

House Engrossed

State of Arizona
House of Representatives
Forty-fifth Legislature
First Regular Session
2001

CHAPTER 51

HOUSE BILL 2473

AN ACT

AMENDING SECTIONS 13-702 AND 28-1382, ARIZONA REVISED STATUTES; RELATING TO
DRIVING UNDER THE INFLUENCE.

(TEXT OF BILL BEGINS ON NEXT PAGE)



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

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

4 13-702. Sentencing

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

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

18 B. The upper or lower term imposed pursuant to section 13-604,
19 13-604.01, 13-604.02, 13-702.01 or 13-710 or subsection A of this section may
20 be imposed only if the circumstances alleged to be in aggravation or
21 mitigation of the crime are found to be true by the trial judge upon any
22 evidence or information introduced or submitted to the court before
23 sentencing or any evidence previously heard by the judge at the trial, and
24 factual findings and reasons in support of such findings are set forth on the
25 record at the time of sentencing.

26 C. For the purpose of determining the sentence pursuant to section
27 13-710 and subsection A of this section, the court shall consider the
28 following aggravating circumstances:

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

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

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

39 4. Presence of an accomplice.

40 5. Especially heinous, cruel or depraved manner in which the offense
41 was committed.

42 6. The defendant committed the offense as consideration for the
43 receipt, or in the expectation of the receipt, of anything of pecuniary
44 value.
45

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

3 8. At the time of the commission of the offense, the defendant was a
4 public servant and the offense involved conduct directly related to the
5 defendant's office or employment.

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

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

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

16 12. The defendant was wearing body armor as defined in section 13-3116.

17 13. If the victim of the offense is sixty-five or more years of age or
18 is a handicapped DISABLED person as defined by section 38-492.

19 14. Evidence that the defendant committed the crime out of malice
20 toward a victim because of the victim's identity in a group listed in section
21 41-1750, subsection A, paragraph 3 or because of the defendant's perception
22 of the victim's identity in a group listed in section 41-1750, subsection A,
23 paragraph 3.

24 15. The defendant was convicted of a violation of section 13-1102,
25 section 13-1103, section 13-1104, subsection A, paragraph 3 or section
26 13-1204, subsection A, paragraph 1 or 2 arising from an act that was
27 committed while driving a motor vehicle and the defendant's alcohol
28 concentration at the time of committing the offense was ~~0.18~~ 0.15 or more.
29 For the purposes of this paragraph, "alcohol concentration" has the same
30 meaning prescribed in section 28-101.

31 16. Lying in wait for the victim or ambushing the victim during the
32 commission of any felony.

33 17. The offense was committed in the presence of a child and any of the
34 circumstances exist that are set forth in section 13-3601, subsection A.

35 18. Any other factor that the court deems appropriate to the ends of
36 justice.

37 D. For the purpose of determining the sentence pursuant to section
38 13-710 and subsection A of this section, the court shall consider the
39 following mitigating circumstances:

40 1. The age of the defendant.

41 2. The defendant's capacity to appreciate the wrongfulness of his THE
42 DEFENDANT'S conduct or to conform his conduct to the requirements of law was
43 significantly impaired, but not so impaired as to constitute a defense to
44 prosecution.

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

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

5 5. Any other factor that the court deems appropriate to the ends of
6 justice.

7 In determining what sentence to impose, the court shall take into account the
8 amount of aggravating circumstances and whether the amount of mitigating
9 circumstances is sufficiently substantial to call for the lesser term. If
10 the court finds aggravating circumstances and does not find any mitigating
11 circumstances, the court shall impose an aggravated sentence.

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

15 F. Nothing in this section affects any provision of law that imposes
16 the death penalty, that expressly provides for imprisonment for life or that
17 authorizes or restricts the granting of probation and suspending the
18 execution of sentence.

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

37 1. Files an information in superior court designating the offense as
38 a misdemeanor.

39 2. Files a complaint in justice court or municipal court designating
40 the offense as a misdemeanor within the jurisdiction of the respective court.

