

REFERENCE TITLE: death penalty; repeal; natural life

State of Arizona
House of Representatives
Forty-eighth Legislature
Second Regular Session
2008

HB 2297

Introduced by
Representatives Sinema, Ableser, Prezelski: Bradley, Campbell CH,
Gallardo, Lopes, Lujan, Meza

AN ACT

AMENDING SECTIONS 12-117, 12-120.21, 13-702, 13-703, 13-713, 13-1105, 13-3841, 13-3854, 13-3856, 13-3859.02, 13-3870, 13-3906, 13-3961, 13-4031, 13-4033, 13-4040, 13-4041, 13-4234, 21-102, 25-903, 25-904, 31-240, 31-445 AND 41-1013, ARIZONA REVISED STATUTES; REPEALING SECTION 13-703.01, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2005, CHAPTER 325, SECTION 3; REPEALING SECTION 13-703.01, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2005, CHAPTER 325, SECTION 4; REPEALING TITLE 13, CHAPTER 38, ARTICLE 17, ARIZONA REVISED STATUTES; REPEALING SECTIONS 13-703.02, 13-703.03, 13-703.04, 13-703.05, 13-704, 13-705, 13-706, 13-4042, 13-4234.01 AND 41-3011.13, ARIZONA REVISED STATUTES; REPEALING TITLE 41, CHAPTER 42, ARIZONA REVISED STATUTES; REPEALING LAWS 2006, CHAPTER 369, SECTIONS 8, 9 AND 10; RELATING TO THE REPEAL OF THE DEATH PENALTY.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 12-117, Arizona Revised Statutes, is amended to
3 read:

4 12-117. Public defender training fund; appropriation

5 A. The public defender training fund is established consisting of
6 monies allocated to the fund pursuant to section 12-116. The supreme court
7 shall administer the fund.

8 B. Each month the supreme court shall deposit in the fund the monies
9 collected for the fund. All monies deposited in the fund are continuously
10 appropriated to the supreme court for distribution to each county public
11 defender ~~and the state capital postconviction public defender office~~ as
12 provided in subsection C of this section.

13 C. The allocation of monies collected shall be made to each county
14 public defender office ~~and the state capital postconviction public defender~~
15 ~~office~~ in proportion to the number of felony cases assigned to that office in
16 the last fiscal year.

17 D. Monies received shall be used exclusively for the purpose of public
18 defender training. Each public defender office receiving training fund
19 monies shall submit to the supreme court an annual report of all financial
20 receipts and expenditures from the training fund.

21 Sec. 2. Section 12-120.21, Arizona Revised Statutes, is amended to
22 read:

23 12-120.21. Jurisdiction and venue

24 A. The court of appeals shall have:

25 1. Appellate jurisdiction in all actions and proceedings originating
26 in or permitted by law to be appealed from the superior court, ~~except~~
27 ~~criminal actions involving crimes for which a sentence of death has actually~~
28 ~~been imposed.~~

29 2. Jurisdiction to issue writs of certiorari to review the lawfulness
30 of awards of the industrial commission and to enter judgment affirming or
31 setting aside the awards.

32 3. Jurisdiction to issue injunctions and other writs and orders
33 necessary and proper to the complete exercise of its appellate jurisdiction.

34 4. Jurisdiction to hear and determine petitions for special actions
35 brought pursuant to the ARIZONA rules of procedure for special actions,
36 without regard to its appellate jurisdiction.

37 B. A case or appeal of which the court of appeals has jurisdiction in
38 an action or proceeding originating in or permitted by law to be appealed
39 from the superior court in a county shall be brought or filed in the division
40 ~~which~~ THAT contains that county. An application for a writ of certiorari to
41 review the lawfulness of an award of the industrial commission shall be
42 brought in division 1.

1 Sec. 3. Section 13-702, Arizona Revised Statutes, is amended to read:
2 13-702. Sentencing; definition

3 A. Sentences provided in section 13-701 for a first conviction of a
4 felony, except those felonies involving the discharge, use or threatening
5 exhibition of a deadly weapon or dangerous instrument or the intentional or
6 knowing infliction of serious physical injury upon another or if a specific
7 sentence is otherwise provided, may be increased or reduced by the court
8 within the ranges set by this subsection. Any reduction or increase shall be
9 based on the aggravating and mitigating circumstances contained in
10 subsections C and D of this section and shall be within the following ranges:

	<u>Minimum</u>	<u>Maximum</u>
11 1. For a class 2 felony	4 years	10 years
12 2. For a class 3 felony	2.5 years	7 years
13 3. For a class 4 felony	1.5 years	3 years
14 4. For a class 5 felony	9 months	2 years
15 5. For a class 6 felony	6 months	1.5 years

16 B. The upper or lower term imposed pursuant to section 13-604,
17 13-604.01, 13-604.02, 13-702.01 or 13-710 or subsection A of this section may
18 be imposed only if one or more of the circumstances alleged to be in
19 aggravation of the crime are found to be true by the trier of fact beyond a
20 reasonable doubt or are admitted by the defendant, except that an alleged
21 aggravating circumstance under subsection C, paragraph 11 of this section
22 shall be found to be true by the court, or in mitigation of the crime are
23 found to be true by the court, on any evidence or information introduced or
24 submitted to the court or the trier of fact before sentencing or any evidence
25 presented at trial, and factual findings and reasons in support of such
26 findings are set forth on the record at the time of sentencing.

27 C. For the purpose of determining the sentence pursuant to section
28 13-710 and subsection A of this section, the trier of fact shall determine
29 and the court shall consider the following aggravating circumstances, except
30 that the court shall determine an aggravating circumstance under paragraph 11
31 of this subsection:
32

33 1. Infliction or threatened infliction of serious physical injury,
34 except if this circumstance is an essential element of the offense of
35 conviction or has been utilized to enhance the range of punishment under
36 section 13-604.

37 2. Use, threatened use or possession of a deadly weapon or dangerous
38 instrument during the commission of the crime, except if this circumstance is
39 an essential element of the offense of conviction or has been utilized to
40 enhance the range of punishment under section 13-604.

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

43 4. Presence of an accomplice.

