Senate Engrossed House Bill

FILED
KEN BENNETT
SECRETARY OF STATE

State of Arizona
House of Representatives
Forty-ninth Legislature
First Regular Session
2009

CHAPTER 82

HOUSE BILL 2315

AN ACT

AMENDING SECTIONS 8-238 AND 8-350, ARIZONA REVISED STATUTES; CHANGING THE DESIGNATION OF TITLE 13, CHAPTER 7, ARIZONA REVISED STATUTES, TO "SENTENCING AND IMPRISONMENT"; AMENDING SECTIONS 13-704, 13-708, 13-709.03, 13-710, 13-3419 AND 13-4515, ARIZONA REVISED STATUTES; RELATING TO SENTENCING.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

Section 1. Section 8-238, Arizona Revised Statutes, is amended to read:

8-238. Advisory hearing; DNA

A. If a juvenile is arrested for a violation of any of the following offenses and is summoned to appear at an advisory hearing, the judicial officer shall order the juvenile to report within five days to the law enforcement agency that arrested the ~~person~~ JUVENILE or to the agency's designee and submit a sufficient sample of buccal cells or other bodily substances for deoxyribonucleic acid testing and extraction:

1. An offense listed in title 13, chapter 11.

2. A violation of section 13-1402, 13-1403, 13-1404, 13-1405, 13-1406, 13-1410, 13-1411 or 13-1417.

3. A violation of section 13-1507 or 13-1508.

4. A violation of any serious offense ~~pursuant to section 13-604 involving the discharge, use or threatening exhibition of a deadly weapon or dangerous instrument or the intentional or knowing infliction of serious physical injury~~ AS DEFINED IN SECTION 13-706 THAT IS A DANGEROUS OFFENSE AS DEFINED IN SECTION 13-105.

B. If a ~~person~~ JUVENILE does not comply with an order issued pursuant to subsection A of this section, the court shall revoke the ~~person's~~ JUVENILE'S release.

Sec. 2. Section 8-350, Arizona Revised Statutes, is amended to read:

8-350. Dangerous offenders; sex offenders; notification to schools; definition

A. If a juvenile is adjudicated delinquent for or convicted of a dangerous offense or a violation of section 13-1405, 13-1406, 13-1410 or 13-1417 and the juvenile is placed on probation and is attending school, the court shall notify the elementary or high school district in which the juvenile resides that the juvenile has been adjudicated delinquent or convicted and is on probation. The elementary or high school district shall transmit this notice to the school that the ~~person~~ JUVENILE attends.

B. Elementary or high school districts and local elementary and high schools through the local school district may request from the court the criminal history of individual students to determine if a student has been adjudicated delinquent for or convicted of a dangerous offense or a violation of section 13-1405, 13-1406, 13-1410 or 13-1417.

C. The school that the ~~person~~ JUVENILE attends shall make the information it receives pursuant to this section available to teachers, parents, guardians or custodians on request.

D. For the purposes of this section, "dangerous offense" has the same meaning prescribed in section 13-105.

Sec. 3. Heading change

The chapter heading of title 13, chapter 7, Arizona Revised Statutes, is changed from "IMPRISONMENT" to "SENTENCING AND IMPRISONMENT".

Sec. 4. Section 13-704, Arizona Revised Statutes, is amended to read:

13-704. Dangerous offenders; sentencing

A. Except as provided in section 13-705, a person who is at least eighteen years of age or who has been tried as an adult and who stands convicted of a felony that is a dangerous offense shall be sentenced to a term of imprisonment as follows:

Felony	Minimum	Presumptive	Maximum
Class 2	7 years	10.5 years	21 years
Class 3	5 years	7.5 years	15 years
Class 4	4 years	6 years	8 years
Class 5	2 years	3 years	4 years
Class 6	1.5 years	2.25 years	3 years

