

House Engrossed

**FILED**  
**MICHELE REAGAN**  
**SECRETARY OF STATE**

State of Arizona  
House of Representatives  
Fifty-second Legislature  
First Regular Session  
2015

CHAPTER 51

# **HOUSE BILL 2289**

AN ACT

AMENDING SECTIONS 13-703 AND 13-708, 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 13-703, Arizona Revised Statutes, is amended to  
3 read:

4 13-703. Repetitive offenders; sentencing

5 A. ~~A person shall be sentenced as a category one repetitive~~  
6 ~~offender~~ If the A person is convicted of ~~two~~ MULTIPLE felony offenses that  
7 were not committed on the same occasion but that either are consolidated  
8 for trial purposes or are not historical prior felony convictions, ~~—~~ THE  
9 PERSON SHALL BE SENTENCED AS A FIRST TIME FELONY OFFENDER PURSUANT TO  
10 SECTION 13-702 FOR THE FIRST OFFENSE, AS A CATEGORY ONE REPETITIVE  
11 OFFENDER FOR THE SECOND OFFENSE, AND

12 ~~B. A person shall be sentenced as a category two repetitive~~  
13 ~~offender FOR THE THIRD AND SUBSEQUENT OFFENSES. if the person either:~~

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

17 ~~2.~~ B. Except as provided in section 13-704 or 13-705, A PERSON  
18 SHALL BE SENTENCED AS A CATEGORY TWO REPETITIVE OFFENDER IF THE PERSON is  
19 at least eighteen years of age or has been tried as an adult and stands  
20 convicted of a felony and has one historical prior felony conviction.

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

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

29 E. If a person is sentenced as a category one repetitive offender  
30 pursuant to subsection A of this section and if at least two aggravating  
31 circumstances listed in section 13-701, subsection D apply or at least two  
32 mitigating circumstances listed in section 13-701, subsection E apply, the  
33 court may impose a mitigated or aggravated sentence pursuant to subsection  
34 H of this section.

35 F. If a person is sentenced as a category two repetitive offender  
36 pursuant to subsection B of this section and if at least two aggravating  
37 circumstances listed in section 13-701, subsection D apply or at least two  
38 mitigating circumstances listed in section 13-701, subsection E apply, the  
39 court may impose a mitigated or aggravated sentence pursuant to subsection  
40 I of this section.

41 G. If a person is sentenced as a category three repetitive offender  
42 pursuant to subsection C of this section and at least two aggravating  
43 circumstances listed in section 13-701, subsection D or at least two  
44 mitigating circumstances listed in section 13-701, subsection E apply, the

1 court may impose a mitigated or aggravated sentence pursuant to subsection  
 2 J of this section.

3 H. A category one repetitive offender shall be sentenced within the  
 4 following ranges:

| 5 <u>Felony</u> | <u>Mitigated</u> | <u>Minimum</u> | <u>Presumptive</u> | <u>Maximum</u> | <u>Aggravated</u> |
|-----------------|------------------|----------------|--------------------|----------------|-------------------|
| 6 Class 2       | 3 years          | 4 years        | 5 years            | 10 years       | 12.5 years        |
| 7 Class 3       | 2 years          | 2.5 years      | 3.5 years          | 7 years        | 8.75 years        |
| 8 Class 4       | 1 year           | 1.5 years      | 2.5 years          | 3 years        | 3.75 years        |
| 9 Class 5       | .5 years         | .75 years      | 1.5 years          | 2 years        | 2.5 years         |
| 10 Class 6      | .25 years        | .5 years       | 1 year             | 1.5 years      | 2 years           |

11 I. A category two repetitive offender shall be sentenced within the  
 12 following ranges:

| 13 <u>Felony</u> | <u>Mitigated</u> | <u>Minimum</u> | <u>Presumptive</u> | <u>Maximum</u> | <u>Aggravated</u> |
|------------------|------------------|----------------|--------------------|----------------|-------------------|
| 14 Class 2       | 4.5 years        | 6 years        | 9.25 years         | 18.5 years     | 23 years          |
| 15 Class 3       | 3.25 years       | 4.5 years      | 6.5 years          | 13 years       | 16.25 years       |
| 16 Class 4       | 2.25 years       | 3 years        | 4.5 years          | 6 years        | 7.5 years         |
| 17 Class 5       | 1 year           | 1.5 years      | 2.25 years         | 3 years        | 3.75 years        |
| 18 Class 6       | .75 years        | 1 year         | 1.75 years         | 2.25 years     | 2.75 years        |

