

State of Arizona
Senate
Forty-fifth Legislature
First Regular Session
2001

CHAPTER 260

SENATE BILL 1551

AN ACT

AMENDING SECTION 13-703, ARIZONA REVISED STATUTES; AMENDING TITLE 13, CHAPTER 7, ARIZONA REVISED STATUTES, BY ADDING SECTION 13-703.02; RELATING TO CAPITAL PUNISHMENT.

(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. Sentence of death or life imprisonment; aggravating and
5 mitigating circumstances; definitions

6 A. A person guilty of first degree murder as defined in section
7 13-1105 shall suffer death or imprisonment in the custody of the state
8 department of corrections for life as determined and in accordance with the
9 procedures provided in subsections B through ~~G~~ H of this section. If the
10 court imposes a life sentence, the court may order that the defendant not be
11 released on any basis for the remainder of the defendant's natural life. An
12 order sentencing the defendant to natural life is not subject to commutation
13 or parole, work furlough or work release. If the court does not sentence the
14 defendant to natural life, the defendant shall not be released on any basis
15 until the completion of the service of twenty-five calendar years if the
16 victim was fifteen or more years of age and thirty-five years if the victim
17 was under fifteen years of age.

18 B. IN ANY CASE IN WHICH THE STATE FILES A NOTICE OF INTENT TO SEEK THE
19 DEATH PENALTY AFTER THE EFFECTIVE DATE OF THIS SUBSECTION, THE COURT SHALL
20 NOT IMPOSE THE DEATH PENALTY ON A PERSON WHO IS FOUND TO HAVE MENTAL
21 RETARDATION PURSUANT TO SECTION 13-703.02, BUT INSTEAD SHALL SENTENCE THE
22 PERSON TO LIFE IMPRISONMENT PURSUANT TO SUBSECTION A OF THIS SECTION.

23 ~~B.~~ C. When a defendant is found guilty of or pleads guilty to first
24 degree murder as defined in section 13-1105, the judge who presided at the
25 trial or before whom the guilty plea was entered, or any other judge in the
26 event of the death, resignation, incapacity or disqualification of the judge
27 who presided at the trial or before whom the guilty plea was entered, shall
28 conduct a separate sentencing hearing to determine the existence or
29 nonexistence of the circumstances included in subsections ~~F~~ G and ~~G~~ H of
30 this section, for the purpose of determining the sentence to be imposed. The
31 hearing shall be conducted before the court alone. The court alone shall
32 make all factual determinations required by this section or the constitution
33 of the United States or this state.

34 ~~C.~~ D. In the sentencing hearing the court shall disclose to the
35 defendant or defendant's counsel all material contained in any presentence
36 report, if one has been prepared, except such material as the court
37 determines is required to be withheld for the protection of human life. A
38 victim may submit a written victim impact statement, an audio or video tape
39 statement or make an oral impact statement to the probation officer preparing
40 the presentence report for the probation officer's use in preparing the
41 presentence report. The probation officer shall consider and include in the
42 presentence report the victim impact information regarding the murdered
43 person and the economical, physical and psychological impact of the murder
44 on the victim and other family members. Any presentence information withheld
45 from the defendant shall not be considered in determining the existence or
46 nonexistence of the circumstances included in subsection ~~F~~ G or ~~G~~ H of this

1 section. Any information relevant to any mitigating circumstances included
2 in subsection ~~G~~ H of this section may be presented by either the prosecution
3 or the defendant, regardless of its admissibility under the rules governing
4 admission of evidence at criminal trials, but the admissibility of
5 information relevant to any of the aggravating circumstances set forth in
6 subsection ~~F~~ G of this section shall be governed by the rules of evidence
7 at criminal trials. Evidence admitted at the trial, relating to such
8 aggravating or mitigating circumstances, shall be considered without
9 reintroducing it at the sentencing proceeding. The victim has the right to
10 be present and to testify at the hearing. The victim may present information
11 about the murdered person and the impact of the murder on the victim and
12 other family members. The prosecution and the defendant shall be permitted
13 to rebut any information received at the hearing and shall be given fair
14 opportunity to present argument as to the adequacy of the information to
15 establish the existence of any of the circumstances included in subsections
16 ~~F~~ G and ~~G~~ H of this section. The burden of establishing the existence of
17 any of the circumstances set forth in subsection ~~F~~ G of this section is on
18 the prosecution. The burden of establishing the existence of the
19 circumstances included in subsection ~~G~~ H of this section is on the
20 defendant.

