House Engrossed

FILED
MICHELE REAGAN
SECRETARY OF STATE

State of Arizona
House of Representatives
Fifty-second Legislature
Second Regular Session
2016

CHAPTER 43

HOUSE BILL 2377

AN ACT

AMENDING SECTIONS 12-2703, 13-703, 13-1204 AND 41-1604.10, ARIZONA REVISED STATUTES; RELATING TO CRIMINAL PENALTIES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

Section 1. Section 12-2703, Arizona Revised Statutes, is amended to read:

12-2703. Scope of remedies; violation; classification

A. It is unlawful for any person to render for compensation any service constituting the unauthorized practice of immigration and nationality law or to otherwise violate this chapter.

B. A person having an interest or right that is or may be adversely affected under this chapter may initiate an action for civil remedies. The provisions of this article are in addition to all other causes of action, remedies and penalties that are available in this state.

C. The attorney general shall initiate appropriate proceedings to prevent or to stop violations of this chapter.

D. Section 13-703, subsection A ~~and subsection B, paragraph 1 do~~ DOES not apply for the purpose of enhancing the sentence of a person who is convicted of two or more offenses under this section.

E. A person who violates this chapter is guilty of a class 6 felony.

Sec. 2. Section 13-703, Arizona Revised Statutes, is amended to read:

13-703. Repetitive offenders; sentencing

A. If a person is convicted of multiple felony offenses that were not committed on the same occasion but that either are consolidated for trial purposes or are not historical prior felony convictions, the person shall be sentenced as a first time felony offender pursuant to section 13-702 for the first offense, as a category one repetitive offender for the second offense, and as a category two repetitive offender for the third and subsequent offenses.

B. Except as provided in section 13-704 or 13-705, a person shall be sentenced as a category two repetitive offender if the person is at least eighteen years of age or has been tried as an adult and stands convicted of a felony and has one historical prior felony conviction.

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

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

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

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

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

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

Felony	Mitigated	Minimum	Presumptive	Maximum	Aggravated
Class 2	3 years	4 years	5 years	10 years	12.5 years
Class 3	2 years	2.5 years	3.5 years	7 years	8.75 years
Class 4	1 year	1.5 years	2.5 years	3 years	3.75 years
Class 5	.5 years	.75 years	1.5 years	2 years	2.5 years
Class 6	.25 years	.5 years	1 year	1.5 years	2 years

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

Felony	Mitigated	Minimum	Presumptive	Maximum	Aggravated
Class 2	4.5 years	6 years	9.25 years	18.5 years	23 years
Class 3	3.25 years	4.5 years	6.5 years	13 years	16.25 years
Class 4	2.25 years	3 years	4.5 years	6 years	7.5 years
Class 5	1 year	1.5 years	2.25 years	3 years	3.75 years
Class 6	.75 years	1 year	1.75 years	2.25 years	2.75 years

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

Felony	Mitigated	Minimum	Presumptive	Maximum	Aggravated
Class 2	10.5 years	14 years	15.75 years	28 years	35 years
Class 3	7.5 years	10 years	11.25 years	20 years	25 years
Class 4	6 years	8 years	10 years	12 years	15 years
Class 5	3 years	4 years	5 years	6 years	7.5 years
Class 6	2.25 years	3 years	3.75 years	4.5 years	5.75 years

K. The aggravated or mitigated term imposed pursuant to subsection H, I or J of this section may be imposed only if at least two of the aggravating circumstances are found beyond a reasonable doubt to be true by the trier of fact or are admitted by the defendant, except that an aggravating circumstance under section 13-701, subsection D, paragraph 11 shall be found to be true by the court, or in mitigation of the crime are found to be true by the court, on any evidence or information introduced or submitted to the court or the trier of fact before sentencing or any evidence presented at

trial, and factual findings and reasons in support of these findings are set forth on the record at the time of sentencing.

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

M. A person who has been convicted in any court outside the jurisdiction of this state of an offense that was punishable by that jurisdiction as a felony is subject to this section. A person who has been convicted as an adult of an offense punishable as a felony under the provisions of any prior code in this state or the jurisdiction in which the offense was committed is subject to this section. A person who has been convicted of a felony weapons possession violation in any court outside the jurisdiction of this state that would not be punishable as a felony under the laws of this state is not subject to this section.