44 5. Especially heinous, cruel or depraved manner in which the offense
45 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, or
5 promise of payment, of anything of pecuniary value.
- 6 8. At the time of the commission of the offense, the defendant was a
7 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 of
10 the defendant, the victim's immediate family suffered physical, emotional or
11 financial harm.
- 12 10. During the course of the commission of the offense, the death of an
13 unborn child at any stage of its development occurred.
- 14 11. The defendant was previously convicted of a felony within the ten
15 years immediately preceding the date of the offense. A conviction outside
16 the jurisdiction of this state for an offense that if committed in this state
17 would be punishable as a felony is a felony conviction for the purposes of
18 this paragraph.
- 19 12. The defendant was wearing body armor as defined in section 13-3116.
- 20 13. The victim of the offense is at least sixty-five years of age or is
21 a disabled person as defined ~~by~~ **IN** section 38-492.
- 22 14. The defendant was appointed pursuant to title 14 as a fiduciary and
23 the offense involved conduct directly related to the defendant's duties to
24 the victim as fiduciary.
- 25 15. Evidence that the defendant committed the crime out of malice
26 toward a victim because of the victim's identity in a group listed in section
27 41-1750, subsection A, paragraph 3 or because of the defendant's perception
28 of the victim's identity in a group listed in section 41-1750, subsection A,
29 paragraph 3.
- 30 16. The defendant was convicted of a violation of section 13-1102,
31 section 13-1103, section 13-1104, subsection A, paragraph 3 or section
32 13-1204, subsection A, paragraph 1 or 2 arising from an act that was
33 committed while driving a motor vehicle and the defendant's alcohol
34 concentration at the time of committing the offense was 0.15 or more. For
35 the purposes of this paragraph, "alcohol concentration" has the same meaning
36 prescribed in section 28-101.
- 37 17. Lying in wait for the victim or ambushing the victim during the
38 commission of any felony.
- 39 18. The offense was committed in the presence of a child and any of the
40 circumstances exist that are set forth in section 13-3601, subsection A.
- 41 19. The offense was committed in retaliation for a victim's either
42 reporting criminal activity or being involved in an organization, other than
43 a law enforcement agency, that is established for the purpose of reporting or
44 preventing criminal activity.

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

3 21. The defendant was in violation of 8 United States Code section
4 1323, 1324, 1325, 1326 or 1328 at the time of the commission of the offense.

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

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

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

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

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

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

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

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

26 24. Any other factor that the state alleges is relevant to the
27 defendant's character or background or to the nature or circumstances of the
28 crime.

29 D. For the purpose of determining the sentence pursuant to section
30 13-710 and subsection A of this section, the court shall consider the
31 following mitigating circumstances:

32 1. The age of the defendant.

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

37 3. The defendant was under unusual or substantial duress, although not
38 such as to constitute a defense to prosecution.

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

41 5. During or immediately following the commission of the offense, the
42 defendant complied with all duties imposed under sections 28-661, 28-662 and
43 28-663.

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

4 If the trier of fact finds at least one aggravating circumstance, the trial
5 court may find by a preponderance of the evidence additional aggravating
6 circumstances. In determining what sentence to impose, the court shall take
7 into account the amount of aggravating circumstances and whether the amount
8 of mitigating circumstances is sufficiently substantial to call for the
9 lesser term. If the trier of fact finds aggravating circumstances and the
10 court does not find any mitigating circumstances, the court shall impose an
11 aggravated sentence.

12 E. The court in imposing a sentence shall consider the evidence and
13 opinions presented by the victim or the victim's immediate family at any
14 aggravation or mitigation proceeding or in the presentence report.

15 F. Nothing in this section affects any provision of law that ~~imposes~~
16 ~~the death penalty, that~~ expressly provides for imprisonment for life or that
17 authorizes or restricts the granting of probation and suspending the
18 execution of sentence.

19 G. Notwithstanding any other provision of this title, if a person is
20 convicted of any class 6 felony not involving the intentional or knowing
21 infliction of serious physical injury or the discharge, use or threatening
22 exhibition of a deadly weapon or dangerous instrument and if the court,
23 having regard to the nature and circumstances of the crime and to the history
24 and character of the defendant, is of the opinion that it would be unduly
25 harsh to sentence the defendant for a felony, the court may enter judgment of
26 conviction for a class 1 misdemeanor and make disposition accordingly or may
27 place the defendant on probation in accordance with chapter 9 of this title
28 and refrain from designating the offense as a felony or misdemeanor until the
29 probation is terminated. The offense shall be treated as a felony for all
30 purposes until such time as the court may actually enter an order designating
31 the offense a misdemeanor. This subsection does not apply to any person who
32 stands convicted of a class 6 felony and who has previously been convicted of
33 two or more felonies. If a crime or public offense is punishable in the
34 discretion of the court by a sentence as a class 6 felony or a class 1
35 misdemeanor, the offense shall be deemed a misdemeanor if the prosecuting
36 attorney:

37 1. Files an information in superior court designating the offense as a
38 misdemeanor.

39 2. Files a complaint in justice court or municipal court designating
40 the offense as a misdemeanor within the jurisdiction of the respective court.

41 3. Files a complaint, with the consent of the defendant, before or
42 during the preliminary hearing amending the complaint to charge a
43 misdemeanor.

1 H. For the purposes of this section, "trier of fact" means a jury,
2 unless the defendant and the state waive a jury, in which case the trier of
3 fact means the court.

4 Sec. 4. Section 13-703, Arizona Revised Statutes, is amended to read:

5 13-703. Sentence of life or natural life imprisonment: victims'
6 rights

7 A. ~~If the state has filed a notice of intent to seek the death penalty~~
8 ~~and the~~ A defendant is convicted of first degree murder as defined in section
9 13-1105, the defendant shall be sentenced to ~~death or~~ imprisonment in the
10 custody of the state department of corrections for life or natural life ~~as~~
11 ~~determined and in accordance with the procedures provided in section~~
12 ~~13-703.01.~~ IF THE COURT IMPOSES A NATURAL LIFE SENTENCE, THE COURT SHALL
13 ORDER THAT THE DEFENDANT NOT BE RELEASED ON ANY BASIS FOR THE REMAINDER OF
14 THE DEFENDANT'S NATURAL LIFE. A defendant who is sentenced to natural life
15 is not eligible for commutation, parole, work furlough, work release or
16 release from confinement on any basis. If the defendant is sentenced to
17 life, the defendant shall not be released on any basis until the completion
18 of the service of twenty-five calendar years if the murdered person was
19 fifteen or more years of age and thirty-five years if the murdered person was
20 under fifteen years of age or was an unborn child. In this section, for
21 purposes of punishment an unborn child shall be treated like a minor who is
22 under twelve years of age.

23 ~~B. At the aggravation phase of the sentencing proceeding that is held~~
24 ~~pursuant to section 13-703.01, the admissibility of information relevant to~~
25 ~~any of the aggravating circumstances set forth in subsection F of this~~
26 ~~section shall be governed by the rules of evidence applicable to criminal~~
27 ~~trials. The burden of establishing the existence of any of the aggravating~~
28 ~~circumstances set forth in subsection F of this section is on the~~
29 ~~prosecution. The prosecution must prove the existence of the aggravating~~
30 ~~circumstances beyond a reasonable doubt.~~

31 ~~C. At the penalty phase of the sentencing proceeding that is held~~
32 ~~pursuant to section 13-703.01, the prosecution or the defendant may present~~
33 ~~any information that is relevant to any of the mitigating circumstances~~
34 ~~included in subsection G of this section, regardless of its admissibility~~
35 ~~under the rules governing admission of evidence at criminal trials. The~~
36 ~~burden of establishing the existence of the mitigating circumstances included~~
37 ~~in subsection G of this section is on the defendant. The defendant must~~
38 ~~prove the existence of the mitigating circumstances by a preponderance of the~~
39 ~~evidence. If the trier of fact is a jury, the jurors do not have to agree~~
40 ~~unanimously that a mitigating circumstance has been proven to exist. Each~~
41 ~~juror may consider any mitigating circumstance found by that juror in~~
42 ~~determining the appropriate penalty.~~