B. Except as provided in section 13-705, a person who is convicted of a class 4, 5 or 6 felony that is a dangerous offense and who has one historical prior felony conviction involving a dangerous offense shall be sentenced to a term of imprisonment as follows:

Felony	Minimum	Presumptive	Maximum
Class 4	8 years	10 years	12 years
Class 5	4 years	5 years	6 years
Class 6	3 years	3.75 years	4.5 years

C. Except as provided in section 13-705 or section 13-706, subsection A, a person who is convicted of a class 4, 5 or 6 felony that is a dangerous offense and who has two or more historical prior felony convictions involving dangerous offenses shall be sentenced to a term of imprisonment as follows:

Felony	Minimum	Presumptive	Maximum
Class 4	12 years	14 years	16 years
Class 5	6 years	7 years	8 years
Class 6	4.5 years	5.25 years	6 years

D. Except as provided in section 13-705 or section 13-706, subsection A, a person who is convicted of a class 2 or 3 felony involving a dangerous offense and who has one historical prior felony conviction that is a class 1, 2 or 3 felony involving a dangerous offense shall be sentenced to a term of imprisonment as follows:

Felony	Minimum	Presumptive	Maximum
Class 2	14 years	15.75 years	28 years
Class 3	10 years	11.25 years	20 years

E. Except as provided in section 13-705 or section 13-706, subsection A, a person who is convicted of a class 2 or 3 felony involving a dangerous offense and who has two or more historical prior felony convictions that are class 1, 2 or 3 felonies involving dangerous offenses shall be sentenced to a term of imprisonment as follows:

Felony	Minimum	Presumptive	Maximum
Class 2	21 years	28 years	35 years
Class 3	15 years	20 years	25 years

F. A person who is convicted of two or more felony offenses that are dangerous offenses and that were not committed on the same occasion but that are consolidated for trial purposes or that are not historical prior felony convictions shall be sentenced, for the second or subsequent offense, pursuant to this subsection. FOR A PERSON SENTENCED PURSUANT TO THIS SUBSECTION, THE MINIMUM TERM PRESCRIBED SHALL BE THE PRESUMPTIVE TERM. If the court increases or decreases a sentence pursuant to this subsection, the court shall state on the record the reasons for the increase or decrease. The court shall inform all of the parties before the sentencing occurs of its intent to increase or decrease a sentence pursuant to this subsection. If the court fails to inform the parties, a party waives its right to be informed unless the party timely objects at the time of sentencing. The terms are as follows:

1. For the second dangerous offense:

Felony	Minimum	Maximum	Increased Maximum
Class 2	10.5 years	21 years	26.25 years
Class 3	7.5 years	15 years	18.75 years
Class 4	6 years	8 years	10 years
Class 5	3 years	4 years	5 years
Class 6	2.25 years	3 years	3.75 years

2. For any dangerous offense subsequent to the second dangerous felony offense:

Felony	Minimum	Maximum	Increased Maximum
Class 2	15.75 years	28 years	35 years
Class 3	11.25 years	20 years	25 years
Class 4	10 years	12 years	15 years
Class 5	5 years	6 years	7.5 years
Class 6	3.75 years	4.5 years	5.6 years

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

H. The presumptive term authorized by this section may be mitigated or aggravated pursuant to the terms of section 13-701, subsections C, D ~~or~~ AND E.

I. For the purposes of determining the applicability of the penalties provided in subsection A, ~~B, C,~~ D or E of this section for second or subsequent class 2 or 3 felonies, the conviction for any felony committed before October 1, 1978 that, if committed after October 1, 1978, could be a dangerous offense under subsection A, ~~B, C,~~ D or E of this section may be designated by the state as a prior felony.

J. Convictions for two or more offenses committed on the same occasion shall be counted as only one conviction for the purposes of subsection A, B, C, D or E of this section.

