



STATE OF ARIZONA

JANICE K. BREWER
GOVERNOR

EXECUTIVE OFFICE

April 24, 2014

The Honorable Ken Bennett
Secretary of State
1700 West Washington
Phoenix, Arizona 85007

Re: House Bill 2313 (capital sentencing; aggravators; serious offenses)

Dear Secretary Bennett,

Today, I vetoed House Bill 2313, which would have established in Arizona's death penalty statute an additional aggravating circumstance and expanded the list of serious offenses in determining whether to impose a sentence of death. The aggravating circumstance language is overly broad and vague. Additionally, the expansion of serious offenses contemplated in the bill does not appear necessary in light of the existing list of offenses.

The proposed additional language in the legislation broadens the scope of those eligible for the death penalty to the point where the constitutionality of Arizona's death penalty statute likely would be challenged and potentially declared to be unconstitutional. Arizona's death penalty statute has withstood constitutional challenges in both state and federal courts because it sufficiently narrows the class of individuals eligible for the death penalty.

These concerns are among the primary reasons I have vetoed House Bill 2313.

Sincerely,

A handwritten signature in cursive script that reads "Janice K. Brewer".

Janice K. Brewer
Governor

cc: The Honorable Andy Biggs
The Honorable Andy Tobin
The Honorable Justin Pierce

Senate Engrossed House Bill

State of Arizona
House of Representatives
Fifty-first Legislature
Second Regular Session
2014

HOUSE BILL 2313

AN ACT

AMENDING SECTION 13-751, ARIZONA REVISED STATUTES; RELATING TO CAPITAL SENTENCING.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 13-751, Arizona Revised Statutes, is amended to
3 read:

4 13-751. Sentence of death or life imprisonment; aggravating and
5 mitigating circumstances; definition

6 A. If the state has filed a notice of intent to seek the death penalty
7 and the defendant is:

8 1. Convicted of first degree murder pursuant to section 13-1105,
9 subsection A, paragraph 1 or 3 and was at least eighteen years of age at the
10 time of the commission of the offense, the defendant shall be sentenced to
11 death or imprisonment in the custody of the state department of corrections
12 for natural life as determined and in accordance with the procedures provided
13 in section 13-752. A defendant who is sentenced to natural life is not
14 eligible for commutation, parole, work furlough, work release or release from
15 confinement on any basis.

16 2. Convicted of first degree murder pursuant to section 13-1105 and
17 was under eighteen years of age at the time of the commission of the offense,
18 the defendant shall be sentenced to imprisonment in the custody of the state
19 department of corrections for life or natural life, as determined and in
20 accordance with the procedures provided in section 13-752. A defendant who
21 is sentenced to natural life is not eligible for commutation, parole, work
22 furlough, work release or release from confinement on any basis. If the
23 defendant is sentenced to life, the defendant shall not be released on any
24 basis until the completion of the service of twenty-five calendar years if
25 the murdered person was fifteen or more years of age and thirty-five years if
26 the murdered person was under fifteen years of age or was an unborn child.

27 3. Convicted of first degree murder pursuant to section 13-1105,
28 subsection A, paragraph 2, the defendant shall be sentenced to death or
29 imprisonment in the custody of the state department of corrections for life
30 or natural life as determined and in accordance with the procedures provided
31 in section 13-752. A defendant who is sentenced to natural life is not
32 eligible for commutation, parole, work furlough, work release or release from
33 confinement on any basis. If the defendant is sentenced to life, the
34 defendant shall not be released on any basis until the completion of the
35 service of twenty-five calendar years if the murdered person was fifteen or
36 more years of age and thirty-five years if the murdered person was under
37 fifteen years of age or was an unborn child.

38 B. At the aggravation phase of the sentencing proceeding that is held
39 pursuant to section 13-752, the admissibility of information relevant to any
40 of the aggravating circumstances set forth in subsection F of this section
41 shall be governed by the rules of evidence applicable to criminal trials.
42 The burden of establishing the existence of any of the aggravating
43 circumstances set forth in subsection F of this section is on the
44 prosecution. The prosecution must prove the existence of the aggravating
45 circumstances beyond a reasonable doubt.