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

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

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

Q. 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.

Sec. 3. Section 13-1204, Arizona Revised Statutes, is amended to read:

13-1204. Aggravated assault; classification; definitions

A. A person commits aggravated assault if the person commits assault as prescribed by section 13-1203 under any of the following circumstances:

1. If the person causes serious physical injury to another.

2. If the person uses a deadly weapon or dangerous instrument.

3. If the person commits the assault by any means of force that causes temporary but substantial disfigurement, temporary but substantial loss or impairment of any body organ or part or a fracture of any body part.

4. If the person commits the assault while the victim is bound or otherwise physically restrained or while the victim's capacity to resist is substantially impaired.

5. If the person commits the assault after entering the private home of another with the intent to commit the assault.

6. If the person is eighteen years of age or older and commits the assault on a minor under fifteen years of age.

7. If the person commits assault as prescribed by section 13-1203, subsection A, paragraph 1 or 3 and the person is in violation of an order of protection issued against the person pursuant to section 13-3602 or 13-3624.

8. If the person commits the assault knowing or having reason to know that the victim is any of the following:

(a) A peace officer, or a person summoned and directed by the officer while engaged in the execution of any official duties or if the assault results from the execution of the peace officer's official duties.

(b) A constable, or a person summoned and directed by the constable while engaged in the execution of any official duties or if the assault results from the execution of the constable's official duties.

(c) A firefighter, fire investigator, fire inspector, emergency medical technician or paramedic engaged in the execution of any official duties, or a person summoned and directed by such individual while engaged in the execution of any official duties or if the assault results from the execution of the official duties of the firefighter, fire investigator, fire inspector, emergency medical technician or paramedic.

(d) A teacher or other person employed by any school and the teacher or other employee is on the grounds of a school or grounds adjacent to the school or is in any part of a building or vehicle used for school purposes, any teacher or school nurse visiting a private home in the course of the teacher's or nurse's professional duties or any teacher engaged in any authorized and organized classroom activity held on other than school grounds.

(e) A health care practitioner who is certified or licensed pursuant to title 32, chapter 13, 15, 17 or 25, or a person summoned and directed by

the licensed health care practitioner while engaged in the person's professional duties. This subdivision does not apply if the person who commits the assault is seriously mentally ill, as defined in section 36-550, or is afflicted with alzheimer's disease or related dementia.

(f) A prosecutor while engaged in the execution of any official duties or if the assault results from the execution of the prosecutor's official duties.

(g) A code enforcement officer as defined in section 39-123 while engaged in the execution of any official duties or if the assault results from the execution of the code enforcement officer's official duties.

(h) A state or municipal park ranger while engaged in the execution of any official duties or if the assault results from the execution of the park ranger's official duties.

(i) A public defender while engaged in the execution of any official duties or if the assault results from the execution of the public defender's official duties.

(j) A judicial officer while engaged in the execution of any official duties or if the assault results from the execution of the judicial officer's official duties.

9. If the person knowingly takes or attempts to exercise control over any of the following:

(a) A peace officer's or other officer's firearm and the person knows or has reason to know that the victim is a peace officer or other officer employed by one of the agencies listed in paragraph 10, subdivision (a), item (i), (ii), (iii), (iv) or (v) of this subsection and is engaged in the execution of any official duties.

(b) Any weapon other than a firearm that is being used by a peace officer or other officer or that the officer is attempting to use, and the person knows or has reason to know that the victim is a peace officer or other officer employed by one of the agencies listed in paragraph 10, subdivision (a), item (i), (ii), (iii), (iv) or (v) of this subsection and is engaged in the execution of any official duties.

(c) Any implement that is being used by a peace officer or other officer or that the officer is attempting to use, and the person knows or has reason to know that the victim is a peace officer or other officer employed by one of the agencies listed in paragraph 10, subdivision (a), item (i), (ii), (iii), (iv) or (v) of this subsection and is engaged in the execution of any official duties. For the purposes of this subdivision, "implement" means an object that is designed for or that is capable of restraining or injuring an individual. Implement does not include handcuffs.

10. If the person meets both of the following conditions:

(a) Is imprisoned or otherwise subject to the custody of any of the following:

(i) The state department of corrections.

(ii) The department of juvenile corrections.

