Arizona's Slayer Statute: The Killer of Testator Intent

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# ARIZONA’S SLAYER STATUTE:  
THE KILLER OF TESTATOR INTENT

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I. INTRODUCTION

By winter of 2012, at age 81, Ginger Sanders' pain had become too much to bear. Ginger was diagnosed with multiple sclerosis in 1969 and confined to a wheelchair ever since. She heavily relied on her husband, George Sanders, for all of her daily needs. Doctors recently diagnosed Ginger with gangrene on her foot, which required hospitalization and amputation. She then would be sent to a nursing home where she would remain for the rest of her life. George, at the age of 89, could no longer care for her. He had his own debilitating health problems.1

Ginger did not want her toes cut off, did not want to die in a nursing home, and no longer could bear the daily, excruciating pain of her disease. She wanted to end her pain on her own terms and she wanted the one she loved the most to help. She begged George to end her misery. “I can't do it, Honey,” George responded.2

“Yes you can!”

His wife’s anguished pleas persuaded him. George grabbed his revolver, wrapped it in a towel so the bullet would not enter the kitchen, and held it to Ginger's head. “Is it going to hurt?” Ginger asked.

“You won’t feel a thing.”

“She’s going to be pain-free!” she begged.3 George pulled the trigger and fired his revolver into his wife’s head.4 George’s wife of 62 years, no longer felt pain.5

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2 See id.
3 See Brian Slinger, Sun City man, George Sanders, explains ‘mercy killing’ of wife Ginger, ABC NEWS (Mar. 18, 2013), http://www.abc15.com/dpp/news/region_west_valley/sun_city/Sun-City-man-George-
Maricopa County charged George with first-degree murder. He shot his wife knowing that doing so would kill her, and she in fact died because of his conduct. George even confessed to shooting his wife with the intent to kill her. This was a textbook murder conviction case. But, Maricopa County reduced George's charge to manslaughter and asked that he not be jailed. The judge agreed and sentenced George to two years of unsupervised probation.

Left unreported is the potential civil repercussion of George's act. Generally, Arizona law allows an individual (testator) to dispose of his estate to the successors of his choosing. But, Arizona's slayer statute provides an exception to the general rule. If a successor kills the testator, the killer successor (slayer) forfeits all benefits with respect to the decedent's estate. The slayer will be treated as if he pre-deceased the decedent and his share is disclaimed.

While Arizona's criminal justice system showed George mercy, Arizona's newly amended slayer statute does not allow for judicial mercy. If a party sought to disinherit George, Arizona's slayer statute would bar George from inheriting Ginger's property. Is this truly what Ginger would have wanted? Would Ginger have wanted her loving husband, the man who was her caregiver day and night for forty-three years, to forfeit all benefits of her estate?

Sanders-explains-mercy-killing-of-wife-Ginger- (Maricopa County Sheriff Department interrogation video footage of George explaining how he killed his wife).

4 See n. 1, supra.
5 Ginger did not die immediately. She was hospitalized and died from the gunshot wound several days later. See n. 1, supra.
7 See n. 3, supra.
8 See n. 1, supra.
12 Another individual could challenge the disposition, provision, or nomination of George (slayer) as a successor in Ginger's will. This challenge would most likely come from another successor and would tend to cause unintended consequences that may be contrary to the testator's/decedent's intent. For example, one of George's and Ginger's children could bring an action to disclaim George, as a slayer, in order to inherit Ginger's estate. This result would most likely be contrary to Ginger's intentions at the time she executed her testamentary document. This scenario also highlights one of the pitfalls of Arizona's current slayer statute (i.e., promoting interfamilial litigation).
In 2012, the Arizona legislature amended its slayer statute to close loopholes that had emerged during years of slayer case litigation. However, in so doing, the Arizona legislature neglected to consider the adverse impact the amendment would have on the trending social consideration of euthanasia.\textsuperscript{14}