43 ~~D. Evidence that is admitted at the trial and that relates to any~~
44 ~~aggravating or mitigating circumstances shall be deemed admitted as evidence~~
45 ~~at a sentencing proceeding if the trier of fact considering that evidence is~~

1 ~~the same trier of fact that determined the defendant's guilt. The~~
2 ~~prosecution and the defendant shall be permitted to rebut any information~~
3 ~~received at the aggravation or penalty phase of the sentencing proceeding and~~
4 ~~shall be given fair opportunity to present argument as to whether the~~
5 ~~information is sufficient to establish the existence of any of the~~
6 ~~circumstances included in subsections F and G of this section.~~

7 ~~E. In determining whether to impose a sentence of death or life~~
8 ~~imprisonment, the trier of fact shall take into account the aggravating and~~
9 ~~mitigating circumstances that have been proven. The trier of fact shall~~
10 ~~impose a sentence of death if the trier of fact finds one or more of the~~
11 ~~aggravating circumstances enumerated in subsection F of this section and then~~
12 ~~determines that there are no mitigating circumstances sufficiently~~
13 ~~substantial to call for leniency.~~

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

16 ~~1. The defendant has been convicted of another offense in the United~~
17 ~~States for which under Arizona law a sentence of life imprisonment or death~~
18 ~~was imposable.~~

19 ~~2. The defendant has been or was previously convicted of a serious~~
20 ~~offense, whether preparatory or completed. Convictions for serious offenses~~
21 ~~committed on the same occasion as the homicide, or not committed on the same~~
22 ~~occasion but consolidated for trial with the homicide, shall be treated as a~~
23 ~~serious offense under this paragraph.~~

24 ~~3. In the commission of the offense the defendant knowingly created a~~
25 ~~grave risk of death to another person or persons in addition to the person~~
26 ~~murdered during the commission of the offense.~~

27 ~~4. The defendant procured the commission of the offense by payment, or~~
28 ~~promise of payment, of anything of pecuniary value.~~

29 ~~5. The defendant committed the offense as consideration for the~~
30 ~~receipt, or in expectation of the receipt, of anything of pecuniary value.~~

31 ~~6. The defendant committed the offense in an especially heinous, cruel~~
32 ~~or depraved manner.~~

33 ~~7. The defendant committed the offense while:~~

34 ~~(a) In the custody of or on authorized or unauthorized release from~~
35 ~~the state department of corrections, a law enforcement agency or a county or~~
36 ~~city jail.~~

37 ~~(b) On probation for a felony offense.~~

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

41 ~~9. The defendant was an adult at the time the offense was committed or~~
42 ~~was tried as an adult and the murdered person was under fifteen years of age,~~
43 ~~was an unborn child in the womb at any stage of its development or was~~
44 ~~seventy years of age or older.~~

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

4 ~~11. The defendant committed the offense with the intent to promote,~~
5 ~~further or assist the objectives of a criminal street gang or criminal~~
6 ~~syndicate or to join a criminal street gang or criminal syndicate.~~

7 ~~12. The defendant committed the offense to prevent a person's~~
8 ~~cooperation with an official law enforcement investigation, to prevent a~~
9 ~~person's testimony in a court proceeding, in retaliation for a person's~~
10 ~~cooperation with an official law enforcement investigation or in retaliation~~
11 ~~for a person's testimony in a court proceeding.~~

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

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

16 ~~(a) "Authorized remote stun gun" means a remote stun gun that has all~~
17 ~~of the following:~~

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

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

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

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

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

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

38 ~~1. The defendant's capacity to appreciate the wrongfulness of his~~
39 ~~conduct or to conform his conduct to the requirements of law was~~
40 ~~significantly impaired, but not so impaired as to constitute a defense to~~
41 ~~prosecution.~~

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

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

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

8 ~~5. The defendant's age.~~

9 ~~H. For purposes of determining whether a conviction of any dangerous~~
10 ~~crime against children is a serious offense pursuant to this section, an~~
11 ~~unborn child shall be treated like a minor who is under twelve years of age.~~

12 ~~I. For the purposes of this section, "serious offense" means any of~~
13 ~~the following offenses if committed in this state or any offense committed~~
14 ~~outside this state that if committed in this state would constitute one of~~
15 ~~the following offenses:~~

16 ~~1. First degree murder.~~

17 ~~2. Second degree murder.~~

18 ~~3. Manslaughter.~~

19 ~~4. Aggravated assault resulting in serious physical injury or~~
20 ~~committed by the use, threatened use or exhibition of a deadly weapon or~~
21 ~~dangerous instrument.~~

22 ~~5. Sexual assault.~~

23 ~~6. Any dangerous crime against children.~~

24 ~~7. Arson of an occupied structure.~~

25 ~~8. Robbery.~~

26 ~~9. Burglary in the first degree.~~

27 ~~10. Kidnapping.~~

28 ~~11. Sexual conduct with a minor under fifteen years of age.~~

29 ~~12. Burglary in the second degree.~~

30 ~~13. Terrorism.~~

31 B. THE VICTIM HAS THE RIGHT TO BE PRESENT AT ANY SENTENCING PROCEEDING
32 AND TO PRESENT ANY INFORMATION THAT IS RELEVANT TO THE PROCEEDING. THE
33 VICTIM MAY PRESENT INFORMATION ABOUT THE MURDERED PERSON AND THE IMPACT OF
34 THE MURDER ON THE VICTIM AND OTHER FAMILY MEMBERS AND MAY SUBMIT A VICTIM
35 IMPACT STATEMENT IN ANY FORMAT. FOR THE PURPOSES OF THIS SUBSECTION,
36 "VICTIM" MEANS THE MURDERED PERSON'S SPOUSE, PARENT, CHILD OR OTHER LAWFUL
37 REPRESENTATIVE, EXCEPT IF THE SPOUSE, PARENT, CHILD OR OTHER LAWFUL
38 REPRESENTATIVE IS IN CUSTODY FOR AN OFFENSE OR IS THE ACCUSED.

39 Sec. 5. Repeal

40 Section 13-703.01, Arizona Revised Statutes, as amended by Laws 2005,
41 chapter 325, section 3, section 13-703.01, Arizona Revised Statutes, as
42 amended by Laws 2005, chapter 325, section 4 and sections 13-703.02,
43 13-703.03, 13-703.04, 13-703.05, 13-704, 13-705 and 13-706, Arizona Revised
44 Statutes, are repealed.

1 Sec. 6. Section 13-713, Arizona Revised Statutes, is amended to read:

2 13-713. Third or subsequent offenses by violent or aggravated
3 offenders; sentencing; life imprisonment; definition

4 A. Unless a longer term of imprisonment ~~or death~~ is the prescribed
5 penalty and notwithstanding any provision that establishes a shorter term of
6 imprisonment, a person who has been convicted of committing or attempting or
7 conspiring to commit any violent or aggravated felony and who has previously
8 been convicted on separate occasions of two or more violent or aggravated
9 felonies not committed on the same occasion shall be sentenced to
10 imprisonment for life and is not eligible for suspension of sentence,
11 probation, pardon or release on any basis except that the person may be
12 eligible for commutation after the person has served at least thirty-five
13 years.

