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Senate Engrossed

State of Arizona
Senate
Forty-fifth Legislature
Fifth Special Session
2002

SENATE BILL 1001

AN ACT

AMENDING SECTION 13-703, ARIZONA REVISED STATUTES; RENUMBERING SECTION 13-703.01 AS SECTION 13-703.04, ARIZONA REVISED STATUTES; AMENDING TITLE 13, CHAPTER 7, ARIZONA REVISED STATUTES, BY ADDING A NEW SECTION 13-703.01; AMENDING SECTION 13-703.02, ARIZONA REVISED STATUTES; AMENDING TITLE 13, CHAPTER 7, ARIZONA REVISED STATUTES, BY ADDING SECTION 13-703.05; AMENDING SECTION 13-1105, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2000, CHAPTER 50, SECTION 2; RELATING TO DEATH SENTENCES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1

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

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

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

6 A. A person guilty of first degree murder as defined in section
7 13-1105 shall suffer death or imprisonment in the custody of the state
8 department of corrections for life OR NATURAL LIFE as determined and in
9 accordance with the procedures provided in ~~subsections B through H of this~~
10 ~~section 13-703.01. If the court imposes a life sentence, the court may order~~
11 ~~that the defendant not be released on any basis for the remainder of the~~
12 ~~defendant's natural life. An order sentencing the~~ A defendant WHO IS
13 SENTENCED to natural life is not ~~subject to~~ ELIGIBLE FOR commutation, or
14 parole, work furlough, or work release OR RELEASE FROM CONFINEMENT ON ANY
15 BASIS. If the ~~court does not sentence the defendant~~ DEFENDANT IS SENTENCED
16 to ~~natural~~ life, the defendant shall not be released on any basis until the
17 completion of the service of twenty-five calendar years if the ~~victim~~
18 MURDERED PERSON was fifteen or more years of age and thirty-five years if the
19 ~~victim~~ MURDERED PERSON was under fifteen years of age.

20 ~~B. In any case in which the state files a notice of intent to seek the~~
21 ~~death penalty after the effective date of this subsection, the court shall~~
22 ~~not impose the death penalty on, a person who is found to have mental~~
23 ~~retardation pursuant to section 13-703.02, but instead shall sentence the~~
24 ~~person to life imprisonment pursuant to subsection A of this section.~~

25 ~~C. When a defendant is found guilty of or pleads guilty to first~~
26 ~~degree murder as defined in section 13-1105, the judge who presided at the~~
27 ~~trial or before whom the guilty plea was entered, or any other judge in the~~
28 ~~event of the death, resignation, incapacity or disqualification of the judge~~
29 ~~who presided at the trial or before whom the guilty plea was entered, shall~~
30 ~~conduct a separate sentencing hearing to determine the existence or~~
31 ~~nonexistence of the circumstances included in subsections G and H of this~~
32 ~~section, for the purpose of determining the sentence to be imposed. The~~
33 ~~hearing shall be conducted before the court alone. The court alone shall~~
34 ~~make all factual determinations required by this section or the constitution~~
35 ~~of the United States or this state.~~

36 ~~D. In the sentencing hearing the court shall disclose to the defendant~~
37 ~~or defendant's counsel all material contained in any presentence report, if~~
38 ~~one has been prepared, except such material as the court determines is~~
39 ~~required to be withheld for the protection of human life. A victim may~~
40 ~~submit a written victim impact statement, an audio or video tape statement or~~
41 ~~make an oral impact statement to the probation officer preparing the~~
42 ~~presentence report for the probation officer's use in preparing the~~
43 ~~presentence report. The probation officer shall consider and include in the~~
44 ~~presentence report the victim impact information regarding the murdered~~
45 ~~person and the economical, physical and psychological impact of the murder on~~

1 ~~the victim and other family members. Any presentence information withheld~~
2 ~~from the defendant shall not be considered in determining the existence or~~
3 ~~nonexistence of the circumstances included in subsection G or H of this~~
4 ~~section. Any information relevant to any mitigating circumstances included~~
5 ~~in subsection H of this section may be presented by either the prosecution or~~
6 ~~the defendant, regardless of its admissibility under the rules governing~~
7 ~~admission of evidence at criminal trials, but~~