(iii) A law enforcement agency.

(iv) A county or city jail or an adult or juvenile detention facility of a city or county.

(v) Any other entity that is contracting with the state department of corrections, the department of juvenile corrections, a law enforcement agency, another state, any private correctional facility, a county, a city or the federal bureau of prisons or other federal agency that has responsibility for sentenced or unsentenced prisoners.

(b) Commits an assault knowing or having reason to know that the victim is acting in an official capacity as an employee of any of the entities listed in subdivision (a) of this paragraph.

11. If the person uses a simulated deadly weapon.

B. A person commits aggravated assault if the person commits assault by either intentionally, knowingly or recklessly causing any physical injury to another person, intentionally placing another person in reasonable apprehension of imminent physical injury or knowingly touching another person with the intent to injure the person, and both of the following occur:

1. The person intentionally or knowingly impedes the normal breathing or circulation of blood of another person by applying pressure to the throat or neck or by obstructing the nose and mouth either manually or through the use of an instrument.

2. Any of the circumstances exists that are set forth in section 13-3601, subsection A, paragraph 1, 2, 3, 4, 5 or 6.

C. A person who is convicted of intentionally or knowingly committing aggravated assault on a peace officer while the officer is engaged in the execution of any official duties pursuant to subsection A, paragraph 1 or 2 of this section shall be sentenced to imprisonment for not less than the presumptive sentence authorized under chapter 7 of this title and is not eligible for suspension of sentence, commutation or release on any basis until the sentence imposed is served.

D. Except pursuant to subsections E and F of this section, aggravated assault pursuant to subsection A, paragraph 1 or 2, paragraph 9, subdivision (a) or paragraph 11 of this section is a class 3 felony except if the aggravated assault is a violation of subsection A, paragraph 1 or 2 ~~or paragraph 9, subdivision (a)~~ of this section and the victim is under fifteen years of age it is a class 2 felony punishable pursuant to section 13-705. Aggravated assault pursuant to subsection A, paragraph 3 or subsection B of this section is a class 4 felony. Aggravated assault pursuant to subsection A, paragraph 9, subdivision (b) or paragraph 10 of this section is a class 5 felony. Aggravated assault pursuant to subsection A, paragraph 4, 5, 6, 7 or 8 or paragraph 9, subdivision (c) of this section is a class 6 felony.

E. Aggravated assault pursuant to subsection A, paragraph 1 or 2 of this section committed on a peace officer while the officer is engaged in the execution of any official duties is a class 2 felony. Aggravated assault pursuant to subsection A, paragraph 3 of this section committed on a peace

officer while the officer is engaged in the execution of any official duties is a class 3 felony. Aggravated assault pursuant to subsection A, paragraph 8, subdivision (a) of this section committed on a peace officer while the officer is engaged in the execution of any official duties is a class 5 felony unless the assault results in any physical injury to the peace officer while the officer is engaged in the execution of any official duties, in which case it is a class 4 felony.

F. Aggravated assault pursuant to:

1. Subsection A, paragraph 1 or 2 of this section is a class 2 felony if committed on a prosecutor.

2. Subsection A, paragraph 3 of this section is a class 3 felony if committed on a prosecutor.

3. Subsection A, paragraph 8, subdivision (f) of this section is a class 5 felony if the assault results in physical injury to a prosecutor.

G. For the purposes of this section:

1. "Judicial officer" means a justice of the supreme court, judge, justice of the peace~~,~~ OR magistrate or a commissioner or hearing officer of a state, county or municipal court.

2. "Prosecutor" means a county attorney, a municipal prosecutor or the attorney general and includes an assistant or deputy county attorney, municipal prosecutor or attorney general.

Sec. 4. Section 41-1604.10, Arizona Revised Statutes, is amended to read:

41-1604.10. Earned release credits; forfeiture; restoration; applicability

A. Each prisoner classified as parole eligible, class one, pursuant to section 41-1604.09, shall be allowed the following release credits:

1. If sentenced ~~upon~~ ON a first conviction other than pursuant to section 13-751 or other than for a felony involving a dangerous offense as defined in section 13-105, every two days served within class one shall be counted as an earned release credit of one day.

