

State of Arizona
Senate
Forty-sixth Legislature
Second Regular Session
2004

CHAPTER 174

SENATE BILL 1127

AN ACT

AMENDING SECTION 13-702, ARIZONA REVISED STATUTES; AMENDING TITLE 13, CHAPTER 24, ARIZONA REVISED STATUTES, BY ADDING SECTION 13-2411; RELATING TO OBSTRUCTION OF PUBLIC ADMINISTRATION.

(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>
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		
26		
27		
28		
29		
30		
31		
32		
33		
34		
35		
36		
37		
38		
39		
40		
41		
42		
43		
44		
45		

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 on any
evidence or information introduced or submitted to the court before
sentencing or any evidence previously heard by the judge at the trial, and
factual findings and reasons in support of such findings are set forth on the
record at the time of sentencing.

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

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

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

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

4. Presence of an accomplice.

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

6. The defendant committed the offense as consideration for the
receipt, or in the expectation of the receipt, of anything of pecuniary
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 20. THE DEFENDANT WAS IMPERSONATING A PEACE OFFICER AS DEFINED IN
43 SECTION 1-215.

44 20- 21. Any other factor that the court deems appropriate to the ends
45 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. Title 13, chapter 24, Arizona Revised Statutes, is amended by
9 adding section 13-2411, to read:

10 13-2411. Impersonating a peace officer; classification;
11 definition

12 A. A PERSON COMMITS IMPERSONATING A PEACE OFFICER IF THE PERSON,
13 WITHOUT LAWFUL AUTHORITY, PRETENDS TO BE A PEACE OFFICER AND ENGAGES IN ANY
14 CONDUCT WITH THE INTENT TO INDUCE ANOTHER TO SUBMIT TO THE PERSON'S PRETEND
15 AUTHORITY OR TO RELY UPON THE PERSON'S PRETENDED ACTS.

16 B. IT IS NOT A DEFENSE TO A PROSECUTION UNDER THIS SECTION THAT THE
17 LAW ENFORCEMENT AGENCY THE PERSON PRETENDED TO REPRESENT DID NOT IN FACT
18 EXIST, OR THAT THE LAW ENFORCEMENT AGENCY THE PERSON PRETENDED TO REPRESENT
19 DID NOT IN FACT POSSESS THE AUTHORITY CLAIMED FOR IT.

20 C. IMPERSONATING A PEACE OFFICER IS A CLASS 6 FELONY.

21 D. FOR THE PURPOSES OF THIS SECTION, "PEACE OFFICER" HAS THE SAME
22 MEANING PRESCRIBED IN SECTION 1-215 AND INCLUDES ANY FEDERAL LAW ENFORCEMENT
23 OFFICER OR AGENT WHO HAS THE POWER TO MAKE ARRESTS PURSUANT TO FEDERAL LAW.

APPROVED BY THE GOVERNOR APRIL 27, 2004.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 27, 2004.

Passed the House April 15, 2004,

by the following vote: 50 Ayes,

6 Nays, 4 Not Voting

Jake Flake
Speaker of the House

Spencer L. Frou
Chief Clerk of the House

Passed the Senate February 19, 2004,

by the following vote: 24 Ayes,

5 Nays, 1 Not Voting

Klu Bennett
President of the Senate

Charmain Billington
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. 1127

**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 22, 2004,

by the following vote: 29 Ayes,

0 Nays, 1 Not Voting

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

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this

22nd day of April, 2004

at 3:22 o'clock P. M.

[Signature]
Secretary to the Governor

Approved this 27 day of

April, 2004,

at 2nd 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, 2004,

at 4:18 o'clock P. M.

[Signature]
Secretary of State

S.B. 1127