8 B. AT THE AGGRAVATION PHASE OF THE SENTENCING PROCEEDING THAT IS HELD
9 PURSUANT TO SECTION 13-703.01, the admissibility of information relevant to
10 any of the aggravating circumstances set forth in subsection ~~G~~ F of this
11 section shall be governed by the rules of evidence ~~at~~ APPLICABLE TO criminal
12 trials. ~~Evidence admitted at the trial, relating to such aggravating or~~
13 ~~mitigating circumstances, shall be considered without reintroducing it at the~~
14 ~~sentencing proceeding. The victim has the right to be present and to testify~~
15 ~~at the hearing. The victim may present information about the murdered person~~
16 ~~and the impact of the murder on the victim and other family members. The~~
17 ~~prosecution and the defendant shall be permitted to rebut any information~~
18 ~~received at the hearing and shall be given fair opportunity to present~~
19 ~~argument as to the adequacy of the information to establish the existence of~~
20 ~~any of the circumstances included in subsections G and H of this~~
21 ~~section.~~ The burden of establishing the existence of any of the AGGRAVATING
22 circumstances set forth in subsection ~~G~~ F of this section is on the
23 prosecution. THE PROSECUTION MUST PROVE THE EXISTENCE OF THE AGGRAVATING
24 CIRCUMSTANCES BEYOND A REASONABLE DOUBT.

25 C. AT THE PENALTY PHASE OF THE SENTENCING PROCEEDING THAT IS HELD
26 PURSUANT TO SECTION 13-703.01, THE PROSECUTION OR THE DEFENDANT MAY PRESENT
27 ANY INFORMATION THAT IS RELEVANT TO ANY OF THE MITIGATING CIRCUMSTANCES
28 INCLUDED IN SUBSECTION G OF THIS SECTION, REGARDLESS OF ITS ADMISSIBILITY
29 UNDER THE RULES GOVERNING ADMISSION OF EVIDENCE AT CRIMINAL TRIALS. The
30 burden of establishing the existence of the MITIGATING circumstances included
31 in subsection ~~H~~ G of this section is on the defendant. THE DEFENDANT MUST
32 PROVE THE EXISTENCE OF THE MITIGATING CIRCUMSTANCES BY A PREPONDERANCE OF THE
33 EVIDENCE. IF THE TRIER OF FACT IS A JURY, THE JURORS DO NOT HAVE TO AGREE
34 UNANIMOUSLY THAT A MITIGATING CIRCUMSTANCE HAS BEEN PROVEN TO EXIST. EACH
35 JUROR MAY CONSIDER ANY MITIGATING CIRCUMSTANCE FOUND BY THAT JUROR IN
36 DETERMINING THE APPROPRIATE PENALTY.

37 D. EVIDENCE THAT IS ADMITTED AT THE TRIAL AND THAT RELATES TO ANY
38 AGGRAVATING OR MITIGATING CIRCUMSTANCES SHALL BE DEEMED ADMITTED AS EVIDENCE
39 AT A SENTENCING PROCEEDING IF THE TRIER OF FACT CONSIDERING THAT EVIDENCE IS
40 THE SAME TRIER OF FACT THAT DETERMINED THE DEFENDANT'S GUILT. THE
41 PROSECUTION AND THE DEFENDANT SHALL BE PERMITTED TO REBUT ANY INFORMATION
42 RECEIVED AT THE AGGRAVATION OR PENALTY PHASE OF THE SENTENCING PROCEEDING AND
43 SHALL BE GIVEN FAIR OPPORTUNITY TO PRESENT ARGUMENT AS TO WHETHER THE
44 INFORMATION IS SUFFICIENT TO ESTABLISH THE EXISTENCE OF ANY OF THE
45 CIRCUMSTANCES INCLUDED IN SUBSECTIONS F AND G OF THIS SECTION.

1 ~~E. The court shall return a special verdict setting forth its findings~~
2 ~~as to the existence or nonexistence of each of the circumstances set forth in~~
3 ~~subsection G of this section and as to the existence of any of the~~
4 ~~circumstances included in subsection H of this section. In evaluating the~~
5 ~~mitigating circumstances, the court shall consider any information presented~~
6 ~~by the victim regarding the murdered person and the impact of the murder on~~
7 ~~the victim and other family members. The court shall not consider any~~
8 ~~recommendation made by the victim regarding the sentence to be imposed.~~

9 ~~F.~~ E. In determining whether to impose a sentence of death or life
10 imprisonment, the ~~court~~ TRIER OF FACT shall take into account the aggravating
11 and mitigating circumstances ~~included in subsections G and H of this section~~
12 ~~and~~ THAT HAVE BEEN PROVEN. THE TRIER OF FACT shall impose a sentence of
13 death if the ~~court~~ TRIER OF FACT finds one or more of the aggravating
14 circumstances enumerated in subsection ~~G~~ F of this section and THEN
15 DETERMINES that there are no mitigating circumstances sufficiently
16 substantial to call for leniency.

