

House Engrossed Senate Bill

FILED

**MICHELE REAGAN
SECRETARY OF STATE**

State of Arizona
Senate
Fifty-third Legislature
First Regular Session
2017

**CHAPTER 162
SENATE BILL 1366**

AN ACT

AMENDING SECTIONS 13-701 AND 13-1204, ARIZONA REVISED STATUTES; RELATING
TO AGGRAVATED ASSAULT.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 13-701, Arizona Revised Statutes, is amended to
3 read:

4 13-701. Sentence of imprisonment for felony; presentence
5 report; aggravating and mitigating factors;
6 consecutive terms of imprisonment; definition

7 A. A sentence of imprisonment for a felony shall be a definite term
8 of years and the person sentenced, unless otherwise provided by law, shall
9 be committed to the custody of the state department of corrections.

10 B. No prisoner may be transferred to the custody of the state
11 department of corrections without a certified copy of the judgment and
12 sentence, signed by the sentencing judge, and a copy of a recent
13 presentence investigation report unless the court has waived preparation
14 of the report.

15 C. The minimum or maximum term imposed pursuant to section 13-702,
16 13-703, 13-704, 13-705, 13-708, 13-710, 13-1406, 13-3212 or 13-3419 may be
17 imposed only if one or more of the circumstances alleged to be in
18 aggravation of the crime are found to be true by the trier of fact beyond
19 a reasonable doubt or are admitted by the defendant, except that an
20 alleged aggravating circumstance under subsection D, paragraph 11 of this
21 section shall be found to be true by the court, or in mitigation of the
22 crime are found to be true by the court, on any evidence or information
23 introduced or submitted to the court or the trier of fact before
24 sentencing or any evidence presented at trial, and factual findings and
25 reasons in support of such findings are set forth on the record at the
26 time of sentencing.

27 D. For the purpose of determining the sentence pursuant to
28 subsection C of this section, the trier of fact shall determine and the
29 court shall consider the following aggravating circumstances, except that
30 the court shall determine an aggravating circumstance under paragraph 11
31 of this subsection:

32 1. Infliction or threatened infliction of serious physical injury,
33 except if this circumstance is an essential element of the offense of
34 conviction or has been utilized to enhance the range of punishment under
35 section 13-704.

36 2. Use, threatened use or possession of a deadly weapon or
37 dangerous instrument during the commission of the crime, except if this
38 circumstance is an essential element of the offense of conviction or has
39 been utilized to enhance the range of punishment under section 13-704.

40 3. If the offense involves the taking of or damage to property, the
41 value of the property taken or damaged.

42 4. Presence of an accomplice.

43 5. Especially heinous, cruel or depraved manner in which the
44 offense was committed.

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

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

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

9 9. The victim or, if the victim has died as a result of the conduct
10 of the defendant, the victim's immediate family suffered physical,
11 emotional or financial harm.

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

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

19 12. The defendant was wearing body armor as defined in section
20 13-3116.

21 13. The victim of the offense is at least sixty-five years of age or
22 is a person with a disability as defined in section 38-492, subsection B.

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

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

31 16. The defendant was convicted of a violation of section 13-1102,
32 section 13-1103, section 13-1104, subsection A, paragraph 3 or section
33 13-1204, subsection A, paragraph 1 or 2 arising from an act that was
34 committed while driving a motor vehicle and the defendant's alcohol
35 concentration at the time of committing the offense was 0.15 or more. For
36 the purposes of this paragraph, "alcohol concentration" has the same
37 meaning prescribed in section 28-101.

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

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

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

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

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

5 21. The defendant was in violation of 8 United States Code section
6 1323, 1324, 1325, 1326 or 1328 at the time of the commission of the
7 offense.

8 22. The defendant used a remote stun gun or an authorized remote
9 stun gun in the commission of the offense. For the purposes of this
10 paragraph:

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

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

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

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

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

22 (b) "Remote stun gun" means an electronic device that emits an
23 electrical charge and that is designed and primarily employed to
24 incapacitate a person or animal either through contact with electrodes on
25 the device itself or remotely through wired probes that are attached to
26 the device or through a spark, plasma, ionization or other conductive
27 means emitting from the device.

28 23. During or immediately following the commission of the offense,
29 the defendant committed a violation of section 28-661, 28-662 or 28-663.

30 24. The defendant was convicted of a violation of section 13-1307 or
31 13-1308 and the defendant recruited, enticed or obtained the victim from a
32 shelter that is designed to serve runaway youth, foster children, homeless
33 persons or victims of human trafficking, domestic violence or sexual
34 assault.

35 25. THE DEFENDANT WAS CONVICTED OF A VIOLATION OF SECTION 13-1204
36 AND THERE IS EVIDENCE THAT THE DEFENDANT COMMITTED THE CRIME OUT OF MALICE
37 TOWARD A VICTIM BECAUSE OF THE VICTIM'S EMPLOYMENT AS A PEACE OFFICER.

38 ~~25.~~ 26. Any other factor that the state alleges is relevant to the
39 defendant's character or background or to the nature or circumstances of
40 the crime.

41 E. For the purpose of determining the sentence pursuant to
42 subsection C of this section, the court shall consider the following
43 mitigating circumstances:

44 1. The age of the defendant.

