

REFERENCE TITLE: death penalty; repeal

State of Arizona
Senate
Fifty-first Legislature
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2014

SB 1067

Introduced by
Senators Ableser, Bradley, Gallardo, Hobbs; Representative Mendez: Senator
Meza

AN ACT

AMENDING SECTIONS 12-120.21, 13-701, 13-706 AND 13-751, ARIZONA REVISED STATUTES; REPEALING SECTIONS 13-752, 13-753, 13-754, 13-755, 13-756, 13-757, 13-758 AND 13-759, ARIZONA REVISED STATUTES; AMENDING SECTIONS 13-1105, 13-3841, 13-3859.02, 13-3870, 13-3906 AND 13-3961, ARIZONA REVISED STATUTES; REPEALING TITLE 13, CHAPTER 38, ARTICLE 17, ARIZONA REVISED STATUTES; AMENDING SECTIONS 13-4031, 13-4033, 13-4040 AND 13-4041, ARIZONA REVISED STATUTES; REPEALING SECTION 13-4042, ARIZONA REVISED STATUTES; AMENDING SECTION 13-4234, ARIZONA REVISED STATUTES; REPEALING SECTION 13-4234.01, ARIZONA REVISED STATUTES; AMENDING SECTIONS 21-102, 25-903, 25-904, 31-240, 31-445 AND 41-1013, ARIZONA REVISED STATUTES; 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 12-120.21, Arizona Revised Statutes, is amended to
3 read:

4 12-120.21. Jurisdiction and venue

5 A. The court of appeals shall have:

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

10 2. Jurisdiction to issue writs of certiorari to review the lawfulness
11 of awards of the industrial commission and to enter judgment affirming or
12 setting aside the awards.

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

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

18 B. A case or appeal of which the court of appeals has jurisdiction in
19 an action or proceeding originating in or permitted by law to be appealed
20 from the superior court in a county shall be brought or filed in the division
21 ~~which~~ THAT contains that county. An application for a writ of certiorari to
22 review the lawfulness of an award of the industrial commission shall be
23 brought in division 1.

24 Sec. 2. Section 13-701, Arizona Revised Statutes, is amended to read:

25 13-701. Sentence of imprisonment for felony; presentence
26 report; aggravating and mitigating factors;
27 consecutive terms of imprisonment; definition

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

31 B. No prisoner may be transferred to the custody of the state
32 department of corrections without a certified copy of the judgment and
33 sentence, signed by the sentencing judge, and a copy of a recent presentence
34 investigation report unless the court has waived preparation of the report.

35 C. The minimum or maximum term imposed pursuant to section 13-702,
36 13-703, 13-704, 13-705, 13-708, 13-710, 13-1406, 13-3212 or 13-3419 may be
37 imposed only if one or more of the circumstances alleged to be in aggravation
38 of the crime are found to be true by the trier of fact beyond a reasonable
39 doubt or are admitted by the defendant, except that an alleged aggravating
40 circumstance under subsection D, paragraph 11 of this section shall be found
41 to be true by the court, or in mitigation of the crime are found to be true
42 by the court, on any evidence or information introduced or submitted to the
43 court or the trier of fact before sentencing or any evidence presented at
44 trial, and factual findings and reasons in support of such findings are set
45 forth on the record at the time of sentencing.

1 D. For the purpose of determining the sentence pursuant to subsection
2 C of this section, the trier of fact shall determine and the court shall
3 consider the following aggravating circumstances, except that the court shall
4 determine an aggravating circumstance under paragraph 11 of this subsection:

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

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

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

15 4. Presence of an accomplice.

16 5. Especially heinous, cruel or depraved manner in which the offense
17 was committed.

18 6. The defendant committed the offense as consideration for the
19 receipt, or in the expectation of the receipt, of anything of pecuniary
20 value.

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

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

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

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

31 11. The defendant was previously convicted of a felony within the ten
32 years immediately preceding the date of the offense. A conviction outside
33 the jurisdiction of this state for an offense that if committed in this state
34 would be punishable as a felony is a felony conviction for the purposes of
35 this paragraph.

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

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

39 14. The defendant was appointed pursuant to title 14 as a fiduciary and
40 the offense involved conduct directly related to the defendant's duties to
41 the victim as fiduciary.

42 15. Evidence that the defendant committed the crime out of malice
43 toward a victim because of the victim's identity in a group listed in section
44 41-1750, subsection A, paragraph 3 or because of the defendant's perception

1 of the victim's identity in a group listed in section 41-1750, subsection A,
2 paragraph 3.

3 16. The defendant was convicted of a violation of section 13-1102,
4 section 13-1103, section 13-1104, subsection A, paragraph 3 or section
5 13-1204, subsection A, paragraph 1 or 2 arising from an act that was
6 committed while driving a motor vehicle and the defendant's alcohol
7 concentration at the time of committing the offense was 0.15 or more. For
8 the purposes of this paragraph, "alcohol concentration" has the same meaning
9 prescribed in section 28-101.

