

Senate Engrossed House Bill

State of Arizona  
House of Representatives  
Forty-sixth Legislature  
First Regular Session  
2003

CHAPTER 225

# HOUSE BILL 2208

AN ACT

AMENDING SECTIONS 13-702 AND 13-1202, 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 13-702, 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  
11 be 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>
14 1. For a class 2 felony	4 years	10 years
15 2. For a class 3 felony	2.5 years	7 years
16 3. For a class 4 felony	1.5 years	3 years
17 4. For a class 5 felony	9 months	2 years
18 5. For a class 6 felony	6 months	1.5 years

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

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

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

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

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

40 4. Presence of an accomplice.

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

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

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 that if committed in this state  
14 would be punishable as a felony is a felony conviction for the purposes of  
15 this paragraph.

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

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

19           14. The defendant was appointed pursuant to title 14 as a fiduciary and  
20 the offense involved conduct directly related to the defendant's duties to  
21 the victim as fiduciary.

22           15. Evidence that the defendant committed the crime out of malice  
23 toward a victim because of the victim's identity in a group listed in section  
24 41-1750, subsection A, paragraph 3 or because of the defendant's perception  
25 of the victim's identity in a group listed in section 41-1750, subsection A,  
26 paragraph 3.

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

34           17. Lying in wait for the victim or ambushing the victim during the  
35 commission of any felony.

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

38           19. THE OFFENSE WAS COMMITTED IN RETALIATION FOR A VICTIM'S EITHER  
39 REPORTING CRIMINAL ACTIVITY OR BEING INVOLVED IN AN ORGANIZATION, OTHER THAN  
40 A LAW ENFORCEMENT AGENCY, THAT IS ESTABLISHED FOR THE PURPOSE OF REPORTING  
41 OR PREVENTING CRIMINAL ACTIVITY.

42           ~~19.~~ 20. Any other factor that the court deems appropriate to the ends  
43 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 the  
6 defendant's conduct or to conform the defendant's conduct to the requirements  
7 of law was significantly impaired, but not so impaired as to constitute a  
8 defense to 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 factor that the court deems appropriate to the ends of  
14 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 a 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 affects any provision of law that imposes  
24 the death penalty, that expressly provides for imprisonment for life or that  
25 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. This subsection does not apply to any  
40 person who stands convicted of a class 6 felony and who has previously been  
41 convicted of two or more felonies. If a crime or public offense is  
42 punishable in the discretion of the court by a sentence as a class 6 felony  
43 or a class 1 misdemeanor, the offense shall be deemed a misdemeanor if the  
44 prosecuting attorney:

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

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

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

8           Sec. 2. Section 13-1202, Arizona Revised Statutes, is amended to read:  
9           13-1202. Threatening or intimidating; classification

10          A. A person commits threatening or intimidating if such THE person  
11 threatens or intimidates by word or conduct:

12           1. To cause physical injury to another person or serious damage to the  
13 property of another; or

14           2. To cause, or in reckless disregard to causing, serious public  
15 inconvenience including, but not limited to, evacuation of a building, place  
16 of assembly, or transportation facility; or

17           3. To cause physical injury to another person or damage to the  
18 property of another in order to promote, further or assist in the interests  
19 of or to cause, induce or solicit another person to participate in a criminal  
20 street gang, a criminal syndicate or a racketeering enterprise.

21          B. Threatening or intimidating pursuant to subsection A, paragraph 1  
22 or 2 is a class 1 misdemeanor, EXCEPT THAT IT IS A CLASS 6 FELONY IF THE  
23 OFFENSE IS COMMITTED IN RETALIATION FOR A VICTIM'S EITHER REPORTING CRIMINAL  
24 ACTIVITY OR BEING INVOLVED IN AN ORGANIZATION, OTHER THAN A LAW ENFORCEMENT  
25 AGENCY, THAT IS ESTABLISHED FOR THE PURPOSE OF REPORTING OR PREVENTING  
26 CRIMINAL ACTIVITY. Threatening or intimidating pursuant to subsection A,  
27 paragraph 3 is a class 4 felony.

APPROVED BY THE GOVERNOR MAY 16, 2003.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MAY 16, 2003.

Passed the House March 4, 2003

Passed the Senate April 30, 2003

by the following vote: 48 Ayes,  
12 Nays, 0 Not Voting

by the following vote: 25 Ayes,  
4 Nays, 1 Not Voting

Jake Flake  
Speaker of the House

John Blumenthal  
President of the Senate

Speman L. Moore  
Chief Clerk of the House

Charmian Bellington  
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

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

H.B. 2208

HOUSE CONCURS IN SENATE  
AMENDMENTS AND FINAL PASSAGE

May 12, 20 03,

by the following vote: 44 Ayes,

12 Nays, 4 Not Voting

Jake Flake  
Speaker of the House

Spoman L. Moore  
Chief Clerk of the House

EXECUTIVE DEPARTMENT OF ARIZONA  
OFFICE OF GOVERNOR

This Bill was received by the Governor this

12 day of May, 2003

at 2:05 o'clock P. M.

Jandra Ramsey  
Secretary to the Governor

Approved this 16 day of

May, 2003

at 10<sup>00</sup> o'clock A. M.

Jan Brewer  
Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA  
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this 16 day of May, 2003

at 3:10 o'clock P. M.

Janice K. Brewer  
Secretary of State

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