K. A person who has been convicted in any court outside the jurisdiction of this state of an offense that if committed in this state would be punishable as a felony is subject to subsection A, B, C, D or E of this section. A person who has been convicted of an offense punishable as a felony under the provisions of any prior code in this state is subject to subsection A, B, C, D or E of this section.

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

M. Except as provided in section 13-705 or 13-751, if the victim is an unborn child in the womb at any stage of its development, the defendant shall be sentenced pursuant to this section.

Sec. 5. Section 13-708, Arizona Revised Statutes, is amended to read:

13-708. <u>Offenses committed while released from confinement</u>

A. A person who is convicted of any felony involving a dangerous offense that is committed while the person is on probation~~,~~ for a conviction of a felony offense or parole, work furlough, community supervision or any other release or has escaped from confinement for conviction of a felony offense shall be sentenced to imprisonment for not less than the presumptive sentence authorized under this chapter and is not eligible for suspension or commutation or release on any basis until the sentence imposed is served.

B. A person who is convicted of a dangerous offense that is committed while the person is on release or has escaped from confinement for a conviction of a serious offense as defined in section 13-706, an offense

resulting in serious physical injury or an offense involving the use or exhibition of a deadly weapon or dangerous instrument shall be sentenced to the maximum sentence authorized under this chapter and is not eligible for suspension or commutation or release on any basis until the sentence imposed is served. If the court finds that at least two substantial aggravating circumstances listed in section 13-701, subsection D apply, the court may increase the maximum sentence authorized under this chapter by up to twenty-five per cent. A sentence imposed pursuant to this subsection shall revoke the convicted person's release if the person was on release and shall be consecutive to any other sentence from which the convicted person had been temporarily released or had escaped, unless the sentence from which the convicted person had been paroled or placed on probation was imposed by a jurisdiction other than this state.

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

D. A person who is convicted of committing any felony offense that is committed while the person is released on bond or on the person's own recognizance on a separate felony offense or while the person is escaped from preconviction custody for a separate felony offense shall be sentenced to a term of imprisonment two years longer than would otherwise be imposed for the felony offense committed while on release. The additional sentence imposed under this subsection is in addition to any enhanced punishment that may be applicable under section 13-703, section 13-704, section 13-709.01,

subsection A or section 13-709.02, subsection C. The person is not eligible for suspension of sentence, probation, pardon or release from confinement on any basis, except as specifically authorized by section 31-233, subsection A or B, until the two years are served, the person is eligible for release pursuant to section 41-1604.07 or the sentence is commuted. The penalties prescribed by this subsection shall be substituted for the penalties otherwise authorized by law if the allegation that the person committed a felony while released on bond or on the person's own recognizance or while escaped from preconviction custody is charged in the indictment or information and admitted or found by the court. The release provisions prescribed by this subsection shall not be substituted for any penalties required by the substantive offense or provision of law that specifies a later release or completion of the sentence imposed before release. The court shall allow the allegation that the person committed a felony while released on bond or on the person's own recognizance on a separate felony offense or while escaped from preconviction custody on a separate felony offense at any time before the case is actually tried unless the allegation is filed fewer than twenty days before the case is actually tried and the court finds on the record that the person was in fact prejudiced by the untimely filing and states the reasons for these findings. The allegation that the person committed a felony while released on bond or on the person's own recognizance or while escaped from preconviction custody shall not be read to the jury. For the purposes of this subsection, "substantive offense" means the felony offense that the trier of fact found beyond a reasonable doubt the person committed. Substantive offense does not include allegations that, if proven, would enhance the sentence of imprisonment or fine to which the person otherwise would be subject.