10 17. Lying in wait for the victim or ambushing the victim during the
11 commission of any felony.

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

14 19. The offense was committed in retaliation for a victim either
15 reporting criminal activity or being involved in an organization, other than
16 a law enforcement agency, that is established for the purpose of reporting or
17 preventing criminal activity.

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

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

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

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

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

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

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

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

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

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

43 24. Any other factor that the state alleges is relevant to the
44 defendant's character or background or to the nature or circumstances of the
45 crime.

1 E. For the purpose of determining the sentence pursuant to subsection
2 C of this section, the court shall consider the following mitigating
3 circumstances:

4 1. The age of the defendant.

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

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

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

13 5. During or immediately following the commission of the offense, the
14 defendant complied with all duties imposed under sections 28-661, 28-662 and
15 28-663.

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

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

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

30 H. This section does not affect any provision of law that ~~imposes the~~
31 ~~death penalty, that~~ expressly provides for imprisonment for life or that
32 authorizes or restricts the granting of probation and suspending the
33 execution of sentence.

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

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

39 Sec. 3. Section 13-706, Arizona Revised Statutes, is amended to read:

40 13-706. Serious, violent or aggravated offenders; sentencing;
41 life imprisonment; definitions

42 A. A person who is at least eighteen years of age or who has been
43 tried as an adult and who is convicted of a serious offense except a drug
44 offense, first degree murder or any dangerous crime against children as
45 defined in section 13-705, whether a completed or preparatory offense, and

1 who has previously been convicted of two or more serious offenses not
2 committed on the same occasion shall be sentenced to life imprisonment and is
3 not eligible for suspension of sentence, probation, pardon or release from
4 confinement on any basis, except as specifically authorized by section
5 31-233, subsection A or B, until the person has served at least twenty-five
6 years or the sentence is commuted.

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

17 C. In order for the penalty under subsection B of this section to
18 apply, both of the following must occur:

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

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

28 D. Chapter 3 of this title applies to all offenses under this section.

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

35 F. For the purposes of this section:

36 1. "Serious offense" means any of the following offenses if committed
37 in this state or any offense committed outside this state that if committed
38 in this state would constitute one of the following offenses:

39 (a) First degree murder.

40 (b) Second degree murder.

41 (c) Manslaughter.

42 (d) Aggravated assault resulting in serious physical injury or
43 involving the discharge, use or threatening exhibition of a deadly weapon or
44 dangerous instrument.

45 (e) Sexual assault.

- 1 (f) Any dangerous crime against children.
- 2 (g) Arson of an occupied structure.
- 3 (h) Armed robbery.
- 4 (i) Burglary in the first degree.
- 5 (j) Kidnapping.
- 6 (k) Sexual conduct with a minor under fifteen years of age.
- 7 (l) Child prostitution.
- 8 2. "Violent or aggravated felony" means any of the following offenses:
- 9 (a) First degree murder.
- 10 (b) Second degree murder.
- 11 (c) Aggravated assault resulting in serious physical injury or
- 12 involving the discharge, use or threatening exhibition of a deadly weapon or
- 13 dangerous instrument.
- 14 (d) Dangerous or deadly assault by prisoner.
- 15 (e) Committing assault with intent to incite to riot or participate in
- 16 riot.
- 17 (f) Drive by shooting.
- 18 (g) Discharging a firearm at a residential structure if the structure
- 19 is occupied.
- 20 (h) Kidnapping.
- 21 (i) Sexual conduct with a minor that is a class 2 felony.
- 22 (j) Sexual assault.
- 23 (k) Molestation of a child.
- 24 (l) Continuous sexual abuse of a child.
- 25 (m) Violent sexual assault.
- 26 (n) Burglary in the first degree committed in a residential structure
- 27 if the structure is occupied.
- 28 (o) Arson of an occupied structure.
- 29 (p) Arson of an occupied jail or prison facility.
- 30 (q) Armed robbery.
- 31 (r) Participating in or assisting a criminal syndicate or leading or
- 32 participating in a criminal street gang.
- 33 (s) Terrorism.
- 34 (t) Taking a child for the purpose of prostitution.
- 35 (u) Child prostitution.
- 36 (v) Commercial sexual exploitation of a minor.
- 37 (w) Sexual exploitation of a minor.
- 38 (x) Unlawful introduction of disease or parasite as prescribed by
- 39 section 13-2912, subsection A, paragraph 2 or 3.
- 40 Sec. 4. Section 13-751, Arizona Revised Statutes, is amended to read:
- 41 13-751. Sentence of life or natural life imprisonment; victims'
- 42 rights
- 43 A. If ~~the state has filed a notice of intent to seek the death penalty~~
- 44 ~~and the~~ A defendant is:

1 1. Convicted of first degree murder pursuant to section 13-1105,
2 subsection A, paragraph 1 or 3 and was at least eighteen years of age at the
3 time of the commission of the offense, the defendant shall be sentenced to
4 ~~death or~~ imprisonment in the custody of the state department of corrections
5 for natural life ~~as determined and in accordance with the procedures provided~~
6 ~~in section 13-752.~~ **A- THE COURT SHALL ORDER THAT THE DEFENDANT NOT BE**
7 **RELEASED ON ANY BASIS FOR THE REMAINDER OF THE DEFENDANT'S NATURAL LIFE, AND**
8 **THE** defendant ~~who is sentenced to natural life~~ is not eligible for
9 commutation, parole, work furlough, work release or release from confinement
10 on any basis.

