House Engrossed

State of Arizona
House of Representatives
Forty-seventh Legislature
First Regular Session
2005

CHAPTER 20

HOUSE BILL 2522

AN ACT

AMENDING SECTIONS 13-702 AND 13-702.01, ARIZONA REVISED STATUTES; RELATING TO SENTENCING.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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; definition

A. Sentences provided in section 13-701 for a first conviction of a felony, except those felonies involving the 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. Any 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:

	Minimum	Maximum
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 ONE OR MORE OF the circumstances alleged to be in aggravation ~~or mitigation~~ of the crime are found to be true by the TRIER OF FACT BEYOND A REASONABLE DOUBT, OR IN MITIGATION OF THE CRIME ARE FOUND TO BE TRUE BY THE trial judge, on any evidence or information introduced or submitted to the court OR THE TRIER OF FACT before sentencing or any evidence ~~previously heard by the judge~~ PRESENTED 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~~ TRIER OF FACT shall ~~consider~~ DETERMINE AND 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.

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

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

9. The VICTIM OR, IF THE VICTIM HAS DIED AS A RESULT OF THE CONDUCT OF THE DEFENDANT, THE VICTIM'S IMMEDIATE FAMILY SUFFERED physical, emotional ~~and~~ OR financial harm ~~caused to the victim or, if the victim has died as a result of the conduct of the defendant, the emotional and financial harm caused to the victim's immediate family~~.

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

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

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

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

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

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

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

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

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

19. The offense was committed in retaliation for a victim's either reporting criminal activity or being involved in an organization, other than

a law enforcement agency, that is established for the purpose of reporting or preventing criminal activity.

20. The defendant was impersonating a peace officer as defined in section 1-215.

21. Any other factor that the ~~court deems appropriate to the ends of justice~~ STATE ALLEGES IS RELEVANT TO THE DEFENDANT'S CHARACTER OR BACKGROUND OR TO THE NATURE OR CIRCUMSTANCES OF THE CRIME.

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

1. The age of the defendant.

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

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

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

5. Any other factor that IS RELEVANT TO THE DEFENDANT'S CHARACTER OR BACKGROUND OR TO THE NATURE OR CIRCUMSTANCES OF THE CRIME AND THAT the court ~~deems appropriate to the ends of justice~~ FINDS TO BE MITIGATING.

IF THE TRIER OF FACT FINDS AT LEAST ONE AGGRAVATING CIRCUMSTANCE, THE TRIAL COURT MAY FIND BY A PREPONDERANCE OF THE EVIDENCE ADDITIONAL AGGRAVATING CIRCUMSTANCES. In determining what sentence to impose, the court shall take into account the amount of aggravating circumstances and whether the amount of mitigating circumstances is sufficiently substantial to call for the lesser term. If the ~~court~~ TRIER OF FACT finds aggravating circumstances and THE COURT does not find any mitigating circumstances, the court shall impose an aggravated sentence.

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

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

G. Notwithstanding any other provision of this title, if a person is convicted of any class 6 felony not involving the intentional or knowing infliction of serious physical injury or the discharge, use or threatening exhibition of a deadly weapon or dangerous instrument and if the court, having regard to the nature and circumstances of the crime and to the history and character of the defendant, is of the opinion that it would be unduly harsh to sentence the defendant for a felony, the court may enter judgment of conviction for a class 1 misdemeanor and make disposition accordingly or may

place the defendant on probation in accordance with chapter 9 of this title and refrain from designating the offense as a felony or misdemeanor until the probation is terminated. The offense shall be treated as a felony for all purposes until such time as the court may actually enter an order designating the offense a misdemeanor. This subsection does not apply to any person who stands convicted of a class 6 felony and who has previously been convicted of two or more felonies. If a crime or public offense is punishable in the discretion of the court by a sentence as a class 6 felony or a class 1 misdemeanor, the offense shall be deemed a misdemeanor if the prosecuting attorney:

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

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

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

H. FOR THE PURPOSES OF THIS SECTION, "TRIER OF FACT" MEANS A JURY, UNLESS THE DEFENDANT AND THE STATE WAIVE A JURY IN WHICH CASE THE TRIER OF FACT MEANS THE COURT.