21 ~~D~~. E. The court shall return a special verdict setting forth its
22 findings as to the existence or nonexistence of each of the circumstances set
23 forth in subsection ~~F~~ G of this section and as to the existence of any of
24 the circumstances included in subsection ~~G~~ H of this section. In evaluating
25 the mitigating circumstances, the court shall consider any information
26 presented by the victim regarding the murdered person and the impact of the
27 murder on the victim and other family members. The court shall not consider
28 any recommendation made by the victim regarding the sentence to be imposed.

29 ~~E~~. F. In determining whether to impose a sentence of death or life
30 imprisonment, the court shall take into account the aggravating and
31 mitigating circumstances included in subsections ~~F~~ G and ~~G~~ H of this
32 section and shall impose a sentence of death if the court finds one or more
33 of the aggravating circumstances enumerated in subsection ~~F~~ G of this
34 section and that there are no mitigating circumstances sufficiently
35 substantial to call for leniency.

36 ~~F~~. G. The court shall consider the following aggravating
37 circumstances:

38 1. The defendant has been convicted of another offense in the United
39 States for which under Arizona law a sentence of life imprisonment or death
40 was imposable.

41 2. The defendant was previously convicted of a serious offense,
42 whether preparatory or completed.

43 3. In the commission of the offense the defendant knowingly created
44 a grave risk of death to another person or persons in addition to the person
45 murdered during the commission of the offense.

1 4. The defendant procured the commission of the offense by payment,
2 or promise of payment, of anything of pecuniary value.

3 5. The defendant committed the offense as consideration for the
4 receipt, or in expectation of the receipt, of anything of pecuniary value.

5 6. The defendant committed the offense in an especially heinous, cruel
6 or depraved manner.

7 7. The defendant committed the offense while in the custody of or on
8 authorized or unauthorized release from the state department of corrections,
9 a law enforcement agency or a county or city jail.

10 8. The defendant has been convicted of one or more other homicides,
11 as defined in section 13-1101, which were committed during the commission of
12 the offense.

13 9. The defendant was an adult at the time the offense was committed
14 or was tried as an adult and the murdered person was under fifteen years of
15 age or was seventy years of age or older.

16 10. The murdered person was an on duty peace officer who was killed in
17 the course of performing his official duties and the defendant knew, or
18 should have known, that the murdered person was a peace officer.

19 ~~G.~~ H. The court shall consider as mitigating circumstances any
20 factors proffered by the defendant or the state which are relevant in
21 determining whether to impose a sentence less than death, including any
22 aspect of the defendant's character, propensities or record and any of the
23 circumstances of the offense, including but not limited to the following:

24 1. The defendant's capacity to appreciate the wrongfulness of his
25 conduct or to conform his conduct to the requirements of law was
26 significantly impaired, but not so impaired as to constitute a defense to
27 prosecution.

28 2. The defendant was under unusual and substantial duress, although
29 not such as to constitute a defense to prosecution.

30 3. The defendant was legally accountable for the conduct of another
31 under the provisions of section 13-303, but his participation was relatively
32 minor, although not so minor as to constitute a defense to prosecution.

33 4. The defendant could not reasonably have foreseen that his conduct
34 in the course of the commission of the offense for which the defendant was
35 convicted would cause, or would create a grave risk of causing, death to
36 another person.

37 5. The defendant's age.

38 ~~H.~~ I. As used in this section:

39 1. "MENTAL RETARDATION" HAS THE SAME MEANING AS IN SECTION 13-703.02.