11 2. Convicted of first degree murder pursuant to section 13-1105 and
12 was under eighteen years of age at the time of the commission of the offense,
13 the defendant shall be sentenced to imprisonment in the custody of the state
14 department of corrections for life or natural life, ~~as determined and in~~
15 ~~accordance with the procedures provided in section 13-752.~~ **IF THE COURT**
16 **IMPOSES A NATURAL LIFE SENTENCE, THE COURT SHALL ORDER THAT THE DEFENDANT NOT**
17 **BE RELEASED ON ANY BASIS FOR THE REMAINDER OF THE DEFENDANT'S NATURAL LIFE.**
18 A defendant who is sentenced to natural life is not eligible for commutation,
19 parole, work furlough, work release or release from confinement on any
20 basis. If the defendant is sentenced to life, the defendant shall not be
21 released on any basis until the completion of the service of twenty-five
22 calendar years if the murdered person was fifteen or more years of age and
23 thirty-five years if the murdered person was under fifteen years of age or
24 was an unborn child.

25 3. Convicted of first degree murder pursuant to section 13-1105,
26 subsection A, paragraph 2, the defendant shall be sentenced to ~~death or~~
27 imprisonment in the custody of the state department of corrections for life
28 or natural life ~~as determined and in accordance with the procedures provided~~
29 ~~in section 13-752.~~ **IF THE COURT IMPOSES A NATURAL LIFE SENTENCE, THE COURT**
30 **SHALL ORDER THAT THE DEFENDANT NOT BE RELEASED ON ANY BASIS FOR THE REMAINDER**
31 **OF THE DEFENDANT'S NATURAL LIFE.** A defendant who is sentenced to natural
32 life is not eligible for commutation, parole, work furlough, work release or
33 release from confinement on any basis. If the defendant is sentenced to
34 life, the defendant shall not be released on any basis until the completion
35 of the service of twenty-five calendar years if the murdered person was
36 fifteen or more years of age and thirty-five years if the murdered person was
37 under fifteen years of age or was an unborn child.

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

1 ~~C. At the penalty phase of the sentencing proceeding that is held~~
2 ~~pursuant to section 13-752, the prosecution or the defendant may present any~~
3 ~~information that is relevant to any of the mitigating circumstances included~~
4 ~~in subsection G of this section, regardless of its admissibility under the~~
5 ~~rules governing admission of evidence at criminal trials. The burden of~~
6 ~~establishing the existence of the mitigating circumstances included in~~
7 ~~subsection G of this section is on the defendant. The defendant must prove~~
8 ~~the existence of the mitigating circumstances by a preponderance of the~~
9 ~~evidence. If the trier of fact is a jury, the jurors do not have to agree~~
10 ~~unanimously that a mitigating circumstance has been proven to exist. Each~~
11 ~~juror may consider any mitigating circumstance found by that juror in~~
12 ~~determining the appropriate penalty.~~

13 ~~D. Evidence that is admitted at the trial and that relates to any~~
14 ~~aggravating or mitigating circumstances shall be deemed admitted as evidence~~
15 ~~at a sentencing proceeding if the trier of fact considering that evidence is~~
16 ~~the same trier of fact that determined the defendant's guilt. The~~
17 ~~prosecution and the defendant shall be permitted to rebut any information~~
18 ~~received at the aggravation or penalty phase of the sentencing proceeding and~~
19 ~~shall be given fair opportunity to present argument as to whether the~~
20 ~~information is sufficient to establish the existence of any of the~~
21 ~~circumstances included in subsections F and G of this section.~~

22 ~~E. In determining whether to impose a sentence of death or life~~
23 ~~imprisonment, the trier of fact shall take into account the aggravating and~~
24 ~~mitigating circumstances that have been proven. The trier of fact shall~~
25 ~~impose a sentence of death if the trier of fact finds one or more of the~~
26 ~~aggravating circumstances enumerated in subsection F of this section and then~~
27 ~~determines that there are no mitigating circumstances sufficiently~~
28 ~~substantial to call for leniency.~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

21 ~~12. The defendant committed the offense to prevent a person's~~
22 ~~cooperation with an official law enforcement investigation, to prevent a~~
23 ~~person's testimony in a court proceeding, in retaliation for a person's~~
24 ~~cooperation with an official law enforcement investigation or in retaliation~~
25 ~~for a person's testimony in a court proceeding.~~