17 ~~G.~~ F. The ~~court~~ TRIER OF FACT shall consider the following
18 aggravating circumstances:

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

22 2. The defendant was previously convicted of a serious offense,
23 whether preparatory or completed.

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

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

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

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

33 7. The defendant committed the offense while in the custody of or on
34 authorized or unauthorized release from the state department of corrections,
35 a law enforcement agency or a county or city jail.

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

39 9. The defendant was an adult at the time the offense was committed or
40 was tried as an adult and the murdered person was under fifteen years of age
41 or was seventy years of age or older.

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

1 ~~H.~~ G. The ~~court~~ TRIER OF FACT shall consider as mitigating
2 circumstances any factors proffered by the defendant or the state ~~which~~ THAT
3 are relevant in determining whether to impose a sentence less than death,
4 including any aspect of the defendant's character, propensities or record and
5 any of the circumstances of the offense, including but not limited to the
6 following:

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

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

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

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

20 5. The defendant's age.

21 ~~I.~~ H. ~~As used in~~ FOR THE PURPOSES OF this section~~:-~~,

22 ~~1. "Mental retardation" has the same meaning as in section 13-703.02.~~

23 ~~2.~~ "serious offense" means any of the following offenses if committed
24 in this state or any offense committed outside this state that if committed
25 in this state would constitute one of the following offenses:

26 ~~(a)~~ 1. First degree murder.

27 ~~(b)~~ 2. Second degree murder.

28 ~~(c)~~ 3. Manslaughter.

29 ~~(d)~~ 4. Aggravated assault resulting in serious physical injury or
30 committed by the use, threatened use or exhibition of a deadly weapon or
31 dangerous instrument.

32 ~~(e)~~ 5. Sexual assault.

33 ~~(f)~~ 6. Any dangerous crime against children.

34 ~~(g)~~ 7. Arson of an occupied structure.

35 ~~(h)~~ 8. Robbery.

36 ~~(i)~~ 9. Burglary in the first degree.

37 ~~(j)~~ 10. Kidnapping.

38 ~~(k)~~ 11. Sexual conduct with a minor under fifteen years of age.

39 ~~3. "Victim" means the murdered person's spouse, parent, child or other~~
40 ~~lawful representative, except if the spouse, parent, child or other lawful~~
41 ~~representative is in custody for an offense or is the accused.~~

42 Sec. 2. Renumber

43 Section 13-703.01, Arizona Revised Statutes, is renumbered as section
44 13-703.04.

1 Sec. 3. Title 13, chapter 7, Arizona Revised Statutes, is amended by
2 adding a new section 13-703.01, to read:

3 13-703.01. Sentences of death or life imprisonment; imposition;
4 sentencing proceedings; definitions

5 A. IF THE STATE HAS FILED A NOTICE OF INTENT TO SEEK THE DEATH PENALTY
6 AND THE DEFENDANT IS CONVICTED OF FIRST DEGREE MURDER, THE TRIER OF FACT AT
7 THE SENTENCING PROCEEDING SHALL DETERMINE WHETHER TO IMPOSE A SENTENCE OF
8 DEATH. IF THE STATE HAS NOT FILED A NOTICE OF INTENT TO SEEK THE DEATH
9 PENALTY AND THE DEFENDANT IS CONVICTED OF FIRST DEGREE MURDER, THE COURT
10 SHALL DETERMINE WHETHER TO IMPOSE A SENTENCE OF LIFE OR NATURAL LIFE.

11 B. BEFORE TRIAL, THE PROSECUTION SHALL NOTICE ONE OR MORE OF THE
12 AGGRAVATING CIRCUMSTANCES UNDER SECTION 13-703, SUBSECTION F.

13 C. IF THE TRIER OF FACT FINDS THE DEFENDANT GUILTY OF FIRST DEGREE
14 MURDER, THE TRIER OF FACT SHALL THEN IMMEDIATELY DETERMINE WHETHER ONE OR
15 MORE ALLEGED AGGRAVATING CIRCUMSTANCES HAVE BEEN PROVEN. THIS PROCEEDING IS
16 THE AGGRAVATION PHASE OF THE SENTENCING PROCEEDING.