41 3. Files a complaint, with the consent of the defendant, before or
42 during the preliminary hearing amending the complaint to charge a
43 misdemeanor.

1 Sec. 2. Section 28-1382, Arizona Revised Statutes, is amended to read:
2 28-1382. Driving or actual physical control while under the
3 extreme influence of intoxicating liquor; trial by
4 jury; sentencing; classification

5 A. It is unlawful for a person to drive or be in actual physical
6 control of a vehicle in this state if the person has an alcohol concentration
7 of ~~0.18~~ 0.15 or more within two hours of driving or being in actual physical
8 control of the vehicle and the alcohol concentration results from alcohol
9 consumed either before or while driving or being in actual physical control
10 of the vehicle.

11 B. A person who is convicted of a violation of this section is guilty
12 of driving or being in actual physical control of a vehicle while under the
13 extreme influence of intoxicating liquor.

14 C. At the arraignment, the court shall inform the defendant that the
15 defendant may request a trial by jury and that the request, if made, shall
16 be granted.

17 D. A person who is convicted of a violation of this section:

18 1. Shall be sentenced to serve not less than thirty consecutive days
19 in jail and is not eligible for probation or suspension of execution of
20 sentence unless the entire sentence is served.

21 2. Shall pay a fine of not less than two hundred fifty dollars. The
22 fine prescribed in this paragraph and any assessments, restitution and
23 incarceration costs shall be paid before the assessment prescribed in
24 paragraph 3 of this subsection.

25 3. Shall pay an additional assessment of two hundred fifty dollars.
26 If the conviction occurred in the superior court or a justice court, the
27 court shall transmit the monies received pursuant to this paragraph to the
28 county treasurer. If the conviction occurred in a municipal court, the court
29 shall transmit the monies received pursuant to this paragraph to the city
30 treasurer. The city or county treasurer shall transmit the monies received
31 to the state treasurer. The state treasurer shall deposit the monies
32 received in the driving under the influence abatement fund established by
33 section 28-1304.

34 4. May be ordered by a court to perform community service.

35 5. Shall be required by the department, on receipt of the report of
36 conviction, to equip any motor vehicle the person operates with a certified
37 ignition interlock device for one year on the conclusion of the license
38 suspension or revocation. In addition, the court may order the person to
39 equip any motor vehicle the person operates with a certified ignition
40 interlock device for more than one year on the conclusion of the license
41 suspension or revocation. The person who operates a motor vehicle with a
42 certified ignition interlock device under this paragraph shall comply with
43 article 5 of this chapter.

44 E. Notwithstanding subsection D, paragraph 1 of this section, at the
45 time of sentencing the judge may suspend all but ten days of the sentence if

1 the person completes a court ordered alcohol or other drug screening,
2 education or treatment program. If the person fails to complete the court
3 ordered alcohol or other drug screening, education or treatment program and
4 has not been placed on probation, the court shall issue an order to show
5 cause to the defendant as to why the remaining jail sentence should not be
6 served.

7 F. If within a period of sixty months a person is convicted of a
8 second violation of this section or is convicted of a violation of this
9 section and has previously been convicted of a violation of section 28-1381
10 or 28-1383 or an act in another jurisdiction that if committed in this state
11 would be a violation of this section or section 28-1381 or 28-1383, the
12 person:

13 1. Shall be sentenced to serve not less than one hundred twenty days
14 in jail, sixty days of which shall be served consecutively, and is not
15 eligible for probation or suspension of execution of sentence unless the
16 entire sentence has been served.

17 2. Shall pay a fine of not less than five hundred dollars. The fine
18 prescribed in this paragraph and any assessments, restitution and
19 incarceration costs shall be paid before the assessment prescribed in
20 paragraph 3 of this subsection.