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

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

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

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

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

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

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

41 ~~(b) "Remote stun gun" means an electronic device that emits an~~
42 ~~electrical charge and that is designed and primarily employed to incapacitate~~
43 ~~a person or animal either through contact with electrodes on the device~~
44 ~~itself or remotely through wired probes that are attached to the device or~~

1 ~~through a spark, plasma, ionization or other conductive means emitting from~~
2 ~~the device.~~

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

8 ~~1. The defendant's capacity to appreciate the wrongfulness of his~~
9 ~~conduct or to conform his conduct to the requirements of law was~~
10 ~~significantly impaired, but not so impaired as to constitute a defense to~~
11 ~~prosecution.~~

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

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

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

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

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

26 ~~I. In this section, for purposes of punishment an unborn child shall~~
27 ~~be treated like a minor who is under twelve years of age.~~

28 ~~J. For the purposes of this section, "serious offense" means any of~~
29 ~~the following offenses if committed in this state or any offense committed~~
30 ~~outside this state that if committed in this state would constitute one of~~
31 ~~the following offenses:~~

32 ~~1. First degree murder.~~

33 ~~2. Second degree murder.~~

34 ~~3. Manslaughter.~~

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

38 ~~5. Sexual assault.~~

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

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

41 ~~8. Robbery.~~

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

43 ~~10. Kidnapping.~~

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

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

1 ~~13. Terrorism.~~

2 B. THE VICTIM HAS THE RIGHT TO BE PRESENT AT ANY SENTENCING PROCEEDING
3 AND TO PRESENT ANY INFORMATION THAT IS RELEVANT TO THE PROCEEDING. THE
4 VICTIM MAY PRESENT INFORMATION ABOUT THE MURDERED PERSON AND THE IMPACT OF
5 THE MURDER ON THE VICTIM AND OTHER FAMILY MEMBERS AND MAY SUBMIT A VICTIM
6 IMPACT STATEMENT IN ANY FORMAT. FOR THE PURPOSES OF THIS SUBSECTION,
7 "VICTIM" MEANS THE MURDERED PERSON'S SPOUSE, PARENT, CHILD OR OTHER LAWFUL
8 REPRESENTATIVE, EXCEPT IF THE SPOUSE, PARENT, CHILD OR OTHER LAWFUL
9 REPRESENTATIVE IS IN CUSTODY FOR AN OFFENSE OR IS THE ACCUSED.

10 Sec. 5. Repeal

11 Sections 13-752, 13-753, 13-754, 13-755, 13-756, 13-757, 13-758 and
12 13-759, Arizona Revised Statutes, are repealed.

13 Sec. 6. Section 13-1105, Arizona Revised Statutes, is amended to read:

14 13-1105. First degree murder; classification

15 A. A person commits first degree murder if:

16 1. Intending or knowing that the person's conduct will cause death,
17 the person causes the death of another person, including an unborn child,
18 with premeditation or, as a result of causing the death of another person
19 with premeditation, causes the death of an unborn child.

20 2. Acting either alone or with one or more other persons the person
21 commits or attempts to commit sexual conduct with a minor under section
22 13-1405, sexual assault under section 13-1406, molestation of a child under
23 section 13-1410, terrorism under section 13-2308.01, marijuana offenses under
24 section 13-3405, subsection A, paragraph 4, dangerous drug offenses under
25 section 13-3407, subsection A, paragraphs 4 and 7, narcotics offenses under
26 section 13-3408, subsection A, paragraph 7 that equal or exceed the statutory
27 threshold amount for each offense or combination of offenses, involving or
28 using minors in drug offenses under section 13-3409, drive by shooting under
29 section 13-1209, kidnapping under section 13-1304, burglary under section
30 13-1506, 13-1507 or 13-1508, arson under section 13-1703 or 13-1704, robbery
31 under section 13-1902, 13-1903 or 13-1904, escape under section 13-2503 or
32 13-2504, child abuse under section 13-3623, subsection A, paragraph 1 or
33 unlawful flight from a pursuing law enforcement vehicle under section
34 28-622.01 and, in the course of and in furtherance of the offense or
35 immediate flight from the offense, the person or another person causes the
36 death of any person.

37 3. Intending or knowing that the person's conduct will cause death to
38 a law enforcement officer, the person causes the death of a law enforcement
39 officer who is in the line of duty.

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

43 C. An offense under subsection A, paragraph 1 of this section applies
44 to an unborn child in the womb at any stage of its development. A person

1 shall not be prosecuted under subsection A, paragraph 1 of this section if
2 any of the following applies:

3 1. The person was performing an abortion for which the consent of the
4 pregnant woman, or a person authorized by law to act on the pregnant woman's
5 behalf, has been obtained or for which the consent was implied or authorized
6 by law.

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

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

10 D. First degree murder is a class 1 felony and is punishable by ~~death~~
11 ~~or life~~ OR NATURAL LIFE imprisonment as provided by ~~sections~~ SECTION 13-751
12 and ~~13-752~~.

