

House Engrossed

**FILED**  
**KEN BENNETT**  
**SECRETARY OF STATE**

State of Arizona  
House of Representatives  
Fifty-first Legislature  
First Regular Session  
2013

CHAPTER 55

## **HOUSE BILL 2309**

AN ACT

AMENDING SECTION 8-381, ARIZONA REVISED STATUTES; TRANSFERRING AND RENUMBERING SECTION 13-3423, ARIZONA REVISED STATUTES, FOR PLACEMENT IN TITLE 12, CHAPTER 1, ARTICLE 1, ARIZONA REVISED STATUTES, AS SECTION 12-116.08; AMENDING SECTION 12-116.08, ARIZONA REVISED STATUTES, AS TRANSFERRED AND RENUMBERED BY THIS ACT; AMENDING SECTIONS 13-703, 13-4414 AND 32-109, ARIZONA REVISED STATUTES; RELATING TO CRIMINAL OFFENSES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 8-381, Arizona Revised Statutes, is amended to  
3 read:

4 8-381. Applicability

5 This article applies to acts that are committed by a juvenile and that  
6 if committed by an adult would be either:

7 1. A misdemeanor offense ~~involving physical injury, the threat of~~  
8 ~~physical injury or a sexual offense.~~

9 2. A felony offense.

10 3. A PETTY OFFENSE.

11 4. A VIOLATION OF A LOCAL CRIMINAL ORDINANCE.

12 Sec. 2. Section 13-3423, Arizona Revised Statutes, is transferred and  
13 renumbered for placement in title 12, chapter 1, article 1, Arizona Revised  
14 Statutes, as section 12-116.08 and, as so renumbered, is amended to read:

15 12-116.08. Assessment for drug offenses

16 In addition to any other penalty prescribed by law, the court shall  
17 order a person who is convicted of a violation of this TITLE 13, chapter 34  
18 to pay an additional assessment of fifteen dollars. This assessment is not  
19 subject to any surcharge. The court shall transmit the monies received  
20 pursuant to this ~~subsection~~ SECTION to the county treasurer. The county  
21 treasurer shall transmit the monies received to the state treasurer. The  
22 state treasurer shall deposit the monies received in the technical  
23 registration fund established by section 32-109.

24 Sec. 3. Section 13-703, Arizona Revised Statutes, is amended to read:

25 13-703. Repetitive offenders; sentencing

26 A. A person shall be sentenced as a category one repetitive offender  
27 if the person is convicted of two felony offenses that were not committed on  
28 the same occasion but that either are consolidated for trial purposes or are  
29 not historical prior felony convictions.

30 B. A person shall be sentenced as a category two repetitive offender  
31 if the person either:

32 1. Is convicted of three or more felony offenses that were not  
33 committed on the same occasion but that either are consolidated for trial  
34 purposes or are not historical prior felony convictions.

35 2. Except as provided in section 13-704 or 13-705, is at least  
36 eighteen years of age or has been tried as an adult and stands convicted of a  
37 felony and has one historical prior felony conviction.

38 C. Except as provided in section 13-704 or 13-705, a person shall be  
39 sentenced as a category three repetitive offender if the person is at least  
40 eighteen years of age or has been tried as an adult and stands convicted of a  
41 felony and has two or more historical prior felony convictions.

42 D. The presumptive term set by this section may be aggravated or  
43 mitigated within the range under this section pursuant to section 13-701,  
44 subsections C, D and E.

45 E. If a person is sentenced as a category one repetitive offender  
46 pursuant to subsection A of this section and if at least two aggravating

1 circumstances listed in section 13-701, subsection D apply or at least two  
 2 mitigating circumstances listed in section 13-701, subsection E apply, the  
 3 court may impose a mitigated or aggravated sentence pursuant to subsection H  
 4 of this section.

5 F. If a person is sentenced as a category two repetitive offender  
 6 pursuant to subsection B of this section and if at least two aggravating  
 7 circumstances listed in section 13-701, subsection D apply or at least two  
 8 mitigating circumstances listed in section 13-701, subsection E apply, the  
 9 court may impose a mitigated or aggravated sentence pursuant to subsection I  
 10 of this section.