14 B. In order for the penalty under subsection A of this section to
15 apply, both of the following must occur:

16 1. The aggravated or violent felonies that comprise the prior
17 convictions shall have been entered within fifteen years of the conviction
18 for the third offense, not including time spent in custody or on probation
19 for an offense or while the person is an absconder.

20 2. The sentence for the first aggravated or violent felony conviction
21 shall have been imposed before the conduct occurred that gave rise to the
22 second conviction, and the sentence for the second aggravated or violent
23 felony conviction shall have been imposed before the conduct occurred that
24 gave rise to the third conviction.

25 C. Chapter 3 of this title applies to all offenses under this section.

26 D. For the purposes of this section, if a person has been convicted of
27 an offense committed in another jurisdiction that if committed in this state
28 would be a violation or attempted violation of any of the offenses listed in
29 this section and that has the same elements of an offense listed in this
30 section, the offense committed in another jurisdiction is considered an
31 offense committed in this state.

32 E. For the purposes of this section, "violent or aggravated felony"
33 means any of the following offenses:

34 1. First degree murder.

35 2. Second degree murder.

36 3. Aggravated assault resulting in serious physical injury or
37 involving the discharge, use or threatening exhibition of a deadly weapon or
38 dangerous instrument.

39 4. Dangerous or deadly assault by prisoner.

40 5. Committing assault with intent to incite to riot or participate in
41 riot.

42 6. Drive by shooting.

43 7. Discharging a firearm at a residential structure if the structure
44 is occupied.

45 8. Kidnapping.

- 1 9. Sexual conduct with a minor that is a class 2 felony.
- 2 10. Sexual assault.
- 3 11. Molestation of a child.
- 4 12. Continuous sexual abuse of a child.
- 5 13. Violent sexual assault.
- 6 14. Burglary in the first degree committed in a residential structure
- 7 if the structure is occupied.
- 8 15. Arson of an occupied structure.
- 9 16. Arson of an occupied jail or prison facility.
- 10 17. Armed robbery.
- 11 18. Participating in or assisting a criminal syndicate or leading or
- 12 participating in a criminal street gang.
- 13 19. Terrorism.
- 14 20. Taking a child for the purpose of prostitution.
- 15 21. Child prostitution.
- 16 22. Commercial sexual exploitation of a minor.
- 17 23. Sexual exploitation of a minor.
- 18 24. Unlawful introduction of disease or parasite as prescribed by
- 19 section 13-2912, subsection A, paragraph 2 or 3.
- 20 Sec. 7. Section 13-1105, Arizona Revised Statutes, is amended to read:
- 21 13-1105. First degree murder; classification
- 22 A. A person commits first degree murder if:
- 23 1. Intending or knowing that the person's conduct will cause death,
- 24 the person causes the death of another person, including an unborn child,
- 25 with premeditation or, as a result of causing the death of another person
- 26 with premeditation, causes the death of an unborn child.
- 27 2. Acting either alone or with one or more other persons the person
- 28 commits or attempts to commit sexual conduct with a minor under section
- 29 13-1405, sexual assault under section 13-1406, molestation of a child under
- 30 section 13-1410, terrorism under section 13-2308.01, marijuana offenses under
- 31 section 13-3405, subsection A, paragraph 4, dangerous drug offenses under
- 32 section 13-3407, subsection A, paragraphs 4 and 7, narcotics offenses under
- 33 section 13-3408, subsection A, paragraph 7 that equal or exceed the statutory
- 34 threshold amount for each offense or combination of offenses, involving or
- 35 using minors in drug offenses under section 13-3409, kidnapping under section
- 36 13-1304, burglary under section 13-1506, 13-1507 or 13-1508, arson under
- 37 section 13-1703 or 13-1704, robbery under section 13-1902, 13-1903 or
- 38 13-1904, escape under section 13-2503 or 13-2504, child abuse under section
- 39 13-3623, subsection A, paragraph 1, ~~or~~ unlawful flight from a pursuing law
- 40 enforcement vehicle under section 28-622.01 and, in the course of and in
- 41 furtherance of the offense or immediate flight from the offense, the person
- 42 or another person causes the death of any person.
- 43 3. Intending or knowing that the person's conduct will cause death to
- 44 a law enforcement officer, the person causes the death of a law enforcement
- 45 officer who is in the line of duty.

1 B. Homicide, as prescribed in subsection A, paragraph 2 of this
2 section, requires no specific mental state other than what is required for
3 the commission of any of the enumerated felonies.

4 C. An offense under subsection A, paragraph 1 of this section applies
5 to an unborn child in the womb at any stage of its development. A person
6 shall not be prosecuted under subsection A, paragraph 1 of this section if
7 any of the following applies:

8 1. The person was performing an abortion for which the consent of the
9 pregnant woman, or a person authorized by law to act on the pregnant woman's
10 behalf, has been obtained or for which the consent was implied or authorized
11 by law.

12 2. The person was performing medical treatment on the pregnant woman
13 or the pregnant woman's unborn child.

14 3. The person was the unborn child's mother.

15 D. First degree murder is a class 1 felony and is punishable by ~~death~~
16 ~~or~~ life OR NATURAL LIFE imprisonment as provided by ~~sections~~ SECTION 13-703
17 ~~and 13-703.01~~.

18 Sec. 8. Section 13-3841, Arizona Revised Statutes, is amended to read:
19 13-3841. Definitions

20 In this article, unless the context otherwise requires:

21 1. "Charged with crime", "criminal charge" or "criminal offense"
22 includes any of the following:

23 (a) A felony or misdemeanor offense.

24 (b) Escape from confinement or the custody of any of the following:

25 (i) A law enforcement officer.

26 (ii) A custodial official.

27 (iii) A custodial agency.

28 (iv) A custodial institution.

29 (c) Being accused on a warrant of violating the terms of federal or
30 state supervision.

31 (d) Being accused of violating bail or conditions of release.

32 (e) ~~The conviction~~ BEING CONVICTED of a crime.

33 (f) Having an unserved remaining criminal sentence.

34 ~~(g) Being subject to the death penalty on criminal conviction.~~

35 ~~3-~~ 2. "Executive authority" includes the governor, and any person
36 performing the functions of governor in a state other than this state.

37 ~~2-~~ 3. "Governor" includes any person performing the functions of
38 governor by authority of the law of this state.

39 4. "State," when referring to a state other than this state, means
40 any other state or territory, organized or unorganized, of the United States.

41 Sec. 9. Section 13-3854, Arizona Revised Statutes, is amended to read:
42 13-3854. Arrest without a warrant

43 ~~The arrest of a person~~ A PEACE OFFICER OR A PRIVATE CITIZEN may be
44 lawfully ~~made also by any peace officer or a private citizen~~ MAKE AN ARREST
45 without a warrant ~~upon~~ ON reasonable information that the accused stands

1 charged in the courts of another state with a crime punishable by ~~death or~~
2 imprisonment for a term exceeding one year, ~~but when so arrested.~~ ON ARREST,
3 the accused must be taken before a judge or magistrate with all practicable
4 speed and A complaint must be made against ~~him~~ THE ACCUSED under oath
5 ~~setting.~~ THE COMPLAINT SHALL SET forth the ground for the arrest as in
6 section 13-3853, and thereafter ~~his~~ THE answer shall be heard as if ~~he~~ THE
7 ACCUSED had been arrested on a warrant.