40 ~~I.~~ 2. "Serious offense" means any of the following offenses if
41 committed in this state or any offense committed outside this state that if
42 committed in this state would constitute one of the following offenses:

43 (a) First degree murder.

44 (b) Second degree murder.

45 (c) Manslaughter.

1 (d) Aggravated assault resulting in serious physical injury or
2 committed by the use, threatened use or exhibition of a deadly weapon or
3 dangerous instrument.

4 (e) Sexual assault.

5 (f) Any dangerous crime against children.

6 (g) Arson of an occupied structure.

7 (h) Robbery.

8 (i) Burglary in the first degree.

9 (j) Kidnapping.

10 (k) Sexual conduct with a minor under fifteen years of age.

11 2. 3. "Victim" means the murdered person's spouse, parent, child or
12 other lawful representative, except if the spouse, parent, child or other
13 lawful representative is in custody for an offense or is the accused.

14 Sec. 2. Title 13, chapter 7, Arizona Revised Statutes, is amended by
15 adding section 13-703.02, to read:

16 13-703.02. Evaluations of capital defendants; prescreening
17 evaluation; hearing; mental retardation; appeal;
18 definitions; prospective application

19 A. IF THE STATE FILES A NOTICE OF INTENT TO SEEK THE DEATH PENALTY;
20 THE COURT SHALL APPOINT A PRESCREENING PSYCHOLOGICAL EXPERT IN ORDER TO
21 DETERMINE THE DEFENDANT'S INTELLIGENCE QUOTIENT USING CURRENT COMMUNITY,
22 NATIONALLY AND CULTURALLY ACCEPTED INTELLIGENCE TESTING PROCEDURES. THE
23 PRESCREENING PSYCHOLOGICAL EXPERT SHALL SUBMIT A WRITTEN REPORT OF THE
24 INTELLIGENCE QUOTIENT DETERMINATION TO THE COURT WITHIN TEN DAYS OF THE
25 TESTING OF THE DEFENDANT.

26 B. IF THE PRESCREENING PSYCHOLOGICAL EXPERT DETERMINES THAT THE
27 DEFENDANT'S INTELLIGENCE QUOTIENT IS HIGHER THAN SEVENTY-FIVE, THE NOTICE OF
28 INTENT TO SEEK THE DEATH PENALTY SHALL NOT BE DISMISSED ON THE GROUND THAT
29 THE DEFENDANT HAS MENTAL RETARDATION. IF THE PRESCREENING PSYCHOLOGICAL
30 EXPERT DETERMINES THAT THE DEFENDANT'S INTELLIGENCE QUOTIENT IS HIGHER THAN
31 SEVENTY-FIVE, THE REPORT SHALL BE SEALED BY THE COURT AND BE AVAILABLE ONLY
32 TO THE DEFENDANT. THE REPORT SHALL BE RELEASED UPON MOTION OF ANY PARTY IF
33 THE DEFENDANT INTRODUCES THE REPORT IN THE PRESENT CASE OR IS CONVICTED OF
34 AN OFFENSE IN THE PRESENT CASE AND THE SENTENCE IS FINAL. A PRESCREENING
35 DETERMINATION THAT THE DEFENDANT'S INTELLIGENCE QUOTIENT IS HIGHER THAN
36 SEVENTY-FIVE DOES NOT PREVENT THE DEFENDANT FROM INTRODUCING EVIDENCE OF THE
37 DEFENDANT'S MENTAL RETARDATION OR DIMINISHED MENTAL CAPACITY AS A MITIGATING
38 FACTOR AT ANY SENTENCING PROCEEDING PURSUANT TO SECTION 13-703.