17 D. IF THE TRIER OF FACT FINDS THAT ONE OR MORE OF THE ALLEGED
18 AGGRAVATING CIRCUMSTANCES HAVE BEEN PROVEN, THE TRIER OF FACT SHALL THEN
19 IMMEDIATELY DETERMINE WHETHER THE DEATH PENALTY SHOULD BE IMPOSED. THIS
20 PROCEEDING IS THE PENALTY PHASE OF THE SENTENCING PROCEEDING.

21 E. AT THE AGGRAVATION PHASE, THE TRIER OF FACT SHALL MAKE A SPECIAL
22 FINDING ON WHETHER EACH ALLEGED AGGRAVATING CIRCUMSTANCE HAS BEEN PROVEN
23 BASED ON THE EVIDENCE THAT WAS PRESENTED AT THE TRIAL OR AT THE AGGRAVATION
24 PHASE. IF THE TRIER OF FACT IS A JURY, A UNANIMOUS VERDICT IS REQUIRED TO
25 FIND THAT THE AGGRAVATING CIRCUMSTANCE HAS BEEN PROVEN. IF THE TRIER OF FACT
26 UNANIMOUSLY FINDS THAT AN AGGRAVATING CIRCUMSTANCE HAS NOT BEEN PROVEN, THE
27 DEFENDANT IS ENTITLED TO A SPECIAL FINDING THAT THE AGGRAVATING CIRCUMSTANCE
28 HAS NOT BEEN PROVEN. IF THE TRIER OF FACT UNANIMOUSLY FINDS NO AGGRAVATING
29 CIRCUMSTANCES, THE COURT SHALL THEN DETERMINE WHETHER TO IMPOSE A SENTENCE OF
30 LIFE OR NATURAL LIFE ON THE DEFENDANT.

31 F. THE PENALTY PHASE SHALL BE HELD IMMEDIATELY AFTER THE TRIER OF FACT
32 FINDS AT THE AGGRAVATION PHASE THAT ONE OR MORE OF THE AGGRAVATING
33 CIRCUMSTANCES UNDER SECTION 13-703, SUBSECTION F HAVE BEEN PROVEN. A FINDING
34 BY THE TRIER OF FACT THAT ANY OF THE REMAINING AGGRAVATING CIRCUMSTANCES
35 ALLEGED HAS NOT BEEN PROVEN OR THE INABILITY OF THE TRIER OF FACT TO AGREE ON
36 THE ISSUE OF WHETHER ANY OF THE REMAINING AGGRAVATING CIRCUMSTANCES ALLEGED
37 HAS BEEN PROVEN SHALL NOT PREVENT THE HOLDING OF THE PENALTY PHASE.

38 G. AT THE PENALTY PHASE, THE DEFENDANT AND THE STATE MAY PRESENT ANY
39 EVIDENCE THAT IS RELEVANT TO THE DETERMINATION OF WHETHER THERE IS MITIGATION
40 THAT IS SUFFICIENTLY SUBSTANTIAL TO CALL FOR LENIENCY. IN ORDER FOR THE
41 TRIER OF FACT TO MAKE THIS DETERMINATION, THE STATE MAY PRESENT ANY EVIDENCE
42 THAT DEMONSTRATES THAT THE DEFENDANT SHOULD NOT BE SHOWN LENIENCY.

43 H. THE TRIER OF FACT SHALL DETERMINE UNANIMOUSLY WHETHER DEATH IS THE
44 APPROPRIATE SENTENCE. IF THE TRIER OF FACT IS A JURY AND THE JURY

1 UNANIMOUSLY DETERMINES THAT THE DEATH PENALTY IS NOT APPROPRIATE, THE COURT
2 SHALL DETERMINE WHETHER TO IMPOSE A SENTENCE OF LIFE OR NATURAL LIFE.

3 I. IF THE TRIER OF FACT AT ANY PRIOR PHASE OF THE TRIAL IS THE SAME
4 TRIER OF FACT AT THE SUBSEQUENT PHASE, ANY EVIDENCE THAT WAS PRESENTED AT ANY
5 PRIOR PHASE OF THE TRIAL SHALL BE DEEMED ADMITTED AS EVIDENCE AT ANY
6 SUBSEQUENT PHASE OF THE TRIAL.

