

REFERENCE TITLE: capital cases; aggravating factors

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

HB 2533

Introduced by
Representative Farnsworth

AN ACT

AMENDING SECTION 13-703, ARIZONA REVISED STATUTES; RELATING TO SENTENCING.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 13-703, Arizona Revised Statutes, is amended to
3 read:

4 13-703. Sentence of death or life imprisonment; aggravating and
5 mitigating circumstances; definition

6 A. If the state has filed a notice of intent to seek the death penalty
7 and the defendant is convicted of first degree murder as defined in section
8 13-1105, the defendant shall be sentenced to death or imprisonment in the
9 custody of the state department of corrections for life or natural life as
10 determined and in accordance with the procedures provided in section
11 13-703.01. A defendant who is sentenced to natural life is not eligible for
12 commutation, parole, work furlough, work release or release from confinement
13 on any basis. If the defendant is sentenced to life, the defendant shall not
14 be released on any basis until the completion of the service of twenty-five
15 calendar years if the murdered person was fifteen or more years of age and
16 thirty-five years if the murdered person was under fifteen years of age or
17 was an unborn child. In this section, for purposes of punishment an unborn
18 child shall be treated like a minor who is under twelve years of age.

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

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

39 D. Evidence that is admitted at the trial and that relates to any
40 aggravating or mitigating circumstances shall be deemed admitted as evidence
41 at a sentencing proceeding if the trier of fact considering that evidence is
42 the same trier of fact that determined the defendant's guilt. The
43 prosecution and the defendant shall be permitted to rebut any information
44 received at the aggravation or penalty phase of the sentencing proceeding and
45 shall be given fair opportunity to present argument as to whether the

1 information is sufficient to establish the existence of any of the
2 circumstances included in subsections F and G of this section.

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

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

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

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

20 3. In the commission of the offense the defendant knowingly created a
21 grave risk of death to another person or persons in addition to the person
22 murdered during the commission of the offense.

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

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

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

29 7. The defendant committed the offense while:

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

33 (b) On probation for a felony offense.

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

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

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

1 11. The defendant committed the offense with the intent to promote,
2 further or assist the objectives of a criminal street gang or criminal
3 syndicate or to join a criminal street gang or criminal syndicate.

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

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

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

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

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

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

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

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

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

30 15. THE DEFENDANT COMMITTED THE OFFENSE IN CONNECTION WITH A GANG
31 INITIATION KILLING.

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

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

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

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

- 1 4. The defendant could not reasonably have foreseen that his conduct
2 in the course of the commission of the offense for which the defendant was
3 convicted would cause, or would create a grave risk of causing, death to
4 another person.
- 5 5. The defendant's age.
- 6 H. For THE purposes of determining whether a conviction of any
7 dangerous crime against children is a serious offense pursuant to this
8 section, an unborn child shall be treated like a minor who is under twelve
9 years of age.
- 10 I. For the purposes of this section, "serious offense" means any of
11 the following offenses if committed in this state or any offense committed
12 outside this state that if committed in this state would constitute one of
13 the following offenses:
- 14 1. First degree murder.
 - 15 2. Second degree murder.
 - 16 3. Manslaughter.
 - 17 4. Aggravated assault resulting in serious physical injury or
18 committed by the use, threatened use or exhibition of a deadly weapon or
19 dangerous instrument.
 - 20 5. Sexual assault.
 - 21 6. Any dangerous crime against children.
 - 22 7. Arson of an occupied structure.
 - 23 8. Robbery.
 - 24 9. Burglary in the first degree.
 - 25 10. Kidnapping.
 - 26 11. Sexual conduct with a minor under fifteen years of age.
 - 27 12. Burglary in the second degree.
 - 28 13. Terrorism.