11 G. If a person is sentenced as a category three repetitive offender  
 12 pursuant to subsection C of this section and at least two aggravating  
 13 circumstances listed in section 13-701, subsection D or at least two  
 14 mitigating circumstances listed in section 13-701, subsection E apply, the  
 15 court may impose a mitigated or aggravated sentence pursuant to subsection J  
 16 of this section.

17 H. A category one repetitive offender shall be sentenced within the  
 18 following ranges:

<u>Felony</u>	<u>Mitigated</u>	<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>	<u>Aggravated</u>
20 Class 2	3 years	4 years	5 years	10 years	12.5 years
21 Class 3	2 years	2.5 years	3.5 years	7 years	8.75 years
22 Class 4	1 year	1.5 years	2.5 years	3 years	3.75 years
23 Class 5	.5 years	.75 years	1.5 years	2 years	2.5 years
24 Class 6	<del>3</del> .25 years	.5 years	1 year	1.5 years	<del>1.8</del> 2 years

25 I. A category two repetitive offender shall be sentenced within the  
 26 following ranges:

<u>Felony</u>	<u>Mitigated</u>	<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>	<u>Aggravated</u>
28 Class 2	4.5 years	6 years	9.25 years	18.5 years	23 years
29 Class 3	<del>3-3</del> 3.25 years	4.5 years	6.5 years	13 years	16.25 years
30 Class 4	2.25 years	3 years	4.5 years	6 years	7.5 years
31 Class 5	1 year	1.5 years	2.25 years	3 years	3.75 years
32 Class 6	.75 years	1 year	1.75 years	2.25 years	2.75 years

33 J. A category three repetitive offender shall be sentenced within the  
 34 following ranges:

<u>Felony</u>	<u>Mitigated</u>	<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>	<u>Aggravated</u>
36 Class 2	10.5 years	14 years	15.75 years	28 years	35 years
37 Class 3	7.5 years	10 years	11.25 years	20 years	25 years
38 Class 4	6 years	8 years	10 years	12 years	15 years
39 Class 5	3 years	4 years	5 years	6 years	7.5 years
40 Class 6	2.25 years	3 years	3.75 years	4.5 years	5.75 years

41 K. The aggravated or mitigated term imposed pursuant to subsection H,  
 42 I or J of this section may be imposed only if at least two of the aggravating  
 43 circumstances are found beyond a reasonable doubt to be true by the trier of  
 44 fact or are admitted by the defendant, except that an aggravating  
 45 circumstance under section 13-701, subsection D, paragraph 11 shall be found  
 46 to be true by the court, or in mitigation of the crime are found to be true

1 by the court, on any evidence or information introduced or submitted to the  
2 court or the trier of fact before sentencing or any evidence presented at  
3 trial, and factual findings and reasons in support of these findings are set  
4 forth on the record at the time of sentencing.

5 L. Convictions for two or more offenses committed on the same occasion  
6 shall be counted as only one conviction for the purposes of subsection B,  
7 paragraph 2 and subsection C of this section.

8 M. For the purposes of subsection B, paragraph 2 and subsection C of  
9 this section, a person who has been convicted in any court outside the  
10 jurisdiction of this state of an offense that was punishable by that  
11 jurisdiction as a felony is subject to this section. A person who has been  
12 convicted as an adult of an offense punishable as a felony under the  
13 provisions of any prior code in this state or the jurisdiction in which the  
14 offense was committed is subject to this section. A person who has been  
15 convicted of a felony weapons possession violation in any court outside the  
16 jurisdiction of this state that would not be punishable as a felony under the  
17 laws of this state is not subject to this section.

18 N. The penalties prescribed by this section shall be substituted for  
19 the penalties otherwise authorized by law if an allegation of prior  
20 conviction is charged in the indictment or information and admitted or found  
21 by the court. The release provisions prescribed by this section shall not be  
22 substituted for any penalties required by the substantive offense or a  
23 provision of law that specifies a later release or completion of the sentence  
24 imposed before release. The court shall allow the allegation of a prior  
25 conviction at any time before the date the case is actually tried unless the  
26 allegation is filed fewer than twenty days before the case is actually tried  
27 and the court finds on the record that the person was in fact prejudiced by  
28 the untimely filing and states the reasons for these findings. If the  
29 allegation of a prior conviction is filed, the state must make available to  
30 the person a copy of any material or information obtained concerning the  
31 prior conviction. The charge of previous conviction shall not be read to the  
32 jury. For the purposes of this subsection, "substantive offense" means the  
33 felony offense that the trier of fact found beyond a reasonable doubt the  
34 person committed. Substantive offense does not include allegations that, if  
35 proven, would enhance the sentence of imprisonment or fine to which the  
36 person otherwise would be subject.