7 J. AT THE AGGRAVATION PHASE, IF THE TRIER OF FACT IS A JURY, THE JURY
8 IS UNABLE TO REACH A VERDICT ON ANY OF THE ALLEGED AGGRAVATING CIRCUMSTANCES
9 AND THE JURY HAS NOT FOUND THAT AT LEAST ONE OF THE ALLEGED AGGRAVATING
10 CIRCUMSTANCES HAS BEEN PROVEN, THE COURT SHALL DISMISS THE JURY AND SHALL
11 IMPANEL A NEW JURY. THE NEW JURY SHALL NOT RETRY THE ISSUE OF THE
12 DEFENDANT'S GUILT OR THE ISSUE REGARDING ANY OF THE AGGRAVATING CIRCUMSTANCES
13 THAT THE FIRST JURY FOUND NOT PROVED BY UNANIMOUS VERDICT. IF THE NEW JURY
14 IS UNABLE TO REACH A UNANIMOUS VERDICT, THE COURT SHALL IMPOSE A SENTENCE OF
15 LIFE OR NATURAL LIFE ON THE DEFENDANT.

16 K. AT THE PENALTY PHASE, IF THE TRIER OF FACT IS A JURY AND THE JURY
17 IS UNABLE TO REACH A VERDICT, THE COURT SHALL DISMISS THE JURY AND SHALL
18 IMPANEL A NEW JURY. THE NEW JURY SHALL NOT RETRY THE ISSUE OF THE
19 DEFENDANT'S GUILT OR THE ISSUE REGARDING ANY OF THE AGGRAVATING CIRCUMSTANCES
20 THAT THE FIRST JURY FOUND BY UNANIMOUS VERDICT TO BE PROVED OR NOT
21 PROVED. IF THE NEW JURY IS UNABLE TO REACH A UNANIMOUS VERDICT, THE COURT
22 SHALL IMPOSE A SENTENCE OF LIFE OR NATURAL LIFE ON THE DEFENDANT.

23 L. IF THE JURY THAT RENDERED A VERDICT OF GUILTY IS NOT THE JURY FIRST
24 IMPANELED FOR THE AGGRAVATION PHASE, THE JURY IMPANELED IN THE AGGRAVATION
25 PHASE SHALL NOT RETRY THE ISSUE OF THE DEFENDANT'S GUILT. IF THE JURY
26 IMPANELED IN THE AGGRAVATION PHASE IS UNABLE TO REACH A VERDICT ON ANY OF THE
27 ALLEGED AGGRAVATING CIRCUMSTANCES AND THE JURY HAS NOT FOUND THAT AT LEAST
28 ONE OF THE ALLEGED AGGRAVATING CIRCUMSTANCES HAS BEEN PROVEN, THE COURT SHALL
29 DISMISS THE JURY AND SHALL IMPANEL A NEW JURY. THE NEW JURY SHALL NOT RETRY
30 THE ISSUE OF THE DEFENDANT'S GUILT OR THE ISSUE REGARDING ANY OF THE
31 AGGRAVATING CIRCUMSTANCES THAT THE FIRST JURY FOUND NOT PROVED BY UNANIMOUS
32 VERDICT. IF THE NEW JURY IS UNABLE TO REACH A UNANIMOUS VERDICT, THE COURT
33 SHALL IMPOSE A SENTENCE OF LIFE OR NATURAL LIFE ON THE DEFENDANT.

34 M. ALTERNATE JURORS WHO ARE IMPANELED FOR THE TRIAL IN A CASE IN WHICH
35 THE OFFENSE IS PUNISHABLE BY DEATH SHALL NOT BE EXCUSED FROM THE CASE UNTIL
36 THE COMPLETION OF THE SENTENCING PROCEEDING.

37 N. IF THE SENTENCE OF A PERSON WHO WAS SENTENCED TO DEATH IS
38 OVERTURNED, THE PERSON SHALL BE RESENTENCED PURSUANT TO THIS SECTION BY A
39 JURY THAT IS SPECIFICALLY IMPANELED FOR THIS PURPOSE AS IF THE ORIGINAL
40 SENTENCING HAD NOT OCCURRED.