8 Sec. 10. Section 13-3856, Arizona Revised Statutes, is amended to
9 read:

10 13-3856. Bail; in what cases; conditions of bond

11 Unless the offense with which the person is charged is an offense that
12 is punishable by ~~death or~~ life imprisonment under the laws of the state in
13 which ~~it~~ THE OFFENSE was committed, or the person is alleged to have escaped
14 from jail or prison or violated the terms of release following conviction of
15 a crime that is punishable in the state of conviction by imprisonment for a
16 term exceeding one year, a judge or magistrate in this state shall admit the
17 person arrested to bail by bond or undertaking, with sufficient sureties, and
18 in such sum as the court deems proper, conditioned on the person's appearance
19 before the court at all times specified by the court, and for the person's
20 surrender, ~~upon~~ ON the warrant of the governor of this state. This section
21 does not prevent the immediate service of the governor's warrant that is
22 issued pursuant to section 13-3847.

23 Sec. 11. Section 13-3859.02, Arizona Revised Statutes, is amended to
24 read:

25 13-3859.02. Imprisonment; alternative methods of extradition

26 If after a local criminal prosecution a fugitive defendant is sentenced
27 to serve a term of imprisonment in a correctional facility or a county jail,
28 the court shall vacate the fugitive proceedings and shall exonerate the
29 fugitive bond. After the proceedings are vacated and the bond is exonerated,
30 ~~except for death penalty cases,~~ sections 31-481 and 31-482 apply. If
31 sections 31-481 and 31-482 do not apply, the fugitive matter is governed by
32 any other applicable procedure for the rendition or extradition of fugitives,
33 subject to section 13-3859. The defendant's fugitive status is not
34 extinguished by the sentence of imprisonment.

35 Sec. 12. Section 13-3870, Arizona Revised Statutes, is amended to
36 read:

37 13-3870. Executive agreements

38 A. If this state wishes to obtain custody of a person WHO IS charged
39 in this state with a criminal offense and the person was convicted or is
40 imprisoned or held under criminal proceedings then pending against him in
41 another state, the governor of this state and the executive authority of the
42 other state may agree on the extradition of the person before the criminal
43 proceedings against the person have terminated or the person's sentence has
44 been served in the other state.

1 B. Any executive agreement entered into pursuant to subsection A of
2 this section shall be conditioned on the return of the person to the other
3 state at this state's expense as soon as the prosecution in this state is
4 terminated, ~~unless the person is sentenced to death under the laws of this~~
5 ~~state.~~

6 C. On demand of the executive authority of another state the governor
7 may surrender a person in this state who was returned to this state pursuant
8 to section 13-3863 and who has been charged with a criminal offense in the
9 demanding state. The person may be surrendered even if the person left the
10 demanding state involuntarily.

11 Sec. 13. Section 13-3906, Arizona Revised Statutes, is amended to
12 read:

13 13-3906. Processing arrestees; citizenship determination;
14 notice

15 A. Within twenty-four hours after a person is brought to a law
16 enforcement agency for incarceration, the law enforcement agency shall
17 inquire of the person and determine that person's country of citizenship. If
18 the person is not a United States citizen, the law enforcement agency shall:

19 1. Notify the person's country of citizenship of the person's
20 detention if the person does not waive notification or if the person's
21 country of citizenship requires notification regardless of the person's
22 waiver of notification.

23 2. Document the notification to the person's country of citizenship
24 and any waiver of notification.

25 3. Transmit any information obtained pursuant to this section to the
26 court and the prosecuting agency for the purpose of making a determination
27 pursuant to section 13-3961, subsection A, paragraph ~~5- 4~~ or section 13-3967,
28 subsection B, paragraph 11 or for any other lawful purpose.

29 B. The failure or inability of a law enforcement agency to provide the
30 notice required by this section does not:

31 1. Affect the admissibility of any statements, the voluntariness of a
32 guilty plea or the validity of a conviction.

33 2. Afford a defendant any rights in any proceeding related to
34 deportation, exclusion or denial of naturalization.

35 Sec. 14. Section 13-3961, Arizona Revised Statutes, is amended to
36 read:

37 13-3961. Offenses not bailable; purpose; preconviction;
38 exceptions

39 A. A person who is in custody shall not be admitted to bail if the
40 proof is evident or the presumption great that the person is guilty of the
41 offense charged and the offense charged is one of the following:

42 ~~1. A capital offense.~~

43 ~~2.~~ 1. Sexual assault.

44 ~~3.~~ 2. Sexual conduct with a minor who is under fifteen years of age.

45 ~~4.~~ 3. Molestation of a child who is under fifteen years of age.

1 ~~5.~~ 4. A serious felony offense if there is probable cause to believe
2 that the person has entered or remained in the United States illegally. For
3 the purposes of this paragraph:

4 (a) The court shall consider all of the following in making a
5 determination that a person has entered or remained in the United States
6 illegally:

7 (i) Whether a hold has been placed on the arrested person by the
8 United States immigration and customs enforcement.

9 (ii) Any indication by a law enforcement agency that the person is in
10 the United States illegally.

11 (iii) Whether an admission by the arrested person has been obtained by
12 the court or a law enforcement agency that the person has entered or remained
13 in the United States illegally.

14 (iv) Any information received from a law enforcement agency pursuant
15 to section 13-3906.

16 (v) Any evidence that the person has recently entered or remained in
17 the United States illegally.

18 (vi) Any other relevant information that is obtained by the court or
19 that is presented to the court by a party or any other person.

20 (b) "Serious felony offense" means any class 1, 2, 3 or 4 felony or
21 any violation of section 28-1383.

22 B. The purposes of bail and any conditions of release that are set by
23 a judicial officer include:

24 1. Assuring the appearance of the accused.

25 2. Protecting against the intimidation of witnesses.

26 3. Protecting the safety of the victim, any other person or the
27 community.

28 C. The initial determination of whether an offense is bailable
29 pursuant to subsection A of this section shall be made by the magistrate or
30 judicial officer at the time of the person's initial appearance.

31 D. Except as provided in subsection A of this section, a person who is
32 in custody shall not be admitted to bail if the person is charged with a
33 felony offense and the state certifies by motion and the court finds after a
34 hearing on the matter that there is clear and convincing evidence that the
35 person charged poses a substantial danger to another person or the community
36 or engaged in conduct constituting a violent offense, that no condition or
37 combination of conditions of release may be imposed that will reasonably
38 assure the safety of the other person or the community and that the proof is
39 evident or the presumption great that the person committed the offense for
40 which the person is charged. For the purposes of this subsection, "violent
41 offense" means either of the following:

42 1. A dangerous crime against children.

43 2. Terrorism.