13 Sec. 7. Section 13-3841, Arizona Revised Statutes, is amended to read:
14 13-3841. Definitions

15 In this article, unless the context otherwise requires:

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

- 18 (a) A felony or misdemeanor offense.
- 19 (b) Escape from confinement or the custody of any of the following:
 - 20 (i) A law enforcement officer.
 - 21 (ii) A custodial official.
 - 22 (iii) A custodial agency.
 - 23 (iv) A custodial institution.
- 24 (c) Being accused on a warrant of violating the terms of federal or
25 state supervision.
- 26 (d) Being accused of violating bail or conditions of release.
- 27 (e) ~~The conviction~~ BEING CONVICTED of a crime.
- 28 (f) Having an unserved remaining criminal sentence.
- 29 ~~(g) Being subject to the death penalty on criminal conviction.~~

30 ~~3.~~ 2. "Executive authority" includes the governor, and any person
31 performing the functions of governor in a state other than this state.

32 ~~2.~~ 3. "Governor" includes any person performing the functions of
33 governor by authority of the law of this state.

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

36 Sec. 8. Section 13-3859.02, Arizona Revised Statutes, is amended to
37 read:

38 13-3859.02. Imprisonment; alternative methods of extradition

39 If after a local criminal prosecution a fugitive defendant is sentenced
40 to serve a term of imprisonment in a correctional facility or a county jail,
41 the court shall vacate the fugitive proceedings and shall exonerate the
42 fugitive bond. After the proceedings are vacated and the bond is exonerated,
43 ~~except for death penalty cases,~~ sections 31-481 and 31-482 apply. If
44 sections 31-481 and 31-482 do not apply, the fugitive matter is governed by
45 any other applicable procedure for the rendition or extradition of fugitives,

1 subject to section 13-3859. The defendant's fugitive status is not
2 extinguished by the sentence of imprisonment.

3 Sec. 9. Section 13-3870, Arizona Revised Statutes, is amended to read:
4 13-3870. Executive agreements

5 A. If this state wishes to obtain custody of a person WHO IS charged
6 in this state with a criminal offense and the person was convicted or is
7 imprisoned or held under criminal proceedings then pending against him in
8 another state, the governor of this state and the executive authority of the
9 other state may agree on the extradition of the person before the criminal
10 proceedings against the person have terminated or the person's sentence has
11 been served in the other state.

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

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

22 Sec. 10. Section 13-3906, Arizona Revised Statutes, is amended to
23 read:

24 13-3906. Processing arrestees; citizenship determination;
25 notice

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

30 1. Notify the person's country of citizenship of the person's
31 detention if the person does not waive notification or if the person's
32 country of citizenship requires notification regardless of the person's
33 waiver of notification.

34 2. Document the notification to the person's country of citizenship
35 and any waiver of notification.

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

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

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

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

1 D. Except as provided in subsection A of this section, a person who is
2 in custody shall not be admitted to bail if the person is charged with a
3 felony offense and the state certifies by motion and the court finds after a
4 hearing on the matter that there is clear and convincing evidence that the
5 person charged poses a substantial danger to another person or the community
6 or engaged in conduct constituting a violent offense, that no condition or
7 combination of conditions of release may be imposed that will reasonably
8 assure the safety of the other person or the community and that the proof is
9 evident or the presumption great that the person committed the offense for
10 which the person is charged. For the purposes of this subsection, "violent
11 offense" means either of the following:

- 12 1. A dangerous crime against children.
- 13 2. Terrorism.

14 E. On oral motion of the state, the court shall order the hearing
15 required by subsection D of this section at or within twenty-four hours of
16 the initial appearance unless the person who is subject to detention or the
17 state moves for a continuance. A continuance that is granted on the motion
18 of the person shall not exceed five calendar days unless there are
19 extenuating circumstances. A continuance on the motion of the state shall be
20 granted on good cause shown and shall not exceed twenty-four hours. The
21 prosecutor shall provide reasonable notice and an opportunity for victims and
22 witnesses to be present and heard at any hearing. The person may be detained
23 pending the hearing. The person is entitled to representation by counsel and
24 is entitled to present information by proffer or otherwise, to testify and to
25 present witnesses in the person's own behalf. Testimony of the person
26 charged that is given during the hearing shall not be admissible on the issue
27 of guilt in any subsequent judicial proceeding, except as it might relate to
28 the compliance with or violation of any condition of release subsequently
29 imposed or the imposition of appropriate sentence or in perjury proceedings,
30 or for the purposes of impeachment. The case of the person shall be placed
31 on an expedited calendar and, consistent with the sound administration of
32 justice, the person's trial shall be given priority. The person may be
33 admitted to bail in accordance with the Arizona rules of criminal procedure
34 whenever a judicial officer finds that a subsequent event has eliminated the
35 basis for detention.

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

38 G. In a hearing pursuant to subsection D of this section, proof that
39 the person is a criminal street gang member may give rise to the inference
40 that the person poses a substantial danger to another person or the community
41 and that no condition or combination of conditions of release may be imposed
42 that will reasonably assure the safety of the other person or the community.