Sec. 2. Section 13-702.01, Arizona Revised Statutes, is amended to read:

13-702.01. <u>Exceptional circumstances; aggravation; mitigation; definition</u>

A. Notwithstanding section 13-702, subsection A, if a person is convicted of a felony without having previously been convicted of any felony and if the ~~court~~ TRIER OF FACT finds BEYOND A REASONABLE DOUBT that at least two ~~substantial~~ aggravating factors listed in section 13-702, subsection C apply, the court may increase the maximum term of imprisonment otherwise authorized for that offense up to the following maximum terms:

1. For a class 2 felony	12.5 years
2. For a class 3 felony	8.75 years
3. For a class 4 felony	3.75 years
4. For a class 5 felony	2.5 years
5. For a class 6 felony	2 years

B. Notwithstanding section 13-702, subsection A, if a person is convicted of a felony without having previously been convicted of any felony and if the court finds that at least two ~~substantial~~ mitigating factors listed in section 13-702, subsection D apply, the court may decrease the minimum term of imprisonment otherwise authorized for that offense down to the following minimum terms:

1. For a class 2 felony	3 years
2. For a class 3 felony	2 years
3. For a class 4 felony	1 year
4. For a class 5 felony	6 months

5. For a class 6 felony 4 months

C. Notwithstanding section 13-604, subsection A or B, if a person is convicted of a felony offense and has one historical prior felony conviction and if the ~~court~~ TRIER OF FACT finds BEYOND A REASONABLE DOUBT that at least two ~~substantial~~ aggravating factors listed in section 13-702, subsection C apply, the court may increase the maximum term of imprisonment otherwise authorized for that offense up to the following maximum terms:

1. Class 2 felony 23.25 years
2. Class 3 felony 16.25 years
3. Class 4 felony 7.5 years
4. Class 5 felony 3.75 years
5. Class 6 felony 2.75 years

D. Notwithstanding section 13-604, subsection A or B, if a person is convicted of a felony offense and has one historical prior felony conviction and if the court finds that at least two ~~substantial~~ mitigating factors listed in section 13-702, subsection D apply, the court may decrease the minimum term of imprisonment otherwise authorized for that offense down to the following minimum terms:

1. Class 2 felony 4.5 years
2. Class 3 felony 3.5 years
3. Class 4 felony 2.25 years
4. Class 5 felony 1 year
5. Class 6 felony 9 months

E. Notwithstanding section 13-604, subsection C or D, if a person is convicted of a felony offense and has two or more historical prior felony convictions and if the ~~court~~ TRIER OF FACT finds BEYOND A REASONABLE DOUBT that at least two ~~substantial~~ aggravating factors listed in section 13-702, subsection C apply, the court may increase the maximum term of imprisonment otherwise authorized for that offense up to the following maximum terms:

1. Class 2 felony 35 years
2. Class 3 felony 25 years
3. Class 4 felony 15 years
4. Class 5 felony 7.5 years
5. Class 6 felony 5.75 years

F. Notwithstanding section 13-604, subsection C or D, if a person is convicted of a felony offense and has two or more historical prior felony convictions and if the court finds that at least two ~~substantial~~ mitigating factors listed in section 13-702, subsection D apply, the court may decrease the minimum term of imprisonment otherwise authorized for that offense down to the following minimum terms:

1. Class 2 felony 10.5 years
2. Class 3 felony 7.5 years
3. Class 4 felony 6 years
4. Class 5 felony 3 years
5. Class 6 felony 2.25 years

G. The upper or lower term imposed pursuant to this section may be imposed only if AT LEAST TWO OF the AGGRAVATING circumstances ~~alleged to be in aggravation or mitigation of the crime~~ are found BEYOND A REASONABLE DOUBT to be true by the TRIER OF FACT, OR IN MITIGATION OF THE CRIME ARE FOUND TO BE TRUE BY THE trial judge, on any evidence or information introduced or submitted to the court OR THE TRIER OF FACT before sentencing or any evidence ~~previously heard by the judge~~ PRESENTED at ~~the~~ trial, and factual findings and reasons in support of these findings are set forth on the record at the time of sentencing.

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

I. The court shall inform all of the parties before sentencing occurs of its intent to increase or decrease a sentence pursuant to this section. If the court fails to inform the parties, a party waives its right to be informed unless the party timely objects at the time of sentencing.

J. FOR THE PURPOSES OF THIS SECTION, "TRIER OF FACT" MEANS A JURY, UNLESS THE DEFENDANT AND THE STATE WAIVE A JURY IN WHICH CASE THE TRIER OF FACT MEANS THE COURT.

APPROVED BY THE GOVERNOR APRIL 1, 2005.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 1, 2005.

Passed the House March 3, 2005 by the following vote: 35 Ayes, 20 Nays, 5 Not Voting

Speaker of the House

Pro Tempore

Norman L. Moore

Chief Clerk of the House

Passed the Senate March 23, 2005, by the following vote: 17 Ayes, 10 Nays, 3 Not Voting

President of the Senate

Charmion B. Clington

Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this 28th day of March, 2005 at 10:05 o'clock a. M.

Jennifer Ybarra
Secretary to the Governor

Approved this 1 day of April, 2005, at 11:15 o'clock A. M.

Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State this 1 day of April, 2005, at 2:23 o'clock P. M.

Janice K. Brewer
Secretary of State

H.B. 2522