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FILED

Jane Dee Hull
Secretary of State

CHAPTER 343

HOUSE BILL 2454

AN ACT

AMENDING SECTIONS 13-702 AND 13-1105, ARIZONA REVISED STATUTES; AMENDING TITLE 13, CHAPTER 12, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING SECTION 13-1210; RELATING TO CRIMINAL ACTS.

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

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

13-702. Sentencing

A. Sentences provided in section 13-701 for a first conviction of a felony, except those felonies involving a discharge, use or threatening exhibition of a deadly weapon or dangerous instrument or the intentional or knowing infliction of serious physical injury upon another or if a specific sentence is otherwise provided, may be increased or reduced by the court within the ranges set by this subsection. Such reduction or increase shall be based on the aggravating and mitigating circumstances contained in subsections C and D of this section and shall be within the following ranges:

	<u>Minimum</u>	<u>Maximum</u>
1. For a class 2 felony	4 years	10 years
2. For a class 3 felony	2.5 years	7 years
3. For a class 4 felony	1.5 years	3 years
4. For a class 5 felony	9 months	2 years
5. For a class 6 felony	6 months	1.5 years

B. The upper or lower term imposed pursuant to section 13-604, 13-604.01, 13-604.02, 13-702.01 or 13-710 or subsection A of this section may be imposed only if the circumstances alleged to be in aggravation or mitigation of the crime are found to be true by the trial judge upon any evidence or information introduced or submitted to the court prior to

1 sentencing or any evidence previously heard by the judge at the trial, and
2 factual findings and reasons in support of such findings are set forth on the
3 record at the time of sentencing.

4 C. For the purpose of determining the sentence pursuant to section
5 13-710 and subsection A of this section, the court shall consider the
6 following aggravating circumstances:

7 1. Infliction or threatened infliction of serious physical injury,
8 except if this circumstance is an essential element of the offense of
9 conviction or has been utilized to enhance the range of punishment under
10 section 13-604.

11 2. Use, threatened use or possession of a deadly weapon or dangerous
12 instrument during the commission of the crime, except if this circumstance
13 is an essential element of the offense of conviction or has been utilized to
14 enhance the range of punishment under section 13-604.

15 3. If the offense involves the taking of or damage to property, the
16 value of the property so taken or damaged.

17 4. Presence of an accomplice.

18 5. Especially heinous, cruel or depraved manner in which the offense
19 was committed.

20 6. The defendant committed the offense as consideration for the
21 receipt, or in the expectation of the receipt, of anything of pecuniary
22 value.

23 7. The defendant procured the commission of the offense by payment,
24 or promise of payment, of anything of pecuniary value.

25 8. At the time of the commission of the offense, the defendant was a
26 public servant and the offense involved conduct directly related to his
27 office or employment.

28 9. The physical, emotional and financial harm caused to the victim or,
29 if the victim has died as a result of the conduct of the defendant, the
30 emotional and financial harm caused to the victim's immediate family.

31 10. During the course of the commission of the offense, the death of
32 an unborn child at any stage of its development occurred.

33 11. The defendant was previously convicted of a felony within the ten
34 years immediately preceding the date of the offense. A conviction outside
35 the jurisdiction of this state for an offense which if committed in this
36 state would be punishable as a felony is a felony conviction for the purposes
37 of this paragraph.

38 12. THE DEFENDANT WAS WEARING A BULLET PROOF VEST.

39 ~~12.~~ 13. If the victim of the offense is sixty-five or more years of
40 age or is a handicapped person as defined by section 38-492.

41 ~~13.~~ 14. Any other factors which the court may deem appropriate to the
42 ends of justice.

1 D. For the purpose of determining the sentence pursuant to section
2 13-710 and subsection A of this section, the court shall consider the
3 following mitigating circumstances:

4 1. The age of the defendant.

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

9 3. The defendant was under unusual or substantial duress, although not
10 such as to constitute a defense to prosecution.

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

13 5. Any other factors which the court may deem appropriate to the ends
14 of justice.

15 In determining what sentence to impose, the court shall take into account the
16 amount of aggravating circumstances and whether the amount of mitigating
17 circumstances is sufficiently substantial to call for the lesser term. If
18 the court finds aggravating circumstances and does not find any mitigating
19 circumstances, the court shall impose an aggravated sentence.

20 E. The court in imposing sentence shall consider the evidence and
21 opinions presented by the victim or the victim's immediate family at any
22 aggravation or mitigation proceeding or in the presentence report.

23 F. Nothing in this section shall affect any provision of law which
24 imposes the death penalty, which expressly provides for imprisonment for life
25 or which authorizes or restricts the granting of probation and suspending the
26 execution of sentence.

27 G. Notwithstanding any other provision of this title, if a person is
28 convicted of any class 6 felony not involving the intentional or knowing
29 infliction of serious physical injury or the discharge, use or threatening
30 exhibition of a deadly weapon or dangerous instrument and if the court,
31 having regard to the nature and circumstances of the crime and to the history
32 and character of the defendant, is of the opinion that it would be unduly
33 harsh to sentence the defendant for a felony, the court may enter judgment
34 of conviction for a class 1 misdemeanor and make disposition accordingly or
35 may place the defendant on probation in accordance with chapter 9 of this
36 title and refrain from designating the offense as a felony or misdemeanor
37 until the probation is terminated. The offense shall be treated as a felony
38 for all purposes until such time as the court may actually enter an order
39 designating the offense a misdemeanor. The provisions of this subsection
40 shall not apply to any person who stands convicted of a class 6 felony and
41 who has previously been convicted of two or more felonies. When a crime or
42 public offense is punishable in the discretion of the court by a sentence as
43 a class 6 felony or a class 1 misdemeanor, the offense shall be deemed a
44 misdemeanor if the prosecuting attorney:

1 1. Files an information in superior court designating the offense as
2 a misdemeanor; or

3 2. Files a complaint in justice court or magistrate court designating
4 the offense as a misdemeanor within the jurisdiction of the respective court;
5 or

6 3. Files a complaint, with the consent of the defendant, before or
7 during the preliminary hearing amending the complaint to charge a
8 misdemeanor.