1 C. At the penalty phase of the sentencing proceeding that is held
2 pursuant to section 13-752, the prosecution or the defendant may present any
3 information that is relevant to any of the mitigating circumstances included
4 in subsection G of this section, regardless of its admissibility under the
5 rules governing admission of evidence at criminal trials. The burden of
6 establishing the existence of the mitigating circumstances included in
7 subsection G of this section is on the defendant. The defendant must prove
8 the existence of the mitigating circumstances by a preponderance of the
9 evidence. If the trier of fact is a jury, the jurors do not have to agree
10 unanimously that a mitigating circumstance has been proven to exist. Each
11 juror may consider any mitigating circumstance found by that juror in
12 determining the appropriate penalty.

13 D. Evidence that is admitted at the trial and that relates to any
14 aggravating or mitigating circumstances shall be deemed admitted as evidence
15 at a sentencing proceeding if the trier of fact considering that evidence is
16 the same trier of fact that determined the defendant's guilt. The
17 prosecution and the defendant shall be permitted to rebut any information
18 received at the aggravation or penalty phase of the sentencing proceeding and
19 shall be given fair opportunity to present argument as to whether the
20 information is sufficient to establish the existence of any of the
21 circumstances included in subsections F and G of this section.

22 E. In determining whether to impose a sentence of death or life
23 imprisonment, the trier of fact shall take into account the aggravating and
24 mitigating circumstances that have been proven. The trier of fact shall
25 impose a sentence of death if the trier of fact finds one or more of the
26 aggravating circumstances enumerated in subsection F of this section and then
27 determines that there are no mitigating circumstances sufficiently
28 substantial to call for leniency.

29 F. The trier of fact shall consider the following aggravating
30 circumstances in determining whether to impose a sentence of death:

31 1. The defendant has been convicted of another offense in the United
32 States for which under Arizona law a sentence of life imprisonment or death
33 was imposable.

34 2. The defendant has been or was previously convicted of a serious
35 offense, whether preparatory or completed. Convictions for serious offenses
36 committed on the same occasion as the homicide, or not committed on the same
37 occasion but consolidated for trial with the homicide, shall be treated as a
38 serious offense under this paragraph.

39 3. In the commission of the offense the defendant knowingly created a
40 grave risk of death to another person or persons in addition to the person
41 murdered during the commission of the offense.

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

1 5. The defendant committed the offense as consideration for the
2 receipt, or in expectation of the receipt, of anything of pecuniary value.

3 6. The defendant committed the offense in an especially heinous, cruel
4 or depraved manner.

5 7. The defendant committed the offense while:

6 (a) In the custody of or on authorized or unauthorized release from
7 the state department of corrections, a law enforcement agency or a county or
8 city jail.

9 (b) On probation for a felony offense.

10 8. The defendant has been convicted of one or more other homicides, as
11 defined in section 13-1101, that were committed during the commission of the
12 offense.

13 9. The defendant was an adult at the time the offense was committed or
14 was tried as an adult and the murdered person was under fifteen years of age,
15 was an unborn child in the womb at any stage of its development or was
16 seventy years of age or older.

17 10. The murdered person was an on duty peace officer who was killed in
18 the course of performing the officer's official duties and the defendant
19 knew, or should have known, that the murdered person was a peace officer.

20 11. The defendant committed the offense with the intent to promote,
21 further or assist the objectives of a criminal street gang or criminal
22 syndicate or to join a criminal street gang or criminal syndicate.

23 12. The defendant committed the offense to prevent a person's
24 cooperation with an official law enforcement investigation, to prevent a
25 person's testimony in a court proceeding, in retaliation for a person's
26 cooperation with an official law enforcement investigation or in retaliation
27 for a person's testimony in a court proceeding.

28 13. The offense was committed in a cold, calculated manner without
29 pretense of moral or legal justification.

30 14. The defendant used a remote stun gun or an authorized remote stun
31 gun in the commission of the offense. For the purposes of this paragraph:

32 (a) "Authorized remote stun gun" means a remote stun gun that has all
33 of the following:

34 (i) An electrical discharge that is less than one hundred thousand
35 volts and less than nine joules of energy per pulse.

36 (ii) A serial or identification number on all projectiles that are
37 discharged from the remote stun gun.

38 (iii) An identification and tracking system that, on deployment of
39 remote electrodes, disperses coded material that is traceable to the
40 purchaser through records that are kept by the manufacturer on all remote
41 stun guns and all individual cartridges sold.

42 (iv) A training program that is offered by the manufacturer.

43 (b) "Remote stun gun" means an electronic device that emits an
44 electrical charge and that is designed and primarily employed to incapacitate
45 a person or animal either through contact with electrodes on the device

1 itself or remotely through wired probes that are attached to the device or
2 through a spark, plasma, ionization or other conductive means emitting from
3 the device.