44 E. On oral motion of the state, the court shall order the hearing
45 required by subsection D of this section at or within twenty-four hours of

1 the initial appearance unless the person who is subject to detention or the
2 state moves for a continuance. A continuance that is granted on the motion
3 of the person shall not exceed five calendar days unless there are
4 extenuating circumstances. A continuance on the motion of the state shall be
5 granted on good cause shown and shall not exceed twenty-four hours. The
6 prosecutor shall provide reasonable notice and an opportunity for victims and
7 witnesses to be present and heard at any hearing. The person may be detained
8 pending the hearing. The person is entitled to representation by counsel and
9 is entitled to present information by proffer or otherwise, to testify and to
10 present witnesses in the person's own behalf. Testimony of the person
11 charged that is given during the hearing shall not be admissible on the issue
12 of guilt in any subsequent judicial proceeding, except as it might relate to
13 the compliance with or violation of any condition of release subsequently
14 imposed or the imposition of appropriate sentence or in perjury proceedings,
15 or for the purposes of impeachment. The case of the person shall be placed
16 on an expedited calendar and, consistent with the sound administration of
17 justice, the person's trial shall be given priority. The person may be
18 admitted to bail in accordance with the Arizona rules of criminal procedure
19 whenever a judicial officer finds that a subsequent event has eliminated the
20 basis for detention.

21 F. The finding of an indictment or the filing of an information does
22 not add to the strength of the proof or the presumption to be drawn.

23 G. In a hearing pursuant to subsection C of this section, proof that
24 the person is a criminal street gang member may give rise to the inference
25 that the person poses a substantial danger to another person or the community
26 and that no condition or combination of conditions of release may be imposed
27 that will reasonably assure the safety of the other person or the community.

28 Sec. 15. Repeal

29 Title 13, chapter 38, article 17, Arizona Revised Statutes, is
30 repealed.

31 Sec. 16. Section 13-4031, Arizona Revised Statutes, is amended to
32 read:

33 13-4031. Right of appeal

34 The state, or any party to a prosecution by indictment, information or
35 complaint, may appeal as prescribed by law and in the manner provided by the
36 ARIZONA rules of criminal procedure, ~~except criminal actions involving crimes
37 for which a sentence of death has actually been imposed may only be appealed
38 to the supreme court.~~

39 Sec. 17. Section 13-4033, Arizona Revised Statutes, is amended to
40 read:

41 13-4033. Appeal by defendant

42 A. An appeal may be taken by the defendant only from:

- 43 1. A final judgment of conviction or verdict of guilty except insane.
- 44 2. An order denying a motion for a new trial or from an order made
45 after judgment affecting the substantial rights of the party.

1 ~~court may establish by rule more stringent standards of competency for the~~
2 ~~appointment of postconviction counsel in capital cases than are provided by~~
3 ~~this subsection. The supreme court may refuse to certify an attorney on the~~
4 ~~list who meets the qualifications established under this subsection or may~~
5 ~~remove an attorney from the list who meets the qualifications established~~
6 ~~under this subsection if the supreme court determines that the attorney is~~
7 ~~incapable or unable to adequately represent a capital defendant. The court~~
8 ~~shall appoint counsel from the list. Counsel who are appointed from the list~~
9 ~~shall meet the following qualifications:~~

10 ~~1. Be a member in good standing of the state bar of Arizona for at~~
11 ~~least five years immediately preceding the appointment.~~

12 ~~2. Have practiced in the area of state criminal appeals or~~
13 ~~postconviction proceedings for at least three years immediately preceding the~~
14 ~~appointment.~~

15 ~~3. Not previously have represented the capital defendant in the case~~
16 ~~either in the trial court or in the direct appeal, unless the defendant and~~
17 ~~counsel expressly request continued representation and waive all potential~~
18 ~~issues that are foreclosed by continued representation.~~

19 ~~D. Before filing a petition, the capital defendant may personally~~
20 ~~appear before the trial court and waive counsel. If the trial court finds~~
21 ~~that the waiver is knowing and voluntary, appointed counsel may withdraw.~~
22 ~~The time limits in which to file a petition shall not be extended due solely~~
23 ~~to the change from appointed counsel to self-representation.~~

24 ~~E. If at any time the trial court determines that the capital~~
25 ~~defendant is not indigent, appointed counsel shall no longer be compensated~~
26 ~~by public monies and may withdraw.~~

27 ~~F. Unless counsel is employed by a publicly funded office, counsel~~
28 ~~appointed to represent a capital defendant in state postconviction relief~~
29 ~~proceedings shall be paid an hourly rate of not to exceed one hundred dollars~~
30 ~~per hour for up to two hundred hours of work, whether or not a petition is~~
31 ~~filed. Monies shall not be paid to court appointed counsel unless either:~~

32 ~~1. A petition is timely filed.~~

33 ~~2. If a petition is not filed, a notice is timely filed stating that~~
34 ~~counsel has reviewed the record and found no meritorious claim.~~

35 ~~G. B.~~ On a showing of good cause, the trial court shall compensate
36 appointed counsel from county funds ~~in addition to the amount of compensation~~
37 ~~prescribed by subsection F of this section~~ by paying an hourly rate in an
38 amount that does not exceed one hundred dollars per hour. The attorney may
39 establish good cause for additional fees by demonstrating that the attorney
40 spent over two hundred hours representing the defendant in the proceedings.
41 The court shall review and approve additional reasonable fees and costs. If
42 the attorney believes that the court has set an unreasonably low hourly rate
43 or if the court finds that the hours the attorney spent over the two hundred
44 hour threshold are unreasonable, the attorney may file a special action with
45 the Arizona supreme court. If counsel is appointed in successive

1 postconviction relief proceedings, compensation shall be paid pursuant to
2 section 13-4013, ~~subsection A.~~

3 ~~H. The county shall request reimbursement for fees it incurs pursuant~~
4 ~~to subsections F, G and I of this section arising out of the appointment of~~
5 ~~counsel to represent an indigent capital defendant in a state postconviction~~
6 ~~relief proceeding. The state shall pay fifty per cent of the fees incurred~~
7 ~~by the county out of monies appropriated to the supreme court for these~~
8 ~~purposes. The supreme court shall approve county requests for reimbursement~~
9 ~~after certification that the amount requested is owed.~~

10 ~~I.~~ C. The trial court may authorize additional monies to pay for
11 investigative and expert services that are reasonably necessary to adequately
12 litigate those claims that are not precluded by section 13-4232.

13 Sec. 20. Repeal

14 Section 13-4042, Arizona Revised Statutes, is repealed.

15 Sec. 21. Section 13-4234, Arizona Revised Statutes, is amended to
16 read:

17 13-4234. Commencement of proceedings; notice; assignment of
18 judge

19 A. A proceeding is commenced by timely filing a notice of
20 postconviction relief with the clerk of the court in which the conviction
21 occurred. The clerk of the trial court shall provide notice forms for
22 commencement of first and successive postconviction relief proceedings. The
23 notice shall bear the caption of the original criminal action to which it
24 pertains. The notice in successive postconviction relief proceedings shall
25 comply with section 13-4232, subsection B. On receipt of the notice, the
26 clerk of the trial court shall file a copy of the notice in the case file of
27 each original action and promptly send copies to the defendant, the
28 defendant's attorney, if known, the county attorney and the attorney general,
29 noting the date and manner of sending the copies in the record. The state
30 shall notify the victim on request.

