

House Engrossed

repetitive offenders; organized retail theft

State of Arizona  
House of Representatives  
Fifty-sixth Legislature  
Second Regular Session  
2024

# HOUSE BILL 2435

AN ACT

AMENDING SECTION 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 13-703, Arizona Revised Statutes, is amended to  
3 read:

4 13-703. Repetitive offenders; sentencing

5 A. If a person is convicted of multiple felony offenses that were  
6 not committed on the same occasion but that either are consolidated for  
7 trial purposes or are not historical prior felony convictions, the person  
8 shall be sentenced as a first time felony offender pursuant to section  
9 13-702 for the first offense and as a category one repetitive offender for  
10 the second and subsequent offenses, EXCEPT THAT A PERSON WHO IS CONVICTED  
11 OF A THIRD OR SUBSEQUENT VIOLATION OF SECTION 13-1819, SUBSECTION A,  
12 PARAGRAPH 1 SHALL BE SENTENCED AS A CATEGORY TWO REPETITIVE OFFENDER.

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:

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

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

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

15 J. A category three repetitive offender shall be sentenced within  
16 the following ranges:

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

22 K. The aggravated or mitigated term imposed pursuant to subsection  
23 H, I or J of this section may be imposed only if at least two of the  
24 aggravating circumstances are found beyond a reasonable doubt to be true  
25 by the trier of fact or are admitted by the defendant, except that an  
26 aggravating circumstance under section 13-701, subsection D, paragraph 11  
27 shall be found to be true by the court, or in mitigation of the crime are  
28 found to be true by the court, on any evidence or information introduced  
29 or 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

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

36 M. A person who has been convicted in any court outside the  
37 jurisdiction of this state of an offense that was punishable by that  
38 jurisdiction as a felony is subject to this section. A person who has  
39 been convicted as an adult of an offense punishable as a felony under the  
40 provisions of any prior code in this state or the jurisdiction in which  
41 the offense was committed is subject to this section. A person who has  
42 been convicted of a felony weapons possession violation in any court  
43  
44

1 outside the jurisdiction of this state that would not be punishable as a  
2 felony under the laws of this state is not subject to this section.

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

23 O. A person who is sentenced pursuant to this section is not  
24 eligible for suspension of sentence, probation, pardon or release from  
25 confinement on any basis, except as specifically authorized by section  
26 31-233, subsection A or B, until the sentence imposed by the court has  
27 been served, the person is eligible for release pursuant to section  
28 41-1604.07 or the sentence is commuted.

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

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