39 C. IF THE PRESCREENING PSYCHOLOGICAL EXPERT DETERMINES THAT THE
40 DEFENDANT'S INTELLIGENCE QUOTIENT IS SEVENTY-FIVE OR LESS, THE TRIAL COURT
41 SHALL APPOINT ONE OR MORE ADDITIONAL PSYCHOLOGICAL EXPERTS TO INDEPENDENTLY
42 DETERMINE WHETHER THE DEFENDANT HAS MENTAL RETARDATION. IF THE PRESCREENING
43 PSYCHOLOGICAL EXPERT DETERMINES THAT THE DEFENDANT'S INTELLIGENCE QUOTIENT
44 IS SEVENTY-FIVE OR LESS, THE TRIAL COURT SHALL, WITHIN TEN DAYS OF RECEIVING
45 THE WRITTEN REPORT, ORDER THE STATE AND THE DEFENDANT TO EACH NOMINATE THREE
46 PSYCHOLOGICAL EXPERTS, OR JOINTLY NOMINATE A SINGLE PSYCHOLOGICAL

1 EXPERT. THE TRIAL COURT SHALL APPOINT ONE PSYCHOLOGICAL EXPERT NOMINATED BY
2 THE STATE AND ONE PSYCHOLOGICAL EXPERT NOMINATED BY THE DEFENDANT, OR A
3 SINGLE PSYCHOLOGICAL EXPERT JOINTLY NOMINATED BY THE STATE AND THE DEFENDANT,
4 NONE OF WHOM MADE THE PRESCREENING DETERMINATION OF THE DEFENDANT'S
5 INTELLIGENCE QUOTIENT. THE TRIAL COURT MAY, IN ITS DISCRETION, APPOINT AN
6 ADDITIONAL PSYCHOLOGICAL EXPERT WHO WAS NEITHER NOMINATED BY THE STATE NOR
7 THE DEFENDANT, AND WHO DID NOT MAKE THE PRESCREENING DETERMINATION OF THE
8 DEFENDANT'S INTELLIGENCE QUOTIENT. WITHIN FORTY-FIVE DAYS AFTER THE TRIAL
9 COURT ORDERS THE STATE AND THE DEFENDANT TO NOMINATE PSYCHOLOGICAL EXPERTS,
10 OR UPON THE APPOINTMENT OF SUCH EXPERTS, WHICHEVER IS LATER, THE STATE AND
11 THE DEFENDANT SHALL PROVIDE TO THE PSYCHOLOGICAL EXPERTS AND THE COURT ANY
12 AVAILABLE RECORDS THAT MAY BE RELEVANT TO THE DEFENDANT'S MENTAL RETARDATION
13 STATUS. THE COURT MAY EXTEND THE DEADLINE FOR PROVIDING RECORDS UPON GOOD
14 CAUSE SHOWN BY THE STATE OR DEFENDANT.

15 D. NOT LESS THAN TWENTY DAYS AFTER RECEIPT OF THE RECORDS PROVIDED
16 PURSUANT TO SUBSECTION E OF THIS SECTION, OR TWENTY DAYS AFTER THE EXPIRATION
17 OF THE DEADLINE FOR PROVIDING SUCH RECORDS, WHICHEVER IS LATER, EACH
18 PSYCHOLOGICAL EXPERT SHALL EXAMINE THE DEFENDANT USING CURRENT COMMUNITY,
19 NATIONALLY AND CULTURALLY ACCEPTED PHYSICAL, DEVELOPMENTAL, PSYCHOLOGICAL AND
20 INTELLIGENCE TESTING PROCEDURES, FOR THE PURPOSE OF DETERMINING WHETHER THE
21 DEFENDANT HAS MENTAL RETARDATION. WITHIN FIFTEEN DAYS OF EXAMINING THE
22 DEFENDANT, EACH PSYCHOLOGICAL EXPERT SHALL SUBMIT A WRITTEN REPORT TO THE
23 TRIAL COURT THAT INCLUDES THE EXPERT'S OPINION AS TO WHETHER THE DEFENDANT
24 HAS MENTAL RETARDATION.