Sec. 6. Section 13-709.03, Arizona Revised Statutes, is amended to read:

13-709.03. Special sentencing provisions; drug offenses

A. A person who is convicted of a violation of section 13-3407, subsection A, paragraph 2, 3, 4 or 7 involving methamphetamine shall be sentenced as follows:

Minimum	Presumptive	Maximum
5 CALENDAR years	10 CALENDAR years	15 CALENDAR years

B. A person who is convicted of a violation of section 13-3407, subsection A, paragraph 2, 3, 4 or 7 involving methamphetamine and who has previously been convicted of a violation of section 13-3407, subsection A, paragraph 2, 3, 4 or 7 involving methamphetamine or section 13-3407.01 shall be sentenced as follows:

Minimum	Presumptive	Maximum
10 CALENDAR years	15 CALENDAR years	20 CALENDAR years

C. The presumptive, minimum and maximum sentence for a violation of section 13-3411, subsection A shall be increased by one year. A person is not eligible for suspension of sentence, probation, pardon or release from

confinement on any basis except pursuant to section 31-233, subsection A or B until the sentence imposed by the court has been served or commuted. The additional sentence imposed under section 13-3411, subsection B is in addition to any enhanced punishment that may be applicable under section 13-703, section 13-704, section 13-708, subsection D or any provision of chapter 34 of this title.

D. The presumptive term imposed pursuant to subsections A and B of this section may be mitigated or aggravated pursuant to section 13-701, subsections D and E.

Sec. 7. Section 13-710, Arizona Revised Statutes, is amended to read:

13-710. Sentence for second degree murder

A. Except as provided in section 13-705 or section 13-706, subsection A, a person who is convicted of second degree murder as defined by section 13-1104 shall be sentenced as follows:

Minimum	Presumptive	Maximum
10 CALENDAR years	16 CALENDAR years	22 CALENDAR years

B. Except as provided in section 13-704 or section 13-706, subsection A, a person who is convicted of second degree murder as defined by section 13-1104 and who has previously been convicted of second degree murder or a class 2 or 3 felony involving the use or exhibition of a deadly weapon or dangerous instrument or the intentional or knowing infliction of serious physical injury on another shall be sentenced as follows:

Minimum	Presumptive	Maximum
15 CALENDAR years	20 CALENDAR years	25 CALENDAR years

C. The presumptive term imposed pursuant to subsections A and B of this section may be mitigated or aggravated pursuant to section 13-701, subsections D and E.

Sec. 8. Section 13-3419, Arizona Revised Statutes, is amended to read:

13-3419. Multiple drug offenses not committed on the same occasion; sentencing

A. Except for a person convicted of possession offenses pursuant to section 13-3405, subsection A, paragraph 1, section 13-3407, subsection A, paragraph 1 or section 13-3408, subsection A, paragraph 1, a person who is convicted of two or more offenses under this chapter that were not committed on the same occasion but that either are consolidated for trial purposes or are not historical prior felony convictions shall be sentenced for the second or subsequent offense pursuant to this section. The person shall not be eligible for suspension of sentence, probation, pardon or release from confinement on any basis except as specifically authorized by section 31-233, subsection A or B until the sentence imposed by the court has been served, the person is eligible for release pursuant to section 41-1604.07 or the sentence is commuted, except that a person sentenced pursuant to paragraph 1 of this subsection shall be eligible for probation. The presumptive term for paragraph 1, 2, 3 or 4 of this subsection may be aggravated ~~within the range~~ under this section pursuant to section 13-701, subsections C and D. The

presumptive term for paragraph 1, 2 or 3 of this subsection may be mitigated within the range under this section pursuant to section 13-701, subsections C and E. The terms are as follows:

1. For two offenses for which the aggregate amount of drugs involved in one offense or both of the offenses is less than the statutory threshold amount for the second offense:

Felony	MITIGATED	Minimum	Presumptive	Maximum	AGGRAVATED
Class 2	3 YEARS	4 years	5 years	10 years	12.5 YEARS
Class 3	1.8 YEARS	2.5 years	3.5 years	7 years	8.7 YEARS
Class 4	1.1 YEARS	1.5 years	2.5 years	3 years	3.7 YEARS
Class 5	.5 YEARS	.75 years	1.5 years	2 years	2.5 YEARS