41 O. IN ANY CASE THAT REQUIRES SENTENCING OR RESENTENCING IN WHICH THE
42 DEFENDANT HAS BEEN CONVICTED OF AN OFFENSE THAT IS PUNISHABLE BY DEATH AND IN
43 WHICH THE TRIER OF FACT WAS A JUDGE OR A JURY THAT HAS SINCE BEEN DISCHARGED,
44 THE DEFENDANT SHALL BE SENTENCED OR RESENTENCED PURSUANT TO THIS SECTION BY A
45 JURY THAT IS SPECIFICALLY IMPANELED FOR THIS PURPOSE.

1 P. THE TRIER OF FACT SHALL MAKE ALL FACTUAL DETERMINATIONS REQUIRED BY
2 THIS SECTION OR THE CONSTITUTION OF THE UNITED STATES OR THIS STATE TO IMPOSE
3 A DEATH SENTENCE.

4 Q. SUBJECT TO THE PROVISIONS OF SECTION 13-703, SUBSECTION B, A VICTIM
5 HAS THE RIGHT TO BE PRESENT AT THE AGGRAVATION PHASE AND TO PRESENT ANY
6 INFORMATION THAT IS RELEVANT TO THE PROCEEDING. A VICTIM HAS THE RIGHT TO BE
7 PRESENT AND TO PRESENT INFORMATION AT THE PENALTY PHASE. AT THE PENALTY
8 PHASE, THE VICTIM MAY PRESENT INFORMATION ABOUT THE MURDERED PERSON AND THE
9 IMPACT OF THE MURDER ON THE VICTIM AND OTHER FAMILY MEMBERS AND MAY SUBMIT A
10 VICTIM IMPACT STATEMENT IN ANY FORMAT TO THE TRIER OF FACT.

11 R. FOR THE PURPOSES OF THIS SECTION:

12 1. "TRIER OF FACT" MEANS A JURY UNLESS THE DEFENDANT AND THE STATE
13 WAIVE A JURY, IN WHICH CASE THE TRIER OF FACT SHALL BE THE COURT.

14 2. "VICTIM" MEANS THE MURDERED PERSON'S SPOUSE, PARENT, CHILD OR OTHER
15 LAWFUL REPRESENTATIVE, EXCEPT IF THE SPOUSE, PARENT, CHILD OR OTHER LAWFUL
16 REPRESENTATIVE IS IN CUSTODY FOR AN OFFENSE OR IS THE ACCUSED.

17 Sec. 4. Section 13-703.02, Arizona Revised Statutes, is amended to
18 read:

19 13-703.02. Mental evaluations of capital defendants; hearing;
20 appeal; prospective application; definitions

21 A. IN ANY CASE IN WHICH THE STATE FILES A NOTICE OF INTENT TO SEEK THE
22 DEATH PENALTY, A PERSON WHO IS FOUND TO HAVE MENTAL RETARDATION PURSUANT TO
23 THIS SECTION SHALL NOT BE SENTENCED TO DEATH BUT SHALL BE SENTENCED TO LIFE
24 OR NATURAL LIFE.

25 ~~A-~~ B. If the state files a notice of intent to seek the death
26 penalty, the court shall appoint a prescreening psychological expert in order
27 to determine the defendant's intelligence quotient using current community,
28 nationally and culturally accepted intelligence testing procedures. The
29 prescreening psychological expert shall submit a written report of the
30 intelligence quotient determination to the court within ten days of the
31 testing of the defendant.

32 ~~B-~~ C. If the prescreening psychological expert determines that the
33 defendant's intelligence quotient is higher than seventy-five, the notice of
34 intent to seek the death penalty shall not be dismissed on the ground that
35 the defendant has mental retardation. If the prescreening psychological
36 expert determines that the defendant's intelligence quotient is higher than
37 seventy-five, the report shall be sealed by the court and be available only
38 to the defendant. The report shall be released ~~upon~~ ON THE motion of any
39 party if the defendant introduces the report in the present case or is
40 convicted of an offense in the present case and the sentence is final. A
41 prescreening determination that the defendant's intelligence quotient is
42 higher than seventy-five does not prevent the defendant from introducing
43 evidence of the defendant's mental retardation or diminished mental capacity
44 as a mitigating factor at ~~any~~ THE PENALTY PHASE OF THE sentencing proceeding
45 ~~pursuant to section 13-703.~~

1 ~~C.~~ D. If the prescreening psychological expert determines that the
2 defendant's intelligence quotient is seventy-five or less, the trial court
3 shall appoint one or more additional psychological experts to independently
4 determine whether the defendant has mental retardation. If the prescreening
5 psychological expert determines that the defendant's intelligence quotient is
6 seventy-five or less, the trial court, within ten days of receiving the
7 written report, shall order the state and the defendant to each nominate
8 three psychological experts, or jointly nominate a single psychological
9 expert. The trial court shall appoint one psychological expert nominated by
10 the state and one psychological expert nominated by the defendant, or a
11 single psychological expert jointly nominated by the state and the defendant,
12 none of whom made the prescreening determination of the defendant's
13 intelligence quotient. The trial court ~~may~~, in its discretion, **MAY** appoint
14 an additional psychological expert who was neither nominated by the state nor
15 the defendant, and who did not make the prescreening determination of the
16 defendant's intelligence quotient. Within forty-five days after the trial
17 court orders the state and the defendant to nominate psychological experts,
18 or ~~upon~~ **ON** the appointment of such experts, whichever is later, the state and
19 the defendant shall provide to the psychological experts and the court any
20 available records that may be relevant to the defendant's mental retardation
21 status. The court may extend the deadline for providing records ~~upon~~ **ON** good
22 cause shown by the state or defendant.

23 ~~D.~~ E. Not less than twenty days after receipt of the records provided
24 pursuant to subsection ~~E.~~ D of this section, or twenty days after the
25 expiration of the deadline for providing ~~such~~ **THE** records, whichever is
26 later, each psychological expert shall examine the defendant using current
27 community, nationally and culturally accepted physical, developmental,
28 psychological and intelligence testing procedures, for the purpose of
29 determining whether the defendant has mental retardation. Within fifteen
30 days of examining the defendant, each psychological expert shall submit a
31 written report to the trial court that includes the expert's opinion as to
32 whether the defendant has mental retardation.

33 ~~E.~~ F. If the scores on all the tests for intelligence quotient
34 administered to the defendant are above seventy, the notice of intent to seek
35 the death penalty shall not be dismissed on the ground that the defendant has
36 mental retardation. This does not preclude the defendant from introducing
37 evidence of the defendant's mental retardation or diminished mental capacity
38 as a mitigating factor at ~~any~~ **THE PENALTY PHASE OF THE** sentencing proceeding
39 ~~pursuant to section 13-703.~~

40 ~~F.~~ G. No less than thirty days after the psychological experts'
41 reports are submitted to the court and before trial, the trial court shall
42 hold a hearing to determine if the defendant has mental retardation. At the
43 hearing, the defendant has the burden of proving mental retardation by clear
44 and convincing evidence. A determination by the trial court that the
45 defendant's intelligence quotient is sixty-five or lower establishes a

1 rebuttable presumption that the defendant has mental retardation. Nothing in
2 this subsection shall preclude a defendant with an intelligence quotient of
3 seventy or below from proving mental retardation by clear and convincing
4 evidence.

5 ~~G.~~ H. If the trial court finds that the defendant has mental
6 retardation, the trial court shall dismiss the intent to seek the death
7 penalty, shall not impose a sentence of death on the defendant if the
8 defendant is convicted of first degree murder and shall dismiss one of the
9 attorneys appointed under rule 6.2, Arizona rules of criminal procedure
10 unless the court finds that there is good cause to retain both attorneys. If
11 the trial court finds that the defendant does not have mental retardation,
12 the court's finding does not prevent the defendant from introducing evidence
13 of the defendant's mental retardation or diminished mental capacity as a
14 mitigating factor at ~~any~~ THE PENALTY PHASE OF THE sentencing proceeding
15 ~~pursuant to section 13-703.~~

16 ~~H.~~ I. Within ten days after the trial court makes a finding on mental
17 retardation, the state or the defendant may file a petition for special
18 action with the Arizona court of appeals pursuant to the rules of procedure
19 for special actions. The filing of the petition for special action is
20 governed by the rules of procedure for special actions, except that the court
21 of appeals shall exercise jurisdiction and decide the merits of the claims
22 raised.

23 ~~I.~~ J. This section applies ~~prospectively only to cases in which the~~
24 ~~state files a notice of intent to seek the death penalty after the effective~~
25 ~~date of this section~~ TO ALL CAPITAL SENTENCING PROCEEDINGS.