This Article sheds light on the unintended legal consequences of Arizona’s current slayer statute, considering the trending social issue of euthanasia. Part Two briefly presents terms, highlights two legal theories that were used in early American jurisprudence, and gives a short history of the codification of modern slayer statutes. Part Three gives an overview of three loopholes that arose since the codification of Arizona’s slayer statute. Part Four discusses last year’s legislative changes designed to close the loopholes highlighted in Part Three. Part Five introduces the concept of euthanasia and highlights its increasing public awareness, due in large part because of baby boomers. Part Six presents the potential problems created by Arizona’s 2012 amendment to its slayer statute in relation to the existing Arizona euthanasia law. Part Six also proposes a statutory solution that would allow an individual to “opt-out” of Arizona’s slayer statute by manifesting his or her intention to do so in a testamentary document.

For baby boomers,\textsuperscript{15} end-of-life decisions are approaching. Arizona baby boomers are actively seeking competent estate planning legal advice. This Article updates Arizona practitioners on the amended slayer statute and its impact on those Arizonans contemplating end-of-life planning. This Article also provides remedial considerations for Arizona legislators.

## II. Slayer Background

### A. Slayers

“Slayer” is a colloquial term for an individual who murders someone from whom he or she stands to inherit. In Arizona, a “slayer,” for purposes of the slayer statute, is a person who is responsible for the “felonious and intentional” killing of a decedent.\textsuperscript{16} Historically, Arizona common law defined “felonious and intentional” as murder in the first or second degree.\textsuperscript{17} In 2012, Arizona amended

\textsuperscript{14} See n. 72, infra.


\textsuperscript{17} See Matter of Estate of Hoover, 140 Ariz. 464 (1984) (holding that the “recklessness” which supported a manslaughter conviction was something less than an intentional killing).
ARIZONA’S SLAYER STATUTE: THE KILLER OF TESTATOR INTENT

its slayer statute to include a statutory definition of “felonious and intentional.” Arizona’s slayer statute now defines “felonious and intentional” as murder in the first or second degree, or manslaughter. Slayers are deprived of any right to claim benefit to the decedent’s estate.

A classic example of a slayer would be the biblical account of Cain killing his brother Abel. Cain and Abel were both common children of Adam and Eve. Applying current Arizona law, the common children of Adam and Eve would inherit through representation. Representation dictates that the parent’s estate be divided in equal shares amongst the first line of surviving children.

If Abel were still alive at the time of his parent’s death, then Adam and Eve’s estate would be divided in half. One-half going to each of the brothers. However, Cain murdered his brother. When Adam and Eve die, Cain would inherit his parent’s entire estate, as opposed to just one half, because Cain is now the only living heir. Cain could thus increase his inheritance by killing his brother Abel, absent a law saying otherwise.

The Cain and Abel hypothetical above highlights the dilemma that early American courts faced when dealing with slayers. Should a slayer inherit the decedent’s property absent a codified statute

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\[\text{20 See Ariz. Rev. Stat. Ann. § 14-2803(A)-(E); see also n. 26, infra (describing public policy reasoning for denying a killer from profiting from his murder).} \]

\[\text{21 While theologians and seculars debate the spiritual assertions of the Bible, the Bible continues to be the most influential literary work ever written. See The First Recorded Murder and The Jehovan System of Justice, Edward Sagarin, 1986 (10 Legal Stud. F. 185 1986). Its antiquity and permeation of arguably every culture in the world qualify it as being a work of historicity. See Full Bible now available in 475 languages, UNITED BIBLE SOCIETIES (Apr. 2, 2012), http://www.unitedbiblesocieties.org/news/1525-full-bible-now-available-in-475-languages; see also Latest Bible translation statistics, WYCLIFFE BIBLE TRANSLATORS, http://wycliffe.org.uk/wycliffe/about/vision-whatwedo.html (last visited May 16, 2013).} \]

\[\text{22 After being driven from the Garden of Eden, Adam and Eve began to start their family by bearing children. Genesis 4:9. Cain was their first-born, followed by his little brother Abel. Genesis 4:1-2. Each was assigned certain duties. Cain was to work the soil and Abel was to keep the sheep. Genesis 4:2. When the time came that each was to present the “firstlings” of their labors to the Lord, Cain did not present the “firstlings” of his fruit crop. Genesis 4:4-5. Abel received praise from the Lord for his exact obedience to His directions, while Cain’s offering was rejected. Genesis 4:4-5. Cain becomes “wroth” and, when out of the Lord’s presence, kills his brother Able. Genesis 4:6-8. At his next meeting with the Lord, Cain refuses to take responsibility and the Lord curses Cain for his crime. Genesis 4:9.} \]


barring him from doing so? Early American courts were reluctant to allow a slayer to profit from his murder.