4 15. A SUBSTANTIAL LIKELIHOOD THAT THE DEFENDANT WOULD COMMIT CRIMINAL
5 ACTS OF VIOLENCE THAT CONSTITUTE A CONTINUING THREAT TO SOCIETY.

6 G. The trier of fact shall consider as mitigating circumstances any
7 factors proffered by the defendant or the state that are relevant in
8 determining whether to impose a sentence less than death, including any
9 aspect of the defendant's character, propensities or record and any of the
10 circumstances of the offense, including but not limited to the following:

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

15 2. The defendant was under unusual and substantial duress, although
16 not such as to constitute a defense to prosecution.

17 3. The defendant was legally accountable for the conduct of another
18 under section 13-303, but his participation was relatively minor, although
19 not so minor as to constitute a defense to prosecution.

20 4. The defendant could not reasonably have foreseen that his conduct
21 in the course of the commission of the offense for which the defendant was
22 convicted would cause, or would create a grave risk of causing, death to
23 another person.

24 5. The defendant's age.

25 H. For the purposes of determining whether a conviction of any
26 dangerous crime against children is a serious offense pursuant to this
27 section, an unborn child shall be treated like a minor who is under twelve
28 years of age.

29 I. In this section, for purposes of punishment an unborn child shall
30 be treated like a minor who is under twelve years of age.

31 J. For the purposes of this section, "serious offense" means any of
32 the following offenses if committed in this state or any offense committed
33 outside this state that if committed in this state would constitute one of
34 the following offenses:

35 1. First degree murder.

36 2. Second degree murder.

37 3. Manslaughter.

38 4. Aggravated assault resulting in serious physical injury or
39 committed by the use, threatened use or exhibition of a deadly weapon or
40 dangerous instrument.

41 5. Sexual assault.

42 6. Any dangerous crime against children.

43 7. Arson of an occupied structure.

44 8. Robbery.

45 9. Burglary in the first degree.

- 1 10. Kidnapping.
- 2 11. Sexual conduct with a minor under fifteen years of age.
- 3 12. Burglary in the second degree.
- 4 13. Terrorism.
- 5 14. SMUGGLING.
- 6 15. PARTICIPATING IN OR ASSISTING A HUMAN SMUGGLING ORGANIZATION.

Passed the House February 25, 2014

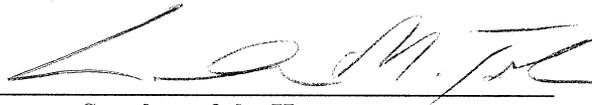
Passed the Senate April 22, 2014

by the following vote: 35 Ayes,

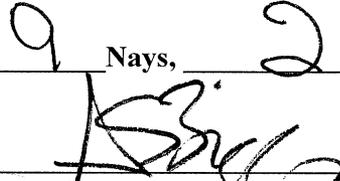
by the following vote: 19 Ayes,

24 Nays, 1 Not Voting

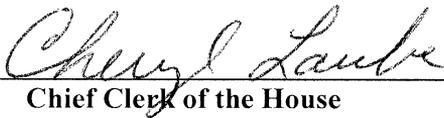
9 Nays, 2 Not Voting



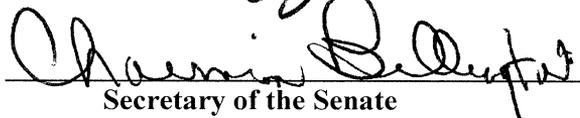
Speaker of the House



President of the Senate



Chief Clerk of the House



Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill received by the Governor this

_____ day of _____, 20____

at _____ o'clock _____ M.

Secretary to the Governor

Approved this _____ day of

at _____ o'clock _____ M.

Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill received by the Secretary of State

this _____ day of _____, 20____

at _____ o'clock _____ M.

Secretary of State

H.B. 2313

HOUSE CONCURS IN SENATE
AMENDMENTS AND FINAL PASSAGE

_____April 22_____, 2014_____

by the following vote: 36 Ayes,

23 Nays, 1 Not Voting

[Signature]
Speaker of the House

[Signature]
Chief Clerk of the House

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this

23rd day of April, 2014,

at 11:50 o'clock A M.

[Signature]
Secretary to the Governor

Approved this _____ day of

_____, 20_____,
VETO
at _____ o'clock _____ M.

Governor of Arizona

H.B. 2313

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