1 Sec. 12. Repeal
2 Title 13, chapter 38, article 17, Arizona Revised Statutes, is
3 repealed.

4 Sec. 13. Section 13-4031, Arizona Revised Statutes, is amended to
5 read:

6 13-4031. Right of appeal

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

12 Sec. 14. Section 13-4033, Arizona Revised Statutes, is amended to
13 read:

14 13-4033. Appeal by defendant

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

- 16 1. A final judgment of conviction or verdict of guilty except insane.
- 17 2. An order denying a motion for a new trial.
- 18 3. An order made after judgment affecting the substantial rights of
19 the party.

20 4. A sentence on the grounds that it is illegal or excessive.

21 B. ~~In noncapital cases~~ A defendant may not appeal from a judgment or
22 sentence that is entered pursuant to a plea agreement or an admission to a
23 probation violation.

24 C. A defendant may not appeal under subsection A, paragraph 1 or 2 if
25 the defendant's absence prevents sentencing from occurring within ninety days
26 after conviction and the defendant fails to prove by clear and convincing
27 evidence at the time of sentencing that the absence was involuntary.

28 Sec. 15. Section 13-4040, Arizona Revised Statutes, is amended to
29 read:

30 13-4040. Divestiture of jurisdiction of supreme court after
31 remission of minute entry and decision; exception

32 After a certified copy of the minute entry and a copy of the decision
33 of the supreme court in a criminal appeal ~~has~~ HAVE been remitted to the trial
34 court from which the appeal was taken, the supreme court shall have no
35 further jurisdiction of the appeal, or of the proceedings thereon. All
36 orders ~~which~~ THAT may be necessary to carry the decision of the supreme court
37 into effect shall be made by the court to which the copy of the minute entry
38 and THE COPY OF THE decision ~~is~~ ARE remitted, ~~except when a judgment or~~
39 ~~sentence of death has been affirmed on appeal after the time appointed for~~
40 ~~the execution of the sentence and the supreme court has fixed a new time for~~
41 ~~execution and issued a warrant to the director of the department of~~
42 ~~corrections to execute the sentence at the time designated in the warrant.~~

1 Sec. 16. Section 13-4041, Arizona Revised Statutes, is amended to
2 read:

3 13-4041. Fee of counsel assigned in criminal proceeding or
4 insanity hearing on appeal or in postconviction
5 relief proceedings; reimbursement

6 A. ~~Except pursuant to subsection G of this section,~~ If counsel is
7 appointed by the court to represent the defendant in either a criminal
8 proceeding or insanity hearing on appeal, the county in which the court from
9 which the appeal is taken presides shall pay counsel, except that in those
10 appeals where the defendant is represented by a public defender or other
11 publicly funded office, **THE COUNTY SHALL NOT SET OR PAY** compensation ~~shall~~
12 ~~not be set or paid~~. Compensation for services rendered on appeal shall be in
13 an amount as the supreme court in its discretion deems reasonable,
14 considering the services performed.

15 ~~B. After the supreme court has affirmed a defendant's conviction and~~
16 ~~sentence in a capital case, the supreme court or, if authorized by the~~
17 ~~supreme court, the presiding judge of the county from which the case~~
18 ~~originated shall appoint counsel to represent the capital defendant in the~~
19 ~~state postconviction relief proceeding.~~

20 ~~C. The supreme court shall establish and maintain a list of persons~~
21 ~~who are qualified to represent capital defendants in postconviction~~
22 ~~proceedings. The supreme court may establish by rule more stringent~~
23 ~~standards of competency for the appointment of postconviction counsel in~~
24 ~~capital cases than are provided by this subsection. The supreme court may~~
25 ~~refuse to certify an attorney on the list who meets the qualifications~~
26 ~~established under this subsection or may remove an attorney from the list who~~
27 ~~meets the qualifications established under this subsection if the supreme~~
28 ~~court determines that the attorney is incapable or unable to adequately~~
29 ~~represent a capital defendant. The court shall appoint counsel from the~~
30 ~~list. Counsel who are appointed from the list shall meet the following~~
31 ~~qualifications:~~

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

34 ~~2. Have practiced in the area of state criminal appeals or~~
35 ~~postconviction proceedings for at least three years immediately preceding the~~
36 ~~appointment.~~

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

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

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

4 ~~F. Unless counsel is employed by a publicly funded office, counsel~~
5 ~~appointed to represent a capital defendant in state postconviction relief~~
6 ~~proceedings shall be paid an hourly rate of not to exceed one hundred dollars~~
7 ~~per hour. Monies shall not be paid to court appointed counsel unless either:~~

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

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

11 ~~G.~~ B. The trial court shall compensate appointed counsel from county
12 funds. The court or the court's designee shall review and approve all
13 reasonable fees and costs. If the attorney believes that the court has set
14 an unreasonably low hourly rate or if the court finds that the hours the
15 attorney spent are unreasonable, the attorney may file a special action with
16 the Arizona supreme court. If counsel is appointed in successive
17 postconviction relief proceedings, compensation shall be paid pursuant to
18 section 13-4013, ~~subsection A.~~

