

44 (t) Aggravated luring a minor for sexual exploitation.

45 (u) Unlawful age misrepresentation.

1 (v) Unlawful mutilation.

2 (w) Sexual extortion as prescribed in section 13-1428.

3 (x) **DRUG TRAFFICKING HOMICIDE.**

4 2. "Predicate felony" means any felony involving child abuse
5 pursuant to section 13-3623, subsection A, paragraph 1, a sexual offense,
6 conduct involving the intentional or knowing infliction of serious
7 physical injury or the discharge, use or threatening exhibition of a
8 deadly weapon or dangerous instrument, or a dangerous crime against
9 children in the first or second degree.

10 Sec. 2. Section 13-706, Arizona Revised Statutes, is amended to
11 read:

12 13-706. Serious, violent or aggravated offenders; sentencing;
13 life imprisonment; definitions

14 A. A person who is at least eighteen years of age or who has been
15 tried as an adult and who is convicted of a serious offense ~~except a drug~~
16 ~~offense~~, first degree murder or any dangerous crime against children as
17 defined in section 13-705, whether a completed or preparatory offense, and
18 who has previously been convicted of two or more serious offenses not
19 committed on the same occasion shall be sentenced to life imprisonment and
20 is not eligible for suspension of sentence, probation, pardon or release
21 from confinement on any basis, except as specifically authorized by
22 section 31-233, subsection A or B, until the person has served at least
23 twenty-five years or the sentence is commuted.

24 B. Unless a longer term of imprisonment or death is the prescribed
25 penalty and notwithstanding any provision that establishes a shorter term
26 of imprisonment, a person who has been convicted of committing or
27 attempting or conspiring to commit any violent or aggravated felony and
28 who has previously been convicted on separate occasions of two or more
29 violent or aggravated felonies not committed on the same occasion shall be
30 sentenced to imprisonment for life and is not eligible for suspension of
31 sentence, probation, pardon or release on any basis except that the person
32 may be eligible for commutation after the person has served at least
33 thirty-five years.

34 C. In order for the penalty under subsection B of this section to
35 apply, both of the following must occur:

36 1. The aggravated or violent felonies that comprise the prior
37 convictions shall have been entered within fifteen years of the conviction
38 for the third offense, not including time spent in custody or on probation
39 for an offense or while the person is an absconder.

40 2. The sentence for the first aggravated or violent felony
41 conviction shall have been imposed before the conduct occurred that gave
42 rise to the second conviction, and the sentence for the second aggravated
43 or violent felony conviction shall have been imposed before the conduct
44 occurred that gave rise to the third conviction.

1 D. Chapter 3 of this title applies to all offenses under this
2 section.

3 E. For the purposes of this section, if a person has been convicted
4 of an offense committed in another jurisdiction that if committed in this
5 state would be a violation or attempted violation of any of the offenses
6 listed in this section and that has the same elements of an offense listed
7 in this section, the offense committed in another jurisdiction is
8 considered an offense committed in this state.

9 F. For the purposes of this section:

10 1. "Serious offense" means any of the following offenses if
11 committed in this state or any offense committed outside this state that
12 if committed in this state would constitute one of the following offenses:

- 13 (a) First degree murder.
- 14 (b) Second degree murder.
- 15 (c) Manslaughter.
- 16 (d) Aggravated assault resulting in serious physical injury or
17 involving the discharge, use or threatening exhibition of a deadly weapon
18 or dangerous instrument.
- 19 (e) Sexual assault.
- 20 (f) Any dangerous crime against children.
- 21 (g) Arson of an occupied structure.
- 22 (h) Armed robbery.
- 23 (i) Burglary in the first degree.
- 24 (j) Kidnapping.
- 25 (k) Sexual conduct with a minor under fifteen years of age.
- 26 (l) Child sex trafficking.
- 27 (m) DRUG TRAFFICKING HOMICIDE.

28 2. "Violent or aggravated felony" means any of the following
29 offenses:

- 30 (a) First degree murder.
- 31 (b) Second degree murder.
- 32 (c) Aggravated assault resulting in serious physical injury or
33 involving the discharge, use or threatening exhibition of a deadly weapon
34 or dangerous instrument.
- 35 (d) Dangerous or deadly assault by prisoner.
- 36 (e) Committing assault with intent to incite to riot or participate
37 in riot.
- 38 (f) Drive by shooting.
- 39 (g) Discharging a firearm at a residential structure if the
40 structure is occupied.
- 41 (h) Kidnapping.
- 42 (i) Sexual conduct with a minor that is a class 2 felony.
- 43 (j) Sexual assault.
- 44 (k) Molestation of a child.
- 45 (l) Continuous sexual abuse of a child.