19 J. A category three repetitive offender shall be sentenced within  
 20 the following ranges:

| 21 <u>Felony</u> | <u>Mitigated</u> | <u>Minimum</u> | <u>Presumptive</u> | <u>Maximum</u> | <u>Aggravated</u> |
|------------------|------------------|----------------|--------------------|----------------|-------------------|
| 22 Class 2       | 10.5 years       | 14 years       | 15.75 years        | 28 years       | 35 years          |
| 23 Class 3       | 7.5 years        | 10 years       | 11.25 years        | 20 years       | 25 years          |
| 24 Class 4       | 6 years          | 8 years        | 10 years           | 12 years       | 15 years          |
| 25 Class 5       | 3 years          | 4 years        | 5 years            | 6 years        | 7.5 years         |
| 26 Class 6       | 2.25 years       | 3 years        | 3.75 years         | 4.5 years      | 5.75 years        |

27 K. The aggravated or mitigated term imposed pursuant to subsection  
 28 H, I or J of this section may be imposed only if at least two of the  
 29 aggravating circumstances are found beyond a reasonable doubt to be true  
 30 by the trier of fact or are admitted by the defendant, except that an  
 31 aggravating circumstance under section 13-701, subsection D, paragraph 11  
 32 shall be found to be true by the court, or in mitigation of the crime are  
 33 found to be true by the court, on any evidence or information introduced  
 34 or submitted to the court or the trier of fact before sentencing or any  
 35 evidence presented at trial, and factual findings and reasons in support  
 36 of these findings are set forth on the record at the time of sentencing.

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

40 M. For the purposes of subsection B, paragraph 2 and subsection C  
 41 of this section, a person who has been convicted in any court outside the  
 42 jurisdiction of this state of an offense that was punishable by that  
 43 jurisdiction as a felony is subject to this section. A person who has  
 44 been convicted as an adult of an offense punishable as a felony under the  
 45 provisions of any prior code in this state or the jurisdiction in which

1 the offense was committed is subject to this section. A person who has  
2 been convicted of a felony weapons possession violation in any court  
3 outside the jurisdiction of this state that would not be punishable as a  
4 felony under the laws of this state is not subject to this section.

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

25 O. A person who is sentenced pursuant to this section is not  
26 eligible for suspension of sentence, probation, pardon or release from  
27 confinement on any basis, except as specifically authorized by section  
28 31-233, subsection A or B, until the sentence imposed by the court has  
29 been served, the person is eligible for release pursuant to section  
30 41-1604.07 or the sentence is commuted.

31 P. The court shall inform all of the parties before sentencing  
32 occurs of its intent to impose an aggravated or mitigated sentence  
33 pursuant to subsection H, I or J of this section. If the court fails to  
34 inform the parties, a party waives its right to be informed unless the  
35 party timely objects at the time of sentencing.

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

39 Sec. 2. Section 13-708, Arizona Revised Statutes, is amended to  
40 read:

41 13-708. Offenses committed while released from confinement

42 A. A person who is convicted of any felony involving a dangerous  
43 offense that is committed while the person is on probation for a  
44 conviction of a felony offense or parole, work furlough, community  
45 supervision or any other release or has escaped from confinement for

1 conviction of a felony offense shall be sentenced to imprisonment for not  
2 less than the presumptive sentence authorized under this chapter and is  
3 not eligible for suspension or commutation or release on any basis until  
4 the sentence imposed is served.

5 B. A person who is convicted of a dangerous offense that is  
6 committed while the person is on release or has escaped from confinement  
7 for a conviction of a serious offense as defined in section 13-706, an  
8 offense resulting in serious physical injury or an offense involving the  
9 use or exhibition of a deadly weapon or dangerous instrument shall be  
10 sentenced to the maximum sentence authorized under this chapter and is not  
11 eligible for suspension or commutation or release on any basis until the  
12 sentence imposed is served. If the court finds that at least two  
13 substantial aggravating circumstances listed in section 13-701, subsection  
14 D apply, the court may increase the maximum sentence authorized under this  
15 chapter by up to twenty-five ~~per cent~~ PERCENT. ~~A sentence imposed~~  
16 ~~pursuant to this subsection shall revoke the convicted person's release if~~  
17 ~~the person was on release and shall be consecutive to any other sentence~~  
18 ~~from which the convicted person had been temporarily released or had~~  
19 ~~escaped, unless the sentence from which the convicted person had been~~  
20 ~~paroled or placed on probation was imposed by a jurisdiction other than~~  
21 ~~this state.~~

