

Amending Death Penalty Aggravators

General Issue/Narrative:

This proposal amends "serious offenses" qualifying as aggravators at sentencing for death penalty to include two additional offenses and adds an aggravator of "continuing threat to society."

With the Tucson sector existing as the busiest and deadliest of any of the nine southwest regions, Manuel Padilla the Chief of the Sector, notes migrants must know the dangers of crossing through Arizona before they put their lives in the hands of smugglers. According to US Border Patrol, over 2,000 human remains have been found in the Tucson Sector alone in the last decade; several hundred were never identified. The extensive interstate networks stemming from our southern border allow for wide spans of human and drug smuggling into and through Arizona; starting along Interstates-8 and 19 and continuing to Interstates 10, 17 and 40.

Once in a smuggler's care, victims are subjected to various life threatening conditions, such as lack of food and water or continued exposure to excessive heat, and remain with the smuggler in what many consider modern day slavery. As aforementioned, far too often victims of smugglers are abandoned or die while with the smuggler. Two items this proposal adds are Smuggling (13-2319) and Participating in or assisting a human smuggling organization (13-2323) to "serious offenses," allowed to be considered as an aggravator at sentencing for death penalty cases.

The third aspect being proposed within joins with 20 of the other 32 death penalty states who possess "continuing threat" aggravators by statute or case law by adding a "continuing threat" aggravator to Arizona Revised Code. Currently, six states hold that a defendant posing a "future danger" or "continuing threat" to society constitutes an aggravator as death penalty sentencing and 14 allow for arguments of that nature by case law. Arizona and Florida only permit the argument as a rebuttal if a defendant provides an argument of lack of future dangerousness during mitigation.

By adding Smuggling (13-2319) and Participating in or assisting a human smuggling organization (13-2323) to serious offenses, the State will possess the ability to seek the death penalty in instances when a defendant is convicted of both murder and 13-2319 and/or 13-2323, whether during the commission of murder or not.

A "continuing threat" as defined below enables the State, when appropriate, seek death for a defendant posing a continuing threat of future violent crime against society.

Current Statute/Caselaw:

Currently, Arizona (State v. Medina, 975 P.2d 94, 106 (Ariz. 1999)) only permits “continuing threat/future dangerousness” as a rebuttal if a defendant provides an argument of lack of future dangerousness, used as a non-statutory mitigating factor.

Oklahoma [OS tit. 21, § 701,12(7) (2002)], Idaho [ID CODE ANN. § 19-2515(9) (2007)], Virginia [VA CODE ANN. § 19.2-264.2], and Wyoming [WS Ann. § 6-2-102(h)(xi) (2007)] statutorily allow for arguments of "future dangerousness" as an aggravating factor for the death penalty during sentencing. Oregon (ORS 163.150 (1)(b)(B) and Texas (TEX CR. CODE ANN. § 37.071 Art. 37.071(b) Sec. 2(b)(1)) also statutorily allow the death sentence based on the continuing threat to society posed by the defendant.

Case law in the following states allows for future dangerousness arguments at sentencing: Alabama (Arthur v. State, 575 So. 2d 1165, 1185 (Ala. Crim. App. 1990)), California (People v. Smithey, 978 P.2d 1171, 1217 (Cal. 1999)), Georgia (Walker v. State, 327 S.E.2d 475, 484 (Ga. 1985)), Illinois (People v. Kidd, 675 N.E.2d 910, 934 (Ill. 1996)), Louisiana (State v. Welcome, 458 So. 2d 1235, 1256 (La. 1984)), Missouri (State v. Antwine, 743 S.W.2d 51, 71–72 (Mo. 1987)), Montana (State v. Smith, 705 P.2d 1087, 1103–05 (Mont. 1985)), Nevada (Redmen v. State, 828 P.2d 395, 400 (Nev. 1992)), New Mexico (Clark v. Tansy, 882 P.2d 527, 533 (N.M. 1994)), North Carolina (State v. Steen, 536 S.E.2d 1, 31 (N.C. 2000)), Ohio (State v. Beuke, 526 N.E.2d 274, 280 (Ohio 1988)), Pennsylvania (Commonwealth v. Trivigno, 750 A.2d 243, 254 (Pa. 2000)), South Carolina (State v. Williams, 468 S.E.2d 626, 632 (S.C. 1996)), and Utah (State v. Arguelles, 63 P.3d 731, 759 (Utah 2003)).

Arizona (State v. Medina, 975 P.2d 94, 106 (Ariz. 1999)) and Florida (Kessler v. State, 752 So. 2d 545, 547 n.4 (Fla. 1999)) permit “future dangerousness” as a rebuttal if a defendant provides an argument of lack of future dangerousness as a non-statutory mitigating factor.

Scope of Change:

Prosecutors, statewide, would possess the ability to use the aggravating circumstances in applicable death penalty eligible cases.

Solution:

Continuing Threat/Future Danger

13-751. Sentence of death or life imprisonment; aggravating and mitigating circumstances

13-751(B). At the aggravation phase of the sentencing proceeding that is held pursuant to section 13-752, the admissibility of information relevant to any of the aggravating circumstances set forth in subsection F of this section shall be governed by the rules of evidence applicable to criminal trials. The burden of establishing the existence of any of the aggravating circumstances set forth in subsection F of this section is on the prosecution. The prosecution must prove the existence of the aggravating circumstances beyond a reasonable doubt.

13-751(F). The trier of fact shall consider the following aggravating circumstances in determining whether to impose a sentence of death:

13-751(F)(2). The defendant has been or was previously convicted of a serious offense, whether preparatory or completed. Convictions for serious offenses committed on the same occasion as the homicide, or not committed on the same occasion but consolidated for trial with the homicide, shall be treated as a serious offense under this paragraph.

13-751(J) 1-13. "For the purposes of this section, "serious offense" means any of the following offenses if committed in this state or any offense committed outside this state that if committed in this state would constitute one of the following offenses:

1. First degree murder. 2. Second degree murder. 3. Manslaughter. 4. Aggravated assault resulting in serious physical injury or committed by the use, threatened use or exhibition of a deadly weapon or dangerous instrument. 5. Sexual assault. 6. Any dangerous crime against children. 7. Arson of an occupied structure. 8. Robbery. 9. Burglary in the first degree. 10. Kidnapping. 11. Sexual conduct with a minor under fifteen years of age. 12. Burglary in the second degree. 13. Terrorism.

Amending legislation for death penalty aggravators

Proposed additions to 13-751(J), to include:

14. Smuggling (13-2319)

15. Participating in or assisting a human smuggling organization (13-2323)

Proposed aggravator:

13-751(F)(15). Continuing threat.

"The existence of a probability that the defendant would commit criminal acts of violence that would constitute a continuing threat to society."

Society would necessarily account for inside and outside of prison.

Support/Opposition:

Those opposed to the death penalty, in general, may oppose the additional aggravators.

Those supporting victim's rights, those opposed to human smuggling, and law enforcement and those working in a corrections field, in general.