31 B. If an appeal of the defendant's conviction or sentence, or both, is
32 pending, the clerk, within five days after the filing of the notice for
33 postconviction relief, shall send a copy of the notice to the appropriate
34 appellate court, noting the date and manner of sending the copy in the
35 record.

36 C. ~~In noncapital cases,~~ The notice shall be filed within ninety days
37 after the judgment and sentence are entered or within thirty days after the
38 order and mandate affirming the judgment and sentence is issued on direct
39 appeal, whichever is later. A defendant has sixty days from the filing of
40 the notice in which to file a petition. On the filing of a successive
41 notice, a defendant has thirty days from the filing of the notice in which to
42 file a petition.

43 ~~D. In capital cases, on the issuance of a mandate affirming the~~
44 ~~defendant's conviction and sentence on direct appeal, the clerk of the~~
45 ~~supreme court expeditiously shall file a notice of postconviction relief with~~

1 ~~the trial court. On the first notice in capital cases, a defendant has sixty~~
2 ~~days from the filing of the notice in which to file a petition. The supreme~~
3 ~~court shall appoint counsel pursuant to section 13-4041, subsection B. All~~
4 ~~indigent state prisoners under a capital sentence are entitled to the~~
5 ~~appointment of counsel to represent them in state postconviction proceedings.~~
6 ~~A competent indigent defendant may reject the offer of counsel with an~~
7 ~~understanding of its legal consequence. On successive notice in capital~~
8 ~~cases, the trial court shall appoint the previous postconviction relief~~
9 ~~counsel of the capital defendant unless counsel is waived pursuant to section~~
10 ~~13-4041, subsection D or good cause exists to appoint another qualified~~
11 ~~attorney pursuant to section 13-4041, subsection B. On the filing of a~~
12 ~~successive notice, a capital defendant or an appointed attorney has thirty~~
13 ~~days from the filing of the notice in which to file a petition.~~

14 ~~E.~~ D. A defendant who has pled guilty and who is precluded from
15 filing a direct appeal pursuant to section 13-4033 may be granted an
16 additional thirty day extension of time in which to file the petition if the
17 defendant's counsel refuses to raise issues and leaves the defendant
18 insufficient time to file a petition within the time limits.

19 ~~F.~~ E. On a specific and detailed showing of good cause, a defendant
20 ~~in a noncapital case~~ may be granted up to a sixty day extension of time in
21 which to file the petition. ~~On a specific and detailed showing of good~~
22 ~~cause, a defendant in a capital case may be granted one thirty day extension~~
23 ~~of time in which to file the petition.~~

24 ~~G.~~ F. The time limits are jurisdictional, and an untimely filed
25 notice or petition shall be dismissed with prejudice.

26 ~~H.~~ G. If the record of the trial proceeding has not been transcribed,
27 the defendant may request on a form provided by the clerk of the superior
28 court that the record be prepared. The court shall order that those portions
29 of the record be prepared that it deems necessary to resolve the issues to be
30 raised in the petition. The preparation of the record is a county expense if
31 the defendant is indigent. The time for filing the petition is tolled from
32 the time a request for the record is made until the record is prepared or the
33 request is denied.

34 ~~I.~~ H. The proceeding shall be assigned to the sentencing judge if it
35 is possible. If it appears that the sentencing judge's testimony is
36 relevant, the sentencing judge shall transfer the case to another judge.

37 ~~J.~~ ~~If the defendant has received a sentence of death and the supreme~~
38 ~~court has fixed the time for execution of the sentence, a stay of execution~~
39 ~~shall not be granted on the filing of a second or subsequent petition except~~
40 ~~on separate application for a stay to the supreme court setting forth with~~
41 ~~particularity those issues raised which are not precluded under section~~
42 ~~13-4232. The warrant shall not be stayed to allow for the filing of a~~
43 ~~petition.~~

44 Sec. 22. Repeal

45 Section 13-4234.01, Arizona Revised Statutes, is repealed.

1 Sec. 23. Section 21-102, Arizona Revised Statutes, is amended to read:
2 21-102. Juries; size; degree of unanimity required; waiver

3 A. A jury for trial of a criminal case in which a sentence of ~~death or~~
4 imprisonment for thirty years or more is authorized by law shall consist of
5 twelve persons, and the concurrence of all shall be necessary to render a
6 verdict.

7 B. A jury for trial in any court of record of any other criminal case
8 shall consist of eight persons, and the concurrence of all shall be necessary
9 to render a verdict.

10 C. A jury for trial in any court of record of a civil case shall
11 consist of eight persons, and the concurrence of all but two shall be
12 necessary to render a verdict.

13 D. In a court not of record, a jury for trial of any case shall
14 consist of six persons. The concurrence of all in a criminal case and all
15 but one in a civil case shall be necessary to render a verdict.

16 E. The parties in a civil case, and the parties with the consent of
17 the court in a criminal case, may waive trial by jury, or at any time before
18 a verdict is returned consent to try the case with or receive a verdict
19 concurred in by a lesser number of jurors than that specified above.

20 Sec. 24. Section 25-903, Arizona Revised Statutes, is amended to read:
21 25-903. Dissolution of a covenant marriage; grounds

22 Notwithstanding any law to the contrary, if a husband and wife have
23 entered into a covenant marriage pursuant to this chapter the court shall not
24 enter a decree of dissolution of marriage pursuant to chapter 3, article 2 of
25 this title unless it finds any of the following:

26 1. The respondent spouse has committed adultery.

27 2. The respondent spouse has committed a felony and has been sentenced
28 to ~~death or~~ imprisonment in any federal, state, county or municipal
29 correctional facility.

30 3. The respondent spouse has abandoned the matrimonial domicile for at
31 least one year before the petitioner filed for dissolution of marriage and
32 refuses to return. A party may file a petition based on this ground by
33 alleging that the respondent spouse has left the matrimonial domicile and is
34 expected to remain absent for the required period. If the respondent spouse
35 has not abandoned the matrimonial domicile for the required period at the
36 time of the filing of the petition, the action shall not be dismissed for
37 failure to state sufficient grounds and the action shall be stayed for the
38 period of time remaining to meet the grounds based on abandonment, except
39 that the court may enter and enforce temporary orders pursuant to section
40 25-315 during the time that the action is pending.

41 4. The respondent spouse has physically or sexually abused the spouse
42 seeking the dissolution of marriage, a child, ~~OR~~ OR a relative of either spouse
43 permanently living in the matrimonial domicile or has committed domestic
44 violence as defined in section 13-3601 or emotional abuse.

1 5. The spouses have been living separate and apart continuously
2 without reconciliation for at least two years before the petitioner filed for
3 dissolution of marriage. A party may file a petition based on this ground by
4 alleging that it is expected that the parties will be living separate and
5 apart for the required period. If the parties have not been separated for
6 the required period at the time of the filing of the petition, the action
7 shall not be dismissed for failure to state sufficient grounds and the action
8 shall be stayed for the period of time remaining to meet the grounds based on
9 separation, except that the court may enter and enforce temporary orders
10 pursuant to section 25-315 during the time that the action is pending.