22 C. A person who is convicted of any felony offense that is not  
23 included in subsection A or B of this section and that is committed while  
24 the person is on probation for a conviction of a felony offense or parole,  
25 work furlough, community supervision or any other release or escape from  
26 confinement for conviction of a felony offense shall be sentenced to a  
27 term of not less than the presumptive sentence authorized for the offense  
28 and the person is not eligible for suspension of sentence, probation,  
29 pardon or release from confinement on any basis except as specifically  
30 authorized by section 31-233, subsection A or B until the sentence imposed  
31 by the court has been served, the person is eligible for release pursuant  
32 to section 41-1604.07 or the sentence is commuted. The release provisions  
33 prescribed by this section shall not be substituted for any penalties  
34 required by the substantive offense or provision of law that specifies a  
35 later release or completion of the sentence imposed before release. ~~A~~  
36 ~~sentence imposed pursuant to this subsection shall revoke the convicted~~  
37 ~~person's release if the person was on release and shall be consecutive to~~  
38 ~~any other sentence from which the convicted person had been temporarily~~  
39 ~~released or had escaped, unless the sentence from which the convicted~~  
40 ~~person had been paroled or placed on probation was imposed by a~~  
41 ~~jurisdiction other than this state.~~ For the purposes of this subsection,  
42 "substantive offense" means the felony, misdemeanor or petty offense that  
43 the trier of fact found beyond a reasonable doubt the defendant committed.  
44 Substantive offense does not include allegations that, if proven, would

1 enhance the sentence of imprisonment or fine to which the defendant would  
2 otherwise be subject.

3 D. A person who is convicted of committing any felony offense that  
4 is committed while the person is released on bond or on the person's own  
5 recognizance on a separate felony offense or while the person is escaped  
6 from preconviction custody for a separate felony offense shall be  
7 sentenced to a term of imprisonment two years longer than would otherwise  
8 be imposed for the felony offense committed while on release. The  
9 additional sentence imposed under this subsection is in addition to any  
10 enhanced punishment that may be applicable under section 13-703, section  
11 13-704, section 13-1204, subsection C or section 13-714. The person is  
12 not eligible for suspension of sentence, probation, pardon or release from  
13 confinement on any basis, except as specifically authorized by section  
14 31-233, subsection A or B, until the two years are served, the person is  
15 eligible for release pursuant to section 41-1604.07 or the sentence is  
16 commuted. The penalties prescribed by this subsection shall be  
17 substituted for the penalties otherwise authorized by law if the  
18 allegation that the person committed a felony while released on bond or on  
19 the person's own recognizance or while escaped from preconviction custody  
20 is charged in the indictment or information and admitted or found by the  
21 court. The release provisions prescribed by this subsection shall not be  
22 substituted for any penalties required by the substantive offense or  
23 provision of law that specifies a later release or completion of the  
24 sentence imposed before release. The court shall allow the allegation  
25 that the person committed a felony while released on bond or on the  
26 person's own recognizance on a separate felony offense or while escaped  
27 from preconviction custody on a separate felony offense at any time before  
28 the case is actually tried unless the allegation is filed fewer than  
29 twenty days before the case is actually tried and the court finds on the  
30 record that the person was in fact prejudiced by the untimely filing and  
31 states the reasons for these findings. The allegation that the person  
32 committed a felony while released on bond or on the person's own  
33 recognizance or while escaped from preconviction custody shall not be read  
34 to the jury. For the purposes of this subsection, "substantive offense"  
35 means the felony offense that the trier of fact found beyond a reasonable  
36 doubt the person committed. Substantive offense does not include  
37 allegations that, if proven, would enhance the sentence of imprisonment or  
38 fine to which the person otherwise would be subject.

39 E. A SENTENCE IMPOSED PURSUANT TO SUBSECTION A, B OR C OF THIS  
40 SECTION SHALL REVOKE THE CONVICTED PERSON'S RELEASE IF THE PERSON WAS ON  
41 RELEASE AND SHALL BE CONSECUTIVE TO ANY OTHER SENTENCE FROM WHICH THE  
42 CONVICTED PERSON HAD BEEN TEMPORARILY RELEASED OR HAD ESCAPED, UNLESS THE  
43 SENTENCE FROM WHICH THE CONVICTED PERSON HAD BEEN PAROLED OR PLACED ON  
44 PROBATION WAS IMPOSED BY A JURISDICTION OTHER THAN THIS STATE.

APPROVED BY THE GOVERNOR MARCH 23, 2015.

Passed the House February 5, 20 15

by the following vote: 58 Ayes,

0 Nays, 2 Not Voting

[Signature]  
Speaker of the House

[Signature]  
Chief Clerk of the House

Passed the Senate March 7, 20 15

by the following vote: 28 Ayes,

0 Nays, 2 Not Voting

[Signature]  
President of the Senate

[Signature]  
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA  
OFFICE OF GOVERNOR

This Bill received by the Governor this

19th day of March, 20 15

at 8:35 o'clock A. M.

[Signature]  
Secretary to the Governor

Approved this 23rd day of

March

at 10:55 o'clock A M.

[Signature]  
Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA  
OFFICE OF SECRETARY OF STATE

This Bill received by the Secretary of State

this 23rd day of March, 20 15

at 4:20 o'clock P. M.

[Signature]  
Secretary of State

H.B. 2289