2. If sentenced pursuant to section 13-703, subsection B~~, paragraph 2,~~ or ~~upon~~ ON first conviction of a class 4, 5 or 6 felony involving a dangerous offense as defined in section 13-105 or any other provisions of law ~~which~~ THAT prohibits release on any basis until serving not less than one-half the sentence imposed by the court, every two days served within class one shall be counted as an earned release credit of one day.

3. If sentenced pursuant to any other provision of section 13-703, section 13-704, subsection A, B, C, D or E, section 13-706, subsection A or section 13-708, subsection D or any other provision of law ~~which~~ THAT prohibits release on any basis until serving not less than two-thirds the sentence imposed by the court, every three days served within class one shall be counted as an earned release credit of one day.

B. Release credits earned by a prisoner pursuant to subsection A of this section shall not reduce the term of imprisonment imposed by the court

on such prisoner, nor reduce the sentence imposed on the prisoner for the purpose of determining such prisoner's parole eligibility.

C. ~~Upon~~ ON reclassification of a prisoner resulting from the prisoner's failure to adhere to the rules of the department or failure to demonstrate a continual willingness to volunteer for or successfully participate in a work, educational, treatment or training program, the director may declare any and all release credits earned by the prisoner forfeited. In the discretion of the director the release credits may subsequently be restored. The director shall maintain an account of release credits earned by each prisoner.

D. The director, according to rules adopted by the department, may authorize the release of any prisoner who has earned release credits ~~which~~ THAT, when added to the time served by the prisoner, equal the sentence imposed by the court which shall be the prisoner's earned release credit date. A prisoner on earned release credit release is not under the control of the department and the department is not required to provide parole services or otherwise supervise any prisoner released, except that the department may revoke the release of the prisoner until the final expiration of ~~his~~ THE PRISONER'S sentence if the department has reason to believe that the released prisoner has engaged in criminal conduct during the term of ~~his~~ release. If a prisoner has a term of probation to be completed or served, the probation department shall begin supervision of the prisoner when the prisoner is released on the earned release credit date. If the prisoner's term of probation equals or exceeds the prisoner's final expiration date, the director of the state department of corrections shall issue the prisoner an absolute discharge on the prisoner's earned release credit date. The prisoner is not under the control of the department and the department is not required to provide parole services or otherwise supervise the prisoner. If the prisoner's term of probation is less than the prisoner's final expiration date, the prisoner is not under the control of the department and the department is not required to provide parole services or otherwise supervise the prisoner, except that the department may revoke the release at any time between the earned release credit date and the final expiration date if the department has reason to believe that the released prisoner has engaged in criminal conduct during the term of release. The director may issue the prisoner an absolute discharge from the sentence of imprisonment if it appears that the prisoner will live and remain at liberty without violating the law and it is in the best interest of the state. The state department of corrections shall provide reasonable notice to the probation department of the scheduled release of the prisoner from confinement by the state department of corrections.

E. A prisoner shall forfeit five days of the prisoner's earned release credits if the court finds or a disciplinary hearing held after a review by and recommendations from the attorney general's office determines that the prisoner does any of the following:

1. Brings a claim without substantial justification.
2. Unreasonably expands or delays a proceeding.
3. Testifies falsely or otherwise presents false information or material to the court.
4. Submits a claim that is intended solely to harass the party it is filed against.

F. If the prisoner does not have five days of earned release credits, the prisoner shall forfeit the prisoner's existing earned release credits and be ineligible from accruing earned release credits until the number of earned release credits the prisoner would have otherwise accrued equals the difference between five days and the number of existing earned release credit days the prisoner forfeits pursuant to this section.

G. This section applies only to persons who commit felonies before January 1, 1994.

APPROVED BY THE GOVERNOR MARCH 17, 2016.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MARCH 18, 2016.

Passed the House January 28, 2016 by the following vote: 55 Ayes, 2 Nays, 3 Not Voting

Speaker of the House

☐ Pro Tempore

Chief Clerk of the House

Passed the Senate March 15, 2016 by the following vote: 29 Ayes, 0 Nays, 1 Not Voting

President of the Senate

Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill received by the Governor this 16th day of March, 2016 at 4:02 o'clock P. M.

Secretary to the Governor

Approved this 17th day of March at 12:30 o'clock P M.

Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill received by the Secretary of State this 18 day of March, 2016 at 9:14 o'clock A M.

Secretary of State

H.B. 2377