25 E. IF THE SCORES ON ALL THE TESTS FOR INTELLIGENCE QUOTIENT
26 ADMINISTERED TO THE DEFENDANT ARE ABOVE SEVENTY, THE NOTICE OF INTENT TO SEEK
27 THE DEATH PENALTY SHALL NOT BE DISMISSED ON THE GROUND THAT THE DEFENDANT HAS
28 MENTAL RETARDATION. THIS DOES NOT PRECLUDE THE DEFENDANT FROM INTRODUCING
29 EVIDENCE OF THE DEFENDANT'S MENTAL RETARDATION OR DIMINISHED MENTAL CAPACITY
30 AS A MITIGATING FACTOR AT ANY SENTENCING PROCEEDING PURSUANT TO SECTION
31 13-703.

32 F. NO LESS THAN THIRTY DAYS AFTER THE PSYCHOLOGICAL EXPERTS' REPORTS
33 ARE SUBMITTED TO THE COURT AND BEFORE TRIAL, THE TRIAL COURT SHALL HOLD A
34 HEARING TO DETERMINE IF THE DEFENDANT HAS MENTAL RETARDATION. AT THE
35 HEARING, THE DEFENDANT HAS THE BURDEN OF PROVING MENTAL RETARDATION BY CLEAR
36 AND CONVINCING EVIDENCE. A DETERMINATION BY THE TRIAL COURT THAT THE
37 DEFENDANT'S INTELLIGENCE QUOTIENT IS SIXTY-FIVE OR LOWER ESTABLISHES A
38 REBUTTABLE PRESUMPTION THAT THE DEFENDANT HAS MENTAL RETARDATION. NOTHING
39 IN THIS SUBSECTION SHALL PRECLUDE A DEFENDANT WITH AN INTELLIGENCE QUOTIENT
40 OF SEVENTY OR BELOW FROM PROVING MENTAL RETARDATION BY CLEAR AND CONVINCING
41 EVIDENCE.

42 G. IF THE TRIAL COURT FINDS THAT THE DEFENDANT HAS MENTAL RETARDATION,
43 THE TRIAL COURT SHALL DISMISS THE INTENT TO SEEK THE DEATH PENALTY, SHALL NOT
44 IMPOSE A SENTENCE OF DEATH ON THE DEFENDANT IF THE DEFENDANT IS CONVICTED OF
45 FIRST DEGREE MURDER AND SHALL DISMISS ONE OF THE ATTORNEYS APPOINTED UNDER
46 RULE 6.2, ARIZONA RULES OF CRIMINAL PROCEDURE UNLESS THE COURT FINDS THAT

1 THERE IS GOOD CAUSE TO RETAIN BOTH ATTORNEYS. IF THE TRIAL COURT FINDS THAT
2 THE DEFENDANT DOES NOT HAVE MENTAL RETARDATION, THE COURT'S FINDING DOES NOT
3 PREVENT THE DEFENDANT FROM INTRODUCING EVIDENCE OF THE DEFENDANT'S MENTAL
4 RETARDATION OR DIMINISHED MENTAL CAPACITY AS A MITIGATING FACTOR AT ANY
5 SENTENCING PROCEEDING PURSUANT TO SECTION 13-703.

6 H. WITHIN TEN DAYS AFTER THE TRIAL COURT MAKES A FINDING ON MENTAL
7 RETARDATION, THE STATE OR THE DEFENDANT MAY FILE A PETITION FOR SPECIAL
8 ACTION WITH THE ARIZONA COURT OF APPEALS PURSUANT TO THE RULES OF PROCEDURE
9 FOR SPECIAL ACTIONS. THE FILING OF THE PETITION FOR SPECIAL ACTION IS
10 GOVERNED BY THE RULES OF PROCEDURE FOR SPECIAL ACTIONS, EXCEPT THAT THE COURT
11 OF APPEALS SHALL EXERCISE JURISDICTION AND DECIDE THE MERITS OF THE CLAIMS
12 RAISED.

13 I. FOR PURPOSES OF THIS SECTION, UNLESS THE CONTEXT OTHERWISE
14 REQUIRES:

15 1. "ADAPTIVE BEHAVIOR" MEANS THE EFFECTIVENESS OR DEGREE TO WHICH THE
16 DEFENDANT MEETS THE STANDARDS OF PERSONAL INDEPENDENCE AND SOCIAL
17 RESPONSIBILITY EXPECTED OF THE DEFENDANT'S AGE AND CULTURAL GROUP.