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

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

29 Sec. 17. Repeal

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

31 Sec. 18. Section 13-4234, Arizona Revised Statutes, is amended to
32 read:

33 13-4234. Commencement of proceedings; notice; assignment of
34 judge

35 A. A proceeding is commenced by timely filing a notice of
36 postconviction relief with the clerk of the court in which the conviction
37 occurred. The clerk of the trial court shall provide notice forms for
38 commencement of first and successive postconviction relief proceedings. The
39 notice shall bear the caption of the original criminal action to which it
40 pertains. The notice in successive postconviction relief proceedings shall
41 comply with section 13-4232, subsection B. On receipt of the notice, the
42 clerk of the trial court shall file a copy of the notice in the case file of
43 each original action and promptly send copies to the defendant, the
44 defendant's attorney, if known, the county attorney and the attorney general,

1 noting the date and manner of sending the copies in the record. The state
2 shall notify the victim on request.

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

8 C. ~~In noncapital cases,~~ The notice shall be filed within ninety days
9 after the judgment and sentence are entered or within thirty days after the
10 order and mandate affirming the judgment and sentence is issued on direct
11 appeal, whichever is later. A defendant has sixty days from the filing of
12 the notice in which to file a petition. On the filing of a successive
13 notice, a defendant has thirty days from the filing of the notice in which to
14 file a petition.

15 ~~D. In capital cases, on the issuance of a mandate affirming the~~
16 ~~defendant's conviction and sentence on direct appeal, the clerk of the~~
17 ~~supreme court expeditiously shall file a notice of postconviction relief with~~
18 ~~the trial court. On the first notice in capital cases, a defendant has sixty~~
19 ~~days from the filing of the notice in which to file a petition. The supreme~~
20 ~~court shall appoint counsel pursuant to section 13-4041, subsection B. All~~
21 ~~indigent state prisoners under a capital sentence are entitled to the~~
22 ~~appointment of counsel to represent them in state postconviction proceedings.~~
23 ~~A competent indigent defendant may reject the offer of counsel with an~~
24 ~~understanding of its legal consequence. On successive notice in capital~~
25 ~~cases, the trial court shall appoint the previous postconviction relief~~
26 ~~counsel of the capital defendant unless counsel is waived pursuant to section~~
27 ~~13-4041, subsection D or good cause exists to appoint another qualified~~
28 ~~attorney pursuant to section 13-4041, subsection B. On the filing of a~~
29 ~~successive notice, a capital defendant or an appointed attorney has thirty~~
30 ~~days from the filing of the notice in which to file a petition.~~

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

36 ~~F.~~ E. On a specific and detailed showing of good cause, a defendant
37 ~~in a noncapital case~~ may be granted up to a sixty day extension of time in
38 which to file the petition. ~~On a specific and detailed showing of good~~
39 ~~cause, a defendant in a capital case may be granted one thirty day extension~~
40 ~~of time in which to file the petition.~~

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

43 ~~H.~~ G. If the record of the trial proceeding has not been transcribed,
44 the defendant may request on a form provided by the clerk of the superior
45 court that the record be prepared. The court shall order that those portions

1 of the record be prepared that it deems necessary to resolve the issues to be
2 raised in the petition. The preparation of the record is a county expense if
3 the defendant is indigent. The time for filing the petition is tolled from
4 the time a request for the record is made until the record is prepared or the
5 request is denied.

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

9 ~~J. If the defendant has received a sentence of death and the supreme
10 court has fixed the time for execution of the sentence, a stay of execution
11 shall not be granted on the filing of a second or subsequent petition except
12 on separate application for a stay to the supreme court setting forth with
13 particularity those issues raised which are not precluded under section
14 13-4232. The warrant shall not be stayed to allow for the filing of a
15 petition.~~

16 Sec. 19. Repeal

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

18 Sec. 20. Section 21-102, Arizona Revised Statutes, is amended to read:

19 21-102. Juries; size; degree of unanimity required; waiver

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

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

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

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

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

37 Sec. 21. Section 25-903, Arizona Revised Statutes, is amended to read:

38 25-903. Dissolution of a covenant marriage; grounds

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

43 1. The respondent spouse has committed adultery.

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

4 3. The respondent spouse has abandoned the matrimonial domicile for at
5 least one year before the petitioner filed for dissolution of marriage and
6 refuses to return. A party may file a petition based on this ground by
7 alleging that the respondent spouse has left the matrimonial domicile and is
8 expected to remain absent for the required period. If the respondent spouse
9 has not abandoned the matrimonial domicile for the required period at the
10 time of the filing of the petition, the action shall not be dismissed for
11 failure to state sufficient grounds and the action shall be stayed for the
12 period of time remaining to meet the grounds based on abandonment, except
13 that the court may enter and enforce temporary orders pursuant to section
14 25-315 during the time that the action is pending.

