

REFERENCE TITLE: repetitive offenders; organized retail theft

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

HB 2435

Introduced by
Representative Toma

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:

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

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.