9 Sec. 2. Section 13-1105, Arizona Revised Statutes, is amended to read:

10 13-1105. First degree murder; classification

11 A. A person commits first degree murder if:

12 1. Intending or knowing that ~~his~~ THE PERSON'S conduct will cause
13 death, such person causes the death of another with premeditation ~~or~~.

14 2. Acting either alone or with one or more other persons such person
15 commits or attempts to commit sexual conduct with a minor under section
16 13-1405, sexual assault under section 13-1406, molestation of a child under
17 section 13-1410, marijuana offenses under section 13-3405, subsection A,
18 paragraph 4, dangerous drug offenses under section 13-3407, subsection A,
19 paragraph 7, narcotics offenses under section 13-3408, subsection A,
20 paragraph 7 that equal or exceed the statutory threshold amount for each
21 offense or combination of offenses, involving or using minors in drug
22 offenses under section 13-3409, kidnapping under section 13-1304, burglary
23 under section 13-1506, 13-1507 or 13-1508, arson under section 13-1703 or
24 13-1704, robbery under section 13-1902, 13-1903 or 13-1904, escape under
25 section 13-2503 or 13-2504, child abuse under section 13-3623, subsection B,
26 paragraph 1, or unlawful flight from a pursuing law enforcement vehicle under
27 section 28-622.01 and in the course of and in furtherance of such offense or
28 immediate flight from such offense, such person or another person causes the
29 death of any person.

30 3. INTENDING OR KNOWING THAT THE PERSON'S CONDUCT WILL CAUSE DEATH TO
31 A LAW ENFORCEMENT OFFICER, THE PERSON CAUSES THE DEATH OF A LAW ENFORCEMENT
32 OFFICER WHO IS IN THE LINE OF DUTY.

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

36 C. First degree murder is a class 1 felony and is punishable by death
37 or life imprisonment as provided by section 13-703.

38 Sec. 3. Title 13, chapter 12, article 1, Arizona Revised Statutes, is
39 amended by adding section 13-1210, to read:

40 13-1210. Assaults on officers; human immunodeficiency virus
41 testing; petition; hearing; notice

42 A. A PERSON WHO IS CHARGED IN ANY CRIMINAL COMPLAINT IN WHICH IT IS
43 ALLEGED THAT THE PERSON INTERFERED WITH THE OFFICIAL DUTIES OF A LAW
44 ENFORCEMENT OFFICER, CORRECTIONAL OFFICER, DETENTION OFFICER OR FIRE FIGHTER

1 BY BITING, SCRATCHING, SPITTING OR TRANSFERRING BLOOD OR OTHER BODILY FLUIDS
2 ON OR THROUGH THE SKIN OR MEMBRANES OF A LAW ENFORCEMENT OFFICER,
3 CORRECTIONAL OFFICER, DETENTION OFFICER OR FIRE FIGHTER IS SUBJECT TO A COURT
4 ORDER REQUIRING TESTING FOR THE HUMAN IMMUNODEFICIENCY VIRUS.

5 B. THE LAW ENFORCEMENT OFFICER, CORRECTIONAL OFFICER, DETENTION
6 OFFICER OR FIRE FIGHTER OR THE EMPLOYING AGENCY, OFFICER OR ENTITY MAY
7 PETITION THE COURT FOR AN ORDER AUTHORIZING TESTING FOR THE HUMAN
8 IMMUNODEFICIENCY VIRUS.

9 C. THE COURT SHALL HEAR THE PETITION PROMPTLY. IF THE COURT FINDS
10 THAT PROBABLE CAUSE EXISTS TO BELIEVE THAT A POSSIBLE TRANSFER OF BLOOD OR
11 OTHER BODILY FLUIDS OCCURRED BETWEEN THE PERSON CHARGED AND THE LAW
12 ENFORCEMENT OFFICER, CORRECTIONAL OFFICER, DETENTION OFFICER OR FIRE FIGHTER,
13 THE COURT SHALL ORDER THAT THE PERSON PROVIDE TWO SPECIMENS OF BLOOD FOR
14 TESTING.

15 D. NOTICE OF THE TEST RESULTS SHALL BE PROVIDED AS PRESCRIBED BY THE
16 DEPARTMENT OF HEALTH SERVICES TO THE PERSON TESTED, TO THE LAW ENFORCEMENT
17 OFFICER, CORRECTIONAL OFFICER, DETENTION OFFICER OR FIRE FIGHTER NAMED IN THE
18 PETITION AND TO THE OFFICER'S OR FIRE FIGHTER'S EMPLOYING AGENCY, OFFICER OR
19 ENTITY AND, IF THE PERSON TESTED IS INCARCERATED OR DETAINED, TO THE OFFICER
20 IN CHARGE AND THE CHIEF MEDICAL OFFICER OF THE FACILITY IN WHICH THE PERSON
21 IS INCARCERATED OR DETAINED.

APPROVED BY THE GOVERNOR MAY 1, 1996

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