21 3. Shall pay an additional assessment of two hundred fifty dollars.
22 If the conviction occurred in the superior court or a justice court, the
23 court shall transmit the monies received pursuant to this paragraph to the
24 county treasurer. If the conviction occurred in a municipal court, the court
25 shall transmit the monies received pursuant to this paragraph to the city
26 treasurer. The city or county treasurer shall transmit the monies received
27 to the state treasurer. The state treasurer shall deposit the monies
28 received in the driving under the influence abatement fund established by
29 section 28-1304.

30 4. May be ordered by a court to perform community service.

31 5. Shall have the person's driving privilege revoked for at least one
32 year. The court shall report the conviction to the department. On receipt
33 of the report, the department shall revoke the person's driving privilege and
34 shall require the person to equip any motor vehicle the person operates with
35 a certified ignition interlock device for one year on the conclusion of the
36 license suspension or revocation. In addition, the court may order the
37 person to equip any motor vehicle the person operates with a certified
38 ignition interlock device for more than one year on the conclusion of the
39 license suspension or revocation. The person who operates a motor vehicle
40 with a certified ignition interlock device under this paragraph shall comply
41 with article 5 of this chapter.

42 G. Notwithstanding subsection F, paragraph 1 of this section, at the
43 time of sentencing, the judge may suspend all but sixty days of the sentence
44 if the person completes a court ordered alcohol or other drug screening,
45 education or treatment program. If the person fails to complete the court

1 ordered alcohol or other drug screening, education or treatment program and
2 has not been placed on probation, the court shall issue an order to show
3 cause as to why the remaining jail sentence should not be served.

4 H. In applying the sixty month provision of subsection F of this
5 section, the dates of the commission of the offense shall be the determining
6 factor, irrespective of the sequence in which the offenses were committed.

7 I. A second violation for which a conviction occurs as provided in
8 this section shall not include a conviction for an offense arising out of the
9 same series of acts.

10 J. A person who is convicted of a violation of this section is guilty
11 of a class 1 misdemeanor.

12 Sec. 3. Emergency

13 This act is an emergency measure that is necessary to preserve the
14 public peace, health or safety and is operative immediately as provided by
15 law.

APPROVED BY THE GOVERNOR APRIL 4, 2001.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 4, 2001.

Passed the House February 12, 2001,

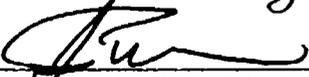
Passed the Senate March 28, 2001

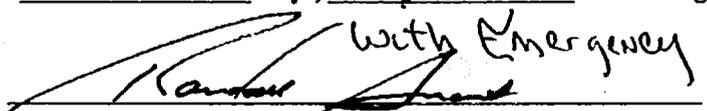
by the following vote: 55 Ayes,

by the following vote: 30 Ayes,

2 Nays, 3 Not Voting
with emergency

0 Nays, 0 Not Voting
with Emergency


Speaker of the House


President of the Senate


Chief Clerk of the House

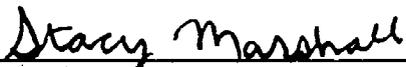

Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this

29 day of March, 2001,

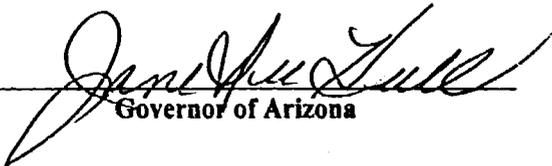
at 1:30 o'clock P M.


Secretary to the Governor

Approved this 4 day of

April, 2001,

at 1:00 o'clock P M.

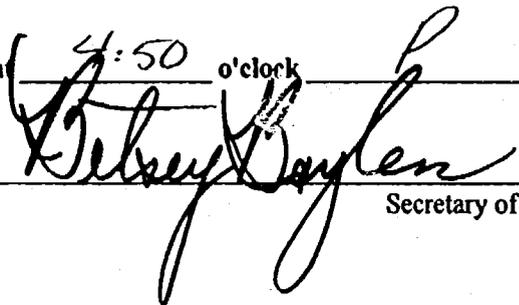

Governor of Arizona

H.B. 2473

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State
this 4 day of April, 2001,

at 4:50 o'clock P M.


Secretary of State