- 1 (m) Violent sexual assault.
- 2 (n) Burglary in the first degree committed in a residential
- 3 structure if the structure is occupied.
- 4 (o) Arson of an occupied structure.
- 5 (p) Arson of an occupied jail or prison facility.
- 6 (q) Armed robbery.
- 7 (r) Participating in or assisting a criminal syndicate or leading
- 8 or participating in a criminal street gang.
- 9 (s) Terrorism.
- 10 (t) Taking a child for the purpose of prostitution.
- 11 (u) Child sex trafficking.
- 12 (v) Commercial sexual exploitation of a minor.
- 13 (w) Sexual exploitation of a minor.
- 14 (x) Unlawful introduction of disease or parasite as prescribed by
- 15 section 13-2912, subsection A, paragraph 2 or 3.

16 (y) DRUG TRAFFICKING HOMICIDE.

17 Sec. 3. Title 13, chapter 11, Arizona Revised Statutes, is amended

18 by adding section 13-1106, to read:

19 13-1106. Drug trafficking homicide; classification;

20 definition

21 A. A PERSON COMMITS DRUG TRAFFICKING HOMICIDE IF BOTH OF THE

22 FOLLOWING APPLY:

23 1. THE PERSON TRANSFERS A DANGEROUS DRUG IN VIOLATION OF SECTION

24 13-3407 OR A NARCOTIC DRUG IN VIOLATION OF SECTION 13-3408 AND INJECTING,

25 INHALING, ABSORBING OR INGESTING THE DANGEROUS DRUG OR NARCOTIC DRUG

26 CAUSES ANOTHER PERSON'S DEATH.

27 2. THE SALE OF THE DANGEROUS DRUG OR NARCOTIC DRUG TO THE OTHER

28 PERSON WAS A CONTRIBUTING CAUSE OF THE OTHER PERSON'S DEATH AND THE DEATH

29 DID NOT RESULT FROM A CAUSE THAT IS NOT CONNECTED TO THE DEFENDANT. FOR

30 THE PURPOSES OF THIS PARAGRAPH, THE STATE IS NOT REQUIRED TO PROVE THAT

31 THE SALE OF THE DANGEROUS DRUG OR NARCOTIC DRUG WAS THE SOLE AND IMMEDIATE

32 CAUSE OF THE OTHER PERSON'S DEATH.

33 B. DRUG TRAFFICKING HOMICIDE IS A CLASS 1 FELONY AND IS PUNISHABLE

34 AS FOLLOWS:

35 <u>MINIMUM</u>	<u>PRESUMPTIVE</u>	<u>MAXIMUM</u>
36 10 CALENDAR YEARS	16 CALENDAR YEARS	25 CALENDAR YEARS

37 C. A PERSON WHO IS CONVICTED OF DRUG TRAFFICKING HOMICIDE AND WHO

38 HAS PREVIOUSLY BEEN CONVICTED OF DRUG TRAFFICKING HOMICIDE OR A CLASS 2 OR

39 3 FELONY INVOLVING A DANGEROUS OFFENSE SHALL BE SENTENCED AS FOLLOWS:

40 <u>MINIMUM</u>	<u>PRESUMPTIVE</u>	<u>MAXIMUM</u>
41 15 CALENDAR YEARS	20 CALENDAR YEARS	29 CALENDAR YEARS

42 D. THE PRESUMPTIVE TERM IMPOSED PURSUANT TO SUBSECTIONS B AND C OF

43 THIS SECTION MAY BE AGGRAVATED OR MITIGATED PURSUANT TO SECTION 13-701,

44 SUBSECTIONS D AND E.

1 E. NOTWITHSTANDING SUBSECTION B OR C OF THIS SECTION, IF THE VICTIM
2 IS UNDER FIFTEEN YEARS OF AGE, DRUG TRAFFICKING HOMICIDE IS PUNISHABLE
3 PURSUANT TO SECTION 13-705.

4 F. FOR THE PURPOSES OF THIS SECTION, "SALE" HAS THE SAME MEANING
5 PRESCRIBED IN SECTION 13-3401.

6 Sec. 4. Short title

7 This act may be cited as the "Ashley Dunn Act".