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

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

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

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

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

34 Sec. 22. Section 25-904, Arizona Revised Statutes, is amended to read:

35 25-904. Decree of legal separation; grounds

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

40 1. The respondent spouse has committed adultery.

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

44 3. The respondent spouse has abandoned the matrimonial domicile for at
45 least one year before the petitioner filed for legal separation and refuses

1 to return. A party may file a petition based on this ground by alleging that
2 the respondent spouse has left the matrimonial domicile and is expected to
3 remain absent for the required period. If the respondent spouse has not
4 abandoned the matrimonial domicile for the required period at the time of the
5 filing of THE petition, the action shall not be dismissed for failure to
6 state sufficient grounds and the action shall be stayed for the period of
7 time remaining to meet the grounds based on abandonment, except that the
8 court may enter and enforce temporary orders pursuant to section 25-315
9 during the time that the action is pending.

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

14 5. The spouses have been living separate and apart continuously
15 without reconciliation for at least two years before the petitioner filed for
16 legal separation. A party may file a petition based on this ground by
17 alleging that it is expected that the parties will be living separate and
18 apart for the required period. If the parties have not been separated for
19 the required period at the time of the filing of the petition, the action
20 shall not be dismissed for failure to state sufficient grounds and the action
21 shall be stayed for the period of time remaining to meet the grounds based on
22 separation, except that the court may enter and enforce temporary orders
23 pursuant to section 25-315 during the time that the action is pending.

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

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

28 Sec. 23. Section 31-240, Arizona Revised Statutes, is amended to read:

29 31-240. Prisoner education services budget; prohibitions

30 A. The director shall establish and maintain a dedicated prisoner
31 education services budget for each state prison to identify the monies
32 appropriated to the department and expended for the following education
33 programs:

34 1. The functional literacy program established pursuant to section
35 31-229.

36 2. Adult basic education.

37 3. General equivalency diploma PREPARATION.

38 4. Vocational and technical education.

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

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

1 Sec. 24. Section 31-445, Arizona Revised Statutes, is amended to read:
2 31-445. Publication of reasons for granting a commutation,
3 pardon or reprieve

4 ~~When the governor grants a commutation, pardon, reprieve or stay or~~
5 ~~suspends execution of sentence in a case where a sentence of death is~~
6 ~~imposed, he shall,~~ Within ten days after granting **the A** commutation, pardon,
7 **OR** reprieve, ~~or stay or suspension of execution, cause to be published~~ **THE**
8 **GOVERNOR SHALL PUBLISH** in bold type, in a newspaper of general circulation,
9 **THAT IS** published in the county where the conviction was had, and shall file
10 with the secretary of state for publication in the Arizona administrative
11 register, a statement setting forth ~~his~~ **THE GOVERNOR'S** reasons for granting
12 the commutation, pardon, ~~OR~~ reprieve ~~or for staying or suspending such~~
13 ~~execution.~~ A further reprieve shall not be granted except ~~upon~~ **ON** the same
14 procedure.

15 Sec. 25. Section 41-1013, Arizona Revised Statutes, is amended to
16 read:

17 41-1013. Register

18 A. The secretary of state shall publish the register at least once
19 each month, including the information which is provided under subsection B of
20 this section and which is filed with the secretary of state during the
21 preceding thirty days. The secretary of state shall publish an index to the
22 register at least twice each year.

23 B. The register shall contain:

- 24 1. A schedule of the time, date and place of all hearings on proposed
- 25 repeals, makings or amendments of rules.
- 26 2. Each governor's executive order.
- 27 3. Each governor's proclamation of general applicability, and each
- 28 statement filed by the governor in granting a commutation, pardon or reprieve
- 29 ~~or stay or suspension of execution where a sentence of death is imposed.~~
- 30 4. A summary of each attorney general's opinion.
- 31 5. Each governor's appointment of state officials and board and
- 32 commission members.
- 33 6. A table of contents.
- 34 7. The notice and agency summary of each docket opening.
- 35 8. The full text and accompanying preamble of each proposed rule.
- 36 9. The full text and accompanying preamble of each final rule.
- 37 10. The full text and accompanying preamble of each emergency rule.
- 38 11. Supplemental notices of a proposed rule.
- 39 12. Proposed and final notices of expedited rule making and notices
- 40 that an objection was received regarding a proposed expedited rule making.
- 41 13. A summary of council action on each rule.
- 42 14. The full text of any exempt final rule filed with the secretary of
- 43 state pursuant to section 41-1005, subsection C.
- 44 15. The notice and a summary of substantive policy statements and
- 45 notice and a summary of any guidance document publication or revision

1 submitted by an agency. The notice for a substantive policy statement shall
2 contain the website address where the full text of the document is available,
3 if practicable.

4 16. Notices of oral proceedings, public workshops or other meetings on
5 an open rule making docket.

6 C. The register shall be available by subscription and for single copy
7 purchase. The charge for each register or periodic subscription shall be a
8 reasonable charge, not to exceed all costs of production and distribution of
9 the register.

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

16 Sec. 26. Death sentences; commutation

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