26 ~~J.~~ K. For THE purposes of this section, unless the context otherwise
27 requires:

28 1. "Adaptive behavior" means the effectiveness or degree to which the
29 defendant meets the standards of personal independence and social
30 responsibility expected of the defendant's age and cultural group.

31 2. "Mental retardation" means a condition based on a mental deficit
32 that involves significantly subaverage general intellectual functioning,
33 existing concurrently with significant impairment in adaptive behavior, where
34 the onset of the foregoing conditions occurred before the defendant reached
35 the age of eighteen.

36 3. "Prescreening psychological expert" or "psychological expert" means
37 a psychologist licensed pursuant to title 32, chapter 19.1 with at least two
38 years' experience in the testing, evaluation and diagnosis of mental
39 retardation.

40 4. "Significantly subaverage general intellectual functioning" means a
41 full scale intelligence quotient of seventy or lower. The court in
42 determining the intelligence quotient shall take into account the margin of
43 error for the test administered.

1 Sec. 5. Title 13, chapter 7, Arizona Revised Statutes, is amended by
2 adding section 13-703.05, to read:

3 13-703.05. Death sentences; supreme court review

4 A. THE SUPREME COURT SHALL REVIEW ALL DEATH SENTENCES TO DETERMINE
5 WHETHER THE TRIER OF FACT ABUSED ITS DISCRETION IN FINDING AGGRAVATING
6 CIRCUMSTANCES AND IMPOSING A SENTENCE OF DEATH.

7 B. IF THE SUPREME COURT DETERMINES THAT AN ERROR OCCURRED IN THE
8 SENTENCING PROCEEDINGS, THE SUPREME COURT SHALL DETERMINE WHETHER THE ERROR
9 WAS HARMLESS BEYOND A REASONABLE DOUBT. IF THE SUPREME COURT CANNOT
10 DETERMINE WHETHER THE ERROR WAS HARMLESS BEYOND A REASONABLE DOUBT, THE
11 SUPREME COURT SHALL REMAND THE CASE FOR A NEW SENTENCING PROCEEDING.

12 Sec. 6. Section 13-1105, Arizona Revised Statutes, as amended by Laws
13 2000, chapter 50, section 2, 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 with premeditation.

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

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

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

40 C. First degree murder is a class 1 felony and is punishable by death
41 or life imprisonment as provided by ~~section~~ SECTIONS 13-703 AND 13-703.01.

42 Sec. 7. Applicability

43 A. Sections 13-703 and 13-703.02, Arizona Revised Statutes, as amended
44 by this act, and section 13-703.01, Arizona Revised Statutes, as added by

1 this act, apply to any sentencing or resentencing proceeding on any first
2 degree murder case that is held after the effective date of this act.

3 B. Section 13-703.04, Arizona Revised Statutes, as renumbered by this
4 act, applies to any sentencing or resentencing proceeding on any first degree
5 murder case that is held after the effective date of this act and in which
6 the offense was committed before the effective date of this act.

7 C. Section 13-703.05, Arizona Revised Statutes, as added by this act,
8 applies to any sentencing or resentencing proceeding on any first degree
9 murder case that is held after the effective date of this act and in which
10 the offense was committed on or after the effective date of this act.

11 Sec. 8. Severability

12 If a provision of this act or its application to any person or
13 circumstance is held invalid, the invalidity does not affect other provisions
14 or applications of the act that can be given effect without the invalid
15 provision or application, and to this end the provisions of this act are
16 severable.

17 Sec. 9. Intent

18 A. It is the intent of the Legislature that:

19 1. There be no hiatus in the imposition of the death penalty in this
20 state as a result of the United States Supreme Court decision in Ring v.
21 Arizona, 530 U.S.____ (2002).

22 2. Those persons who were previously sentenced to death in this state
23 not be entitled to a new sentencing proceeding pursuant to this act if they
24 have already exhausted direct appeals of their sentences.

25 3. The adoption of the new capital jury sentencing procedures
26 contained in this act shall not be construed by any state or federal court as
27 a legislative statement that the former judge sentencing procedures are
28 unconstitutional or that any death sentence imposed pursuant to the former
29 procedure is invalid.

30 4. Cases under supreme court review that are found to need
31 resentencing be remanded to the superior court for resentencing under this
32 act.

33 B. It is not the intent of the Legislature to provide for any right of
34 or basis for appeal or commutation that did not exist before the effective
35 date of this act.

36 Sec. 10. Emergency

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