11 6. The spouses have been living separate and apart continuously
12 without reconciliation for at least one year from the date the decree of
13 legal separation was entered.

14 7. The respondent spouse has habitually abused drugs or alcohol.

15 8. The husband and wife both agree to a dissolution of marriage.

16 Sec. 25. Section 25-904, Arizona Revised Statutes, is amended to read:
17 25-904. Decree of legal separation; grounds

18 Notwithstanding any law to the contrary, if a husband and wife have
19 entered into a covenant marriage pursuant to this chapter the court shall not
20 enter a decree of legal separation pursuant to chapter 3, article 2 of this
21 title unless it finds any of the following:

22 1. The respondent spouse has committed adultery.

23 2. The respondent spouse has committed a felony and has been sentenced
24 to ~~death or~~ imprisonment in any federal, state, county or municipal
25 correctional facility.

26 3. The respondent spouse has abandoned the matrimonial domicile for at
27 least one year before the petitioner filed for legal separation and refuses
28 to return. A party may file a petition based on this ground by alleging that
29 the respondent spouse has left the matrimonial domicile and is expected to
30 remain absent for the required period. If the respondent spouse has not
31 abandoned the matrimonial domicile for the required period at the time of the
32 filing of THE petition, the action shall not be dismissed for failure to
33 state sufficient grounds and the action shall be stayed for the period of
34 time remaining to meet the grounds based on abandonment, except that the
35 court may enter and enforce temporary orders pursuant to section 25-315
36 during the time that the action is pending.

37 4. The respondent spouse has physically or sexually abused the
38 petitioner, a child, ~~OR~~ a relative of either spouse permanently living in
39 the matrimonial domicile or has committed domestic violence as defined in
40 section 13-3601 or emotional abuse.

41 5. The spouses have been living separate and apart continuously
42 without reconciliation for at least two years before the petitioner filed for
43 legal separation. A party may file a petition based on this ground by
44 alleging that it is expected that the parties will be living separate and
45 apart for the required period. If the parties have not been separated for

1 the required period at the time of the filing of the petition, the action
2 shall not be dismissed for failure to state sufficient grounds and the action
3 shall be stayed for the period of time remaining to meet the grounds based on
4 separation, except that the court may enter and enforce temporary orders
5 pursuant to section 25-315 during the time that the action is pending.

6 6. The respondent spouse's habitual intemperance or ill treatment of
7 the other spouse is of such a nature as to render their living together
8 insupportable.

9 7. The respondent spouse has habitually abused drugs or alcohol.

10 Sec. 26. Section 31-240, Arizona Revised Statutes, is amended to read:
11 31-240. Prisoner education services budget; prohibitions

12 A. The director shall establish and maintain a dedicated prisoner
13 education services budget for each state prison to identify the monies
14 appropriated to the department and expended for the following education
15 programs:

16 1. The functional literacy program established pursuant to section
17 31-229.

18 2. Adult basic education.

19 3. General equivalency diploma **PREPARATION**.

20 4. Vocational and technical education.

21 B. The director shall not expend the education services budget monies
22 for education programs dedicated to prisoners incarcerated in a special
23 management unit ~~or prisoners sentenced to death~~.

24 C. ~~The provisions of~~ Subsection B of this section ~~shall~~ **DOES** not apply
25 to prisoners who are under eighteen years of age and prisoners with
26 disabilities who are under twenty-two years of age.

27 Sec. 27. Section 31-445, Arizona Revised Statutes, is amended to read:

28 31-445. Publication of reasons for granting a commutation,
29 pardon or reprieve

30 ~~When the governor grants a commutation, pardon, reprieve or stay or~~
31 ~~suspends execution of sentence in a case where a sentence of death is~~
32 ~~imposed, he shall,~~ Within ten days after granting **the A** commutation, pardon,
33 **OR** reprieve, ~~or stay or suspension of execution, cause to be published~~ **THE**
34 **GOVERNOR SHALL PUBLISH** in bold type, in a newspaper of general circulation,
35 **THAT IS** published in the county where the conviction was had, and shall file
36 with the secretary of state for publication in the Arizona administrative
37 register, a statement setting forth ~~his~~ **THE GOVERNOR'S** reasons for granting
38 the commutation, pardon, **OR** reprieve ~~or for staying or suspending such~~
39 ~~execution~~. A further reprieve shall not be granted except ~~upon~~ **ON** the same
40 procedure.

41 Sec. 28. Section 41-1013, Arizona Revised Statutes, is amended to
42 read:

43 41-1013. Register

44 A. The secretary of state shall publish the register at least once
45 each month, including the information ~~which~~ **THAT** is provided under subsection

1 B of this section and ~~which~~ THAT is filed with the secretary of state during
2 the preceding thirty days. The secretary of state shall publish an index to
3 the register at least twice each year.

4 B. The register shall contain:

5 1. A schedule of the time, date and place of all hearings on proposed
6 repeals, makings or amendments of rules.

7 2. Each governor's executive order.

8 3. Each governor's proclamation of general applicability, and each
9 statement filed by the governor in granting a commutation, pardon or reprieve
10 ~~or stay or suspension of execution where a sentence of death is imposed.~~

11 4. A summary of each attorney general's opinion.

12 5. Each governor's appointment of state officials and board and
13 commission members.

14 6. A table of contents.

15 7. The notice and agency summary of each docket opening.

16 8. The full text and accompanying preamble of each proposed rule.

17 9. The full text and accompanying preamble of each final rule.

18 10. The full text and accompanying preamble of each emergency rule.

19 11. Supplemental notices of a proposed rule or summary rule.

20 12. A summary of council action on each rule.

21 13. The full text of any exempt final rule filed with the secretary of
22 state pursuant to section 41-1005, subsection C.

23 14. The identification and a summary of substantive policy statements
24 and notice and a summary of any guidance document publication or revision
25 submitted by an agency.

26 15. Notices of oral proceedings, public workshops or other meetings on
27 an open rule making docket.

28 C. The register shall be available by subscription and for single copy
29 purchase. The charge for each register or periodic subscription shall be a
30 reasonable charge, not to exceed all costs of production and distribution of
31 the register.

32 D. For purposes of this section, full text publication in the register
33 includes all new, amended or added language and such existing language as the
34 proposing agency deems necessary for a proper understanding of the proposed
35 rule. Rules that are undergoing extensive revision may be reprinted in
36 whole. Existing rule language not required for understanding shall be
37 omitted and marked "no change".

38 Sec. 29. Repeal

39 Section 41-3011.13, Arizona Revised Statutes, is repealed.

40 Sec. 30. Repeal

41 Title 41, chapter 42, Arizona Revised Statutes, is repealed.

42 Sec. 31. Repeal

43 Laws 2006, chapter 369, sections 8, 9 and 10 are repealed.

1 Sec. 32. Death sentences: commutation

2 The supreme court shall remand each case in which a sentence of death
3 was imposed before the effective date of this act to the court in the county
4 in which the sentence of death was imposed and that court shall strike the
5 sentence of death and enter in its place a sentence of natural life. An
6 order sentencing a prisoner to natural life is not subject to commutation,
7 parole, community supervision, work furlough or work release.