B. Statutory Response to Slayers

At common law, American courts used two different theories when dealing with early slayer cases. Some courts would disinherit the slayer because of the public policy principle that a slayer should not profit from his crime (No Profit theory).\(^{25}\) Other courts were reluctant to disinherit a slayer in absence of a legislatively codified statute directing the court to do so (Strict Construction theory).\(^{26}\) In 1936, legal scholar John W. Wade proposed a No Profit theory statutory fix to promote uniformity amongst the states in dealing with slayer cases.\(^{27}\) In 1969, the Uniform Code Commission included No Profit theory language in its first promulgation of the Uniform Probate Code (UPC).\(^{28}\) Arizona adopted the UPC in its entirety in 1973.\(^{29}\) Prior to adopting the UPC, Arizona followed the common law No Profit theory when deciding slayer cases.\(^{30}\)

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\(^{25}\) In *Mutual Life v. Armstrong*, the first American case to consider the issue of whether a slayer could profit from his crime, the Court set forth the No Profit public policy justification of slayer statutes saying: “It would be a reproach to the jurisprudence of the country if one could recover insurance money payable on the death of the party whose life he had feloniously taken.” See *Mut. Life Ins. Co. v. Armstrong*, 117 U.S. 591, 600 (1886).

\(^{26}\) The Strict Construction theory originated from Judge John Clinton Gray’s dissent in *Riggs v. Palmer*. See *Riggs v. Palmer*, 22 N.E. 188, 191-93 (1889). Judge Gray argued that the criminal law already established punishment for slayers. Id. A court denying the estate to a slayer was to, in effect, add significant further punishment to what a slayer received under the criminal statute. Id. Judge Gray argued that this was not something the court was permitted to do without an express, written statute. Id. In Judge Gray’s opinion, the court could not simply create or imagine such statutes so as to obtain a morally pleasing result. Id.


\(^{28}\) “An individual who feloniously and intentionally kills the decedent forfeits all benefits under this [article] with respect to the decedent’s estate, including an intestate share, an elective share, an omitted spouse’s or child’s share, a homestead allowance, exempt property, and a family allowance. If the decedent died intestate, the decedent’s intestate estate passes as if the killer disclaimed his [or her] intestate share.” § 2-803. Effect of Homicide on Intestate Succession, Wills, Trusts, Joint Assets, Life Insurance, and Beneficiary Designations., Unif.Probate Code § 2-803.

\(^{29}\) Forty-eight states have enacted laws that strip a slayer of any inheritance benefit he would have gained from his unlawful act. See Anne-Marie Rhodes, *Consequences of Heirs’ Misconduct: Moving from Rules to Discretion*, 33 Ohio N.U. L. Rev. 975, 980 (2007).

\(^{30}\) In 1970, *In re Griswold* was a case of first impression that offered Arizona courts the opportunity to choose between the No Profit theory and the Strict Construction theory. See *In re Griswold’s Estate*, 475 P.2d 508, 508-10 (1970). In *Griswold*, Francis Griswold killed his wife and in his criminal trial plead guilty to second degree murder. Id. Francis then attempted to probate his wife’s will, which left Francis all of his wife’s property. Id. The Apache County Superior Court held that because of his murderous
Arizona’s slayer statute codifies the public policy principle that a murderer cannot profit from his crime. The slayer statute provides a right of civil action to the victim’s successors for the purpose of directing the victim’s testate/intestate property away from the slayer. Such an action is brought by a successor, or other party of interest (e.g., life insurance company, bank), on behalf of the victim’s estate. The slayer statute applies to both real and personal property that would have been acquired by intestacy or by will.\(^\text{31}\)