18 2. "MENTAL RETARDATION" MEANS A CONDITION BASED ON A MENTAL DEFICIT
19 THAT INVOLVES SIGNIFICANTLY SUBAVERAGE GENERAL INTELLECTUAL FUNCTIONING,
20 EXISTING CONCURRENTLY WITH SIGNIFICANT IMPAIRMENT IN ADAPTIVE BEHAVIOR, WHERE
21 THE ONSET OF THE FOREGOING CONDITIONS OCCURRED BEFORE THE DEFENDANT REACHED
22 THE AGE OF EIGHTEEN.

23 3. "PRESCREENING PSYCHOLOGICAL EXPERT" OR "PSYCHOLOGICAL EXPERT" MEANS
24 A PSYCHOLOGIST LICENSED PURSUANT TO TITLE 32, CHAPTER 19.1 WITH AT LEAST TWO
25 YEARS EXPERIENCE IN THE TESTING, EVALUATION AND DIAGNOSIS OF MENTAL
26 RETARDATION.

27 4. "SIGNIFICANTLY SUBAVERAGE GENERAL INTELLECTUAL FUNCTIONING" MEANS
28 A FULL SCALE INTELLIGENCE QUOTIENT OF SEVENTY OR LOWER. THE COURT IN
29 DETERMINING THE INTELLIGENCE QUOTIENT SHALL TAKE INTO ACCOUNT THE MARGIN OF
30 ERROR FOR THE TEST ADMINISTERED.

31 J. THIS SECTION APPLIES PROSPECTIVELY ONLY TO CASES IN WHICH THE STATE
32 FILES A NOTICE OF INTENT TO SEEK THE DEATH PENALTY AFTER THE EFFECTIVE DATE
33 OF THIS ACT.

34 Sec. 3. Legislative intent

35 It is the intent of the legislature that in any case in which this
36 state files a notice of intent to seek the death penalty after the effective
37 date of this act, a defendant with mental retardation shall not be executed
38 in this state.

APPROVED BY THE GOVERNOR APRIL 26, 2001.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 27, 2001.

Passed the House April 17, 20 01,

by the following vote: 37 Ayes,

17 Nays, 6 Not Voting



Speaker of the House



Chief Clerk of the House

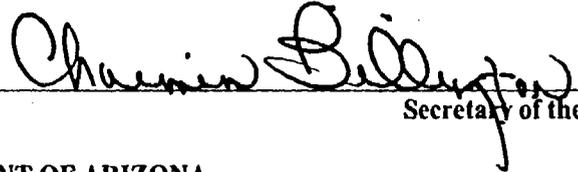
Passed the Senate March 7, 20 01,

by the following vote: 22 Ayes,

8 Nays, 0 Not Voting



President of the Senate



Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this

~~_____ day of _____, 20____,~~

~~at _____ o'clock _____ M.~~

~~_____
Secretary to the Governor~~

Approved this _____ day of

~~_____, 20____,~~

~~at _____ o'clock _____ M.~~

~~_____
Governor of Arizona~~

S.B. 1551

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

~~this _____ day of _____, 20____,~~

~~at _____ o'clock _____ M.~~

~~_____
Secretary of State~~

SENATE CONCURS IN HOUSE
AMENDMENTS AND FINAL PASSAGE

Passed the Senate April 23, 2001,

by the following vote: 26 Ayes,

1 Nays, 2 Not Voting

[Signature] 1 Vacancy
President of the Senate
[Signature]
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this

23 day of April, 2001,

at 3:50 o'clock P M.

[Signature]
Secretary to the Governor

APPROVED THIS 26 day of

April, 2001,

at 11:40 o'clock P M.

[Signature]
Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this 27 day of April, 2001,

at 3:45 o'clock P M.

[Signature]
Secretary of State

S.B. 1551