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

5 3. The defendant was under unusual or substantial duress, although
6 not to a degree that would constitute a defense to prosecution.

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

9 5. During or immediately following the commission of the offense,
10 the defendant complied with all duties imposed under sections 28-661,
11 28-662 and 28-663.

12 6. Any other factor that is relevant to the defendant's character
13 or background or to the nature or circumstances of the crime and that the
14 court finds to be mitigating.

15 F. If the trier of fact finds at least one aggravating
16 circumstance, the trial court may find by a preponderance of the evidence
17 additional aggravating circumstances. In determining what sentence to
18 impose, the court shall take into account the amount of aggravating
19 circumstances and whether the amount of mitigating circumstances is
20 sufficiently substantial to justify the lesser term. If the trier of fact
21 finds aggravating circumstances and the court does not find any mitigating
22 circumstances, the court shall impose an aggravated sentence.

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

26 H. This section does not affect any provision of law that imposes
27 the death penalty, that expressly provides for imprisonment for life or
28 that authorizes or restricts the granting of probation and suspending the
29 execution of sentence.

30 I. The intentional failure by the court to impose the mandatory
31 sentences or probation conditions provided in this title is malfeasance.

32 J. For the purposes of this section, "trier of fact" means a jury,
33 unless the defendant and the state waive a jury in which case the trier of
34 fact means the court.

35 Sec. 2. Section 13-1204, Arizona Revised Statutes, is amended to
36 read:

37 13-1204. Aggravated assault; classification; definitions

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

- 41 1. If the person causes serious physical injury to another.
- 42 2. If the person uses a deadly weapon or dangerous instrument.

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

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

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

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

12 7. If the person commits assault as prescribed by section 13-1203,
13 subsection A, paragraph 1 or 3 and the person is in violation of an order
14 of protection issued against the person pursuant to section 13-3602 or
15 13-3624.

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

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

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

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

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

37 (e) A health care practitioner who is certified or licensed
38 pursuant to title 32, chapter 13, 15, 17 or 25, or a person summoned and
39 directed by the licensed health care practitioner while engaged in the
40 person's professional duties. This subdivision does not apply if the
41 person who commits the assault is seriously mentally ill, as defined in
42 section 36-550, or is afflicted with alzheimer's disease or related
43 dementia.

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

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

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

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

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

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

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

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

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

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

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

41 (i) The state department of corrections.

42 (ii) The department of juvenile corrections.

43 (iii) A law enforcement agency.

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

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

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

9 11. If the person uses a simulated deadly weapon.

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

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

20 2. Any of the circumstances exists that are set forth in section
21 13-3601, subsection A, paragraph 1, 2, 3, 4, 5 or 6.

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

29 D. IT IS NOT A DEFENSE TO A PROSECUTION FOR ASSAULTING A PEACE
30 OFFICER OR A MITIGATING CIRCUMSTANCE THAT THE PEACE OFFICER WAS NOT ON
31 DUTY OR ENGAGED IN THE EXECUTION OF ANY OFFICIAL DUTIES.

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

44 ~~E.~~ F. Aggravated assault pursuant to subsection A, paragraph 1 or
45 2 of this section committed on a peace officer ~~while the officer is~~

1 ~~engaged in the execution of any official duties~~ is a class 2 felony.
2 Aggravated assault pursuant to subsection A, paragraph 3 of this section
3 committed on a peace officer ~~while the officer is engaged in the execution~~
4 ~~of any official duties~~ is a class 3 felony. Aggravated assault pursuant
5 to subsection A, paragraph 8, subdivision (a) of this section committed on
6 a peace officer ~~while the officer is engaged in the execution of any~~
7 ~~official duties~~ is a class 5 felony unless the assault results in any
8 physical injury to the peace officer ~~while the officer is engaged in the~~
9 ~~execution of any official duties~~, in which case it is a class 4 felony.

10 ~~f.~~ G. Aggravated assault pursuant to:

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

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

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

17 ~~g.~~ H. For the purposes of this section:

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

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

24 Sec. 3. Short title

25 This act shall be cited as the "Blue Lives Matter Law".

APPROVED BY THE GOVERNOR APRIL 17, 2017.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 17, 2017.

Passed the House April 5, 2017,

Passed the Senate February 20, 2017,

by the following vote: 34 Ayes,

by the following vote: 24 Ayes,

25 Nays, 1 Not Voting

5 Nays, 1 Not Voting

[Signature]

Speaker of the House

Pro Tempore

[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 was received by the Governor this~~

~~_____ day of _____, 20____,~~

~~at _____ o'clock _____ M.~~

~~_____
Secretary to the Governor~~

~~Approved this _____ day of~~

~~_____, 20____,~~

~~at _____ o'clock _____ M.~~

~~_____
Governor of Arizona~~

~~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~~

S.B. 1366

SENATE CONCURS IN HOUSE
AMENDMENTS AND FINAL PASSAGE

Passed the Senate April 11, 2017

by the following vote: 21 Ayes,

9 Nays, 0 Not Voting


President of the Senate


Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill received by the Governor this

11th day of April, 2017

at 2:27 o'clock P. M.


Secretary to the Governor

Approved this 17th day of

April 2017

at 10:13 o'clock A. M.


Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill received by the Secretary of State

this 17 day of April, 2017

at 3:31 o'clock P. M.


Secretary of State

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