2. For three or more offenses for which the aggregate amount of drugs involved in one offense or all of the offenses is less than the statutory threshold amount for any offense subsequent to the second offense:

Felony	MITIGATED	Minimum	Presumptive	Maximum	AGGRAVATED
Class 2	3 YEARS	4 years	5 years	10 years	12.5 YEARS
Class 3	1.8 YEARS	2.5 years	3.5 years	7 years	8.7 YEARS
Class 4	1.1 YEARS	1.5 years	2.5 years	3 years	3.7 YEARS
Class 5	.5 YEARS	.75 years	1.5 years	2 years	2.5 YEARS

3. For two offenses for which the aggregate amount of drugs involved in one offense or all of the offenses equals or exceeds the statutory threshold amount for the second offense:

Felony	MITIGATED	Minimum	Presumptive	Maximum	AGGRAVATED
Class 2	3 YEARS	4 years	5 years	10 years	12.5 YEARS
Class 3	1.8 YEARS	2.5 years	3.5 years	7 years	8.7 YEARS
Class 4	1.1 YEARS	1.5 years	2.5 years	3 years	3.7 YEARS
Class 5	.5 YEARS	.75 years	1.5 years	2 years	2.5 YEARS

4. For three or more offenses for which the aggregate amount of drugs involved in one offense or all of the offenses equals or exceeds the statutory threshold amount for any offense subsequent to the second offense:

Felony	Minimum	Presumptive	Maximum	AGGRAVATED
Class 2	4 years	7 years	12 years	15 YEARS
Class 3	2.5 years	5 years	9 years	11.2 YEARS
Class 4	1.5 years	3 years	5 years	6.2 YEARS
Class 5	.75 years	2.5 years	4 years	5 YEARS

~~B. For offenders who are sentenced pursuant to subsection A of this section the court may increase the maximum sentence otherwise authorized by up to twenty-five per cent.~~

~~C. For offenders who are sentenced pursuant to subsection A, paragraph 1, 2 or 3 of this section the court may decrease the minimum sentence otherwise authorized by up to twenty-five per cent.~~

~~D.~~ B. If the court increases or decreases a sentence pursuant to this section, the court shall state on the record the reasons for the increase or decrease.

~~E.~~ C. The court shall inform all of the parties before the sentencing occurs of its intent to increase or decrease a sentence pursuant to this section. If the court fails to inform the parties, a party waives its right to be informed unless the party timely objects at the time of sentencing.

Sec. 9. Section 13-4515, Arizona Revised Statutes, is amended to read:

13-4515. Duration of order; notice of dismissed charge or voided order; petitions

A. An order or combination of orders that is issued pursuant to section 13-4512 or 13-4514 shall not be in effect for more than twenty-one months or the maximum possible sentence the defendant could have received pursuant to section 13-702, section 13-703, section 13-704, SUBSECTION A, B, C, D OR E, section 13-705, section 13-706, subsection A, section 13-708, subsection D or section 13-751 or any section for which a specific sentence is authorized, whichever is less. In making this determination the court shall not consider the sentence enhancements under section 13-703 or 13-704 for prior convictions.

B. The court shall notify the prosecutor, the defense attorney, the medical supervisor and the treating facility if the charges against the defendant are dismissed or if an order is voided by the court. No charges shall be dismissed without a hearing prior to the dismissal.

C. If a defendant is discharged or released on the expiration of an order or orders issued pursuant to section 13-4512 or 13-4514, the medical supervisor may file a petition stating that the defendant requires further treatment pursuant to title 36, chapter 5 or appointment of a guardian pursuant to title 14.

Sec. 10. Emergency

This act is an emergency measure that is necessary to preserve the public peace, health or safety and is operative immediately as provided by law.

APPROVED BY THE GOVERNOR JULY 10, 2009.

FILED IN THE OFFICE OF THE SECRETARY OF STATE JULY 10, 2009.