37 O. A person who is sentenced pursuant to this section is not eligible  
38 for suspension of sentence, probation, pardon or release from confinement on  
39 any basis, except as specifically authorized by section 31-233, subsection A  
40 or B, until the sentence imposed by the court has been served, the person is  
41 eligible for release pursuant to section 41-1604.07 or the sentence is  
42 commuted.

43 P. The court shall inform all of the parties before sentencing occurs  
44 of its intent to impose an aggravated or mitigated sentence pursuant to  
45 subsection H, I or J of this section. If the court fails to inform the

1 parties, a party waives its right to be informed unless the party timely  
2 objects at the time of sentencing.

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

6 Sec. 4. Section 13-4414, Arizona Revised Statutes, is amended to read:  
7 13-4414. Notice of post-conviction release; right to be heard;  
8 hearing; final decision

9 A. The victim has the right to be present and be heard at any  
10 proceeding in which post-conviction release from confinement is being  
11 considered pursuant to section 31-233, ~~section 31-326~~ 31-236 or ~~section~~  
12 31-411.

13 B. If the victim has made a request for post-conviction notice, the  
14 board of ~~pardons and paroles~~ EXECUTIVE CLEMENCY shall, at least fifteen days  
15 before the hearing, give to the victim written notice of the hearing and of  
16 the victim's right to be present and be heard at the hearing.

17 C. If the victim has made a request for post-conviction notice, the  
18 board of ~~pardons and paroles~~ EXECUTIVE CLEMENCY shall give to the victim  
19 notice of the decision reached by the board. The notice shall be mailed  
20 within fifteen days after the board reaches its decision.

21 Sec. 5. Section 32-109, Arizona Revised Statutes, is amended to read:  
22 32-109. Technical registration fund

23 A. Pursuant to sections 35-146 and 35-147, the executive director  
24 shall deposit ten per cent of all fees or other revenues received by the  
25 board in the state general fund to assist in defraying the cost of  
26 maintaining the state government and shall deposit the remaining ninety per  
27 cent in a separate fund, known as the technical registration fund, to be used  
28 only in defraying expenses of the board and in prosecuting violations of this  
29 chapter.

30 B. Monies deposited in the technical registration fund pursuant to  
31 subsection A of this section ~~shall be~~ ARE subject to ~~the provisions of~~  
32 section 35-143.01.

33 C. In addition to the monies deposited in the technical registration  
34 fund pursuant to subsection A of this section, the technical registration  
35 fund consists of monies received pursuant to section ~~13-3423~~ 12-116.08. The  
36 monies that are received in the fund pursuant to this subsection shall be  
37 used:

38 1. To pay the board's expenses associated with investigations and  
39 enforcement actions pursuant to section 12-1000.

40 2. For a county, city or town for remediation pursuant to section  
41 12-1000, subsection D. Notwithstanding section 35-143.01, the monies  
42 received pursuant to section ~~13-3423~~ 12-116.08 are not subject to legislative  
43 appropriation.

APPROVED BY THE GOVERNOR APRIL 5, 2013.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 5, 2013.

Passed the House February 19, 2013

Passed the Senate April 2, 2013

by the following vote: 59 Ayes,

by the following vote: 28 Ayes,

0 Nays, 1 Not Voting

0 Nays, 2 Not Voting

[Signature]  
Speaker of the House

[Signature]  
President of the Senate

[Signature]  
Chief Clerk of the House

[Signature]  
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA  
OFFICE OF GOVERNOR

This Bill received by the Governor this

3 day of April, 2013

at 2:25 o'clock P M.

[Signature]  
Secretary to the Governor

Approved this 5<sup>th</sup> day of

[Signature]

at 2:41 o'clock P M.

[Signature]  
Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA  
OFFICE OF SECRETARY OF STATE

This Bill received by the Secretary of State

this 5<sup>th</sup> day of April, 2013

at 5:00 o'clock P M.

[Signature]  
Secretary of State

H.B. 2309