### III. Arizona Loopholes Discovered

Since the codification of Arizona’s slayer statute, cases have arisen in which killers were still able to profit from their murder. In 2001, local Phoenix attorney R. Keith Perkins\(^\text{32}\) incorporated Never Again Foundation Legal Services (Never Again Foundation)\(^\text{33}\) to give legal assistance to families of victims killed by domestic violence.\(^\text{34}\) The Never Again Foundation’s purpose is to guide victims through

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\(^{31}\) See The Law of Trusts and Trustees § 478.

\(^{32}\) Mr. Perkins received his J.D. at Brigham Young University and was admitted to practice law in Arizona in 1993. See Mr. R Keith Perkins, STATE BAR OF ARIZONA, http://www.azbar.org/FindaLawyer#&&+eOEvMJ6pyN4M35vCIEFW3c/aXt9gKpNLr7eO2ReykI2dOoLYFA7PAjBpXMv1HPehx8K/ULCHAOBck1QVA9pZ3jQm3tLYAL6Hdyb5YtdJbMHTUX09FwEdU4 (last visited May 16, 2013).


\(^{34}\) The Never Again Foundation is a “nonprofit legal charity that helps families nationwide who have lost a loved one to domestic violence. [It] prevent[s] killers form financially profiting from murder.” See K.T. v. Ramos, CV-11-156-PHX-LOA, 2012 WL 443732 (D. Ariz. Feb. 13, 2012) (discussing the Never Again Foundation’s purposes); see also Will the Killer Profit?, NEVER AGAIN FOUNDATION, http://neveragainfoundation.org/will_the_killer_profit.pdf (describing the organization’s purposes).
the probate process in order to obtain their rightful assets. In other words, the Never Again Foundation helps victims disinherit slayers. Through the years, the Never Again Foundation has exposed loopholes in Arizona’s slayer statute through litigating slayer cases. The following case examples litigated by the Never Again Foundation and Mr. Perkins demonstrate these loopholes.

A. Loophole #1: “Felonious and Intentional” Not Expressly Defined

The most critical problem of Arizona’s pre-amendment slayer statute arose over the vague terms “felonious and intentional.” The slayer statute stated that “[a] person who feloniously and intentionally kills [a] decedent forfeits all benefits.” However, the terms “felonious and intentional” were not expressly defined in the statute, thus leaving the terms up to the courts to define. In 1983, the Arizona Court of Appeals limited the meaning of “felonious and intentional” to only include murder in the first or second degree. According to the court, manslaughter did not rise to the level or meaning of the phrase “felonious and intentional.” Thus, manslaughter was effectively excluded from the slayer statute. Only killers convicted of homicide in the first or second degree would qualify as slayers under Arizona law.

According to Mr. Perkins’ research, limiting the definition of “felonious and intentional” to only include first or second degree murder, allowed thirty to forty percent of individuals that killed a decedent to slip through the cracks. Killers that were able to reduce their charge to manslaughter, were not barred as slayers and thus could profit, as successors, from their crimes of murder. Most criminal prosecutors were not aware of the civil repercussions of offering lower pleas of manslaughter to slayers, nor were they ethically obligated to take such considerations into account when offering plea deals. If a slayer’s defense counsel could effectively negotiate a plea below second degree homicide, the slayer would have the right to profit from his crime, civilly. Likewise, if a jury was not of unanimous agreement regarding first or second degree murder, but

35 See Will the Killer Profit?, Never Again Foundation, http://neveragainfoundation.org/will_the_killer_profit.pdf (describing the organization’s purposes).
38 Id.
39 See n. 72, infra.
40 See n. 72, infra.
41 See n. 72, infra.
agreed on manslaughter, then the killer had the right to inherit his victim’s property.\textsuperscript{42}

\textbf{Case Example: Douglas Grant}\textsuperscript{43}

Douