

HOUSE FLOOR AMENDMENT EXPLANATION



Bill Number: **HB 2361**

Toma Floor Amendment

Eliminates *Hannah* priors for drug offenses.

Amendment explanation prepared by Joshua Spears

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Is

2/27/2019

TOMA FLOOR AMENDMENT
HOUSE OF REPRESENTATIVES AMENDMENTS TO H.B. 2361
(Reference to printed bill)

1 Page 1, between lines 18 and 19, insert:

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

4 13-701. Sentence of imprisonment for felony; presentence report;
5 aggravating and mitigating factors; consecutive terms of
6 imprisonment; definition

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

10 B. No prisoner may be transferred to the custody of the state
11 department of corrections without a certified copy of the judgment and
12 sentence, signed by the sentencing judge, and a copy of a recent
13 presentence investigation report unless the court has waived preparation of
14 the report.

15 C. The minimum or maximum term imposed pursuant to section 13-702,
16 13-703, 13-704, 13-705, 13-708, 13-710, 13-1406, ~~OR 13-3212~~ ~~or 13-3419~~ may
17 be imposed only if one or more of the circumstances alleged to be in
18 aggravation of the crime are found to be true by the trier of fact beyond a
19 reasonable doubt or are admitted by the defendant, except that an alleged
20 aggravating circumstance under subsection D, paragraph 11 of this section
21 shall be found to be true by the court, or in mitigation of the crime are
22 found to be true by the court, on any evidence or information introduced or
23 submitted to the court or the trier of fact before sentencing or any
24 evidence presented at trial, and factual findings and reasons in support of
25 such findings are set forth on the record at the time of sentencing.

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

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

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

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

16 4. Presence of an accomplice.

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

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

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

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

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

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

1 11. The defendant was previously convicted of a felony within the
2 ten years immediately preceding the date of the offense. A conviction
3 outside the jurisdiction of this state for an offense that if committed in
4 this state would be punishable as a felony is a felony conviction for the
5 purposes of this paragraph.

6 12. The defendant was wearing body armor as defined in section
7 13-3116.

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

10 14. The defendant was appointed pursuant to title 14 as a fiduciary
11 and the offense involved conduct directly related to the defendant's duties
12 to the victim as fiduciary.

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

18 16. The defendant was convicted of a violation of section 13-1102,
19 section 13-1103, section 13-1104, subsection A, paragraph 3 or section
20 13-1204, subsection A, paragraph 1 or 2 arising from an act that was
21 committed while driving a motor vehicle and the defendant's alcohol
22 concentration at the time of committing the offense was 0.15 or more. For
23 the purposes of this paragraph, "alcohol concentration" has the same
24 meaning prescribed in section 28-101.

25 17. Lying in wait for the victim or ambushing the victim during the
26 commission of any felony.

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

30 19. The offense was committed in retaliation for a victim either
31 reporting criminal activity or being involved in an organization, other

1 than a law enforcement agency, that is established for the purpose of
2 reporting or preventing criminal activity.

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

5 21. The defendant was in violation of 8 United States Code section
6 1323, 1324, 1325, 1326 or 1328 at the time of the commission of the
7 offense.

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

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

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

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

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

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

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

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

30 24. The defendant was convicted of a violation of section 13-1307 or
31 13-1308 or section 13-3212, subsection A, paragraph 9 or 10 and the
32 defendant recruited, enticed or obtained the victim from a shelter that is

1 designed to serve runaway youth, foster children, homeless persons or
2 victims of human trafficking, domestic violence or sexual assault.

3 25. The defendant was convicted of a violation of section 13-1204
4 and there is evidence that the defendant committed the crime out of malice
5 toward a victim because of the victim's employment as a peace officer.

6 26. During or immediately following the commission of the offense,
7 the defendant used a mask or other disguise to obscure the defendant's face
8 to avoid identification.

9 27. Any other factor that the state alleges is relevant to the
10 defendant's character or background or to the nature or circumstances of
11 the crime.

12 E. For the purpose of determining the sentence pursuant to
13 subsection C of this section, the court shall consider the following
14 mitigating circumstances:

15 1. The age of the defendant.

16 2. The defendant's capacity to appreciate the wrongfulness of the
17 defendant's conduct or to conform the defendant's conduct to the
18 requirements of law was significantly impaired, but not so impaired as to
19 constitute a defense to prosecution.

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

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

24 5. During or immediately following the commission of the offense,
25 the defendant complied with all duties imposed under sections 28-661,
26 28-662 and 28-663.

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

30 F. If the trier of fact finds at least one aggravating circumstance,
31 the trial court may find by a preponderance of the evidence additional
32 aggravating circumstances. In determining what sentence to impose, the

1 court shall take into account the amount of aggravating circumstances and
2 whether the amount of mitigating circumstances is sufficiently substantial
3 to justify the lesser term. If the trier of fact finds aggravating
4 circumstances and the court does not find any mitigating circumstances, the
5 court shall impose an aggravated sentence.

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

9 H. This section does not affect any provision of law that imposes
10 the death penalty, that expressly provides for imprisonment for life or
11 that authorizes or restricts the granting of probation and suspending the
12 execution of sentence.

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

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

18 Renumber to conform

19 Page 4, between lines 10 and 11, insert:

20 "Sec. 4. Repeal

21 Section 13-3419, Arizona Revised Statutes, is repealed."

22 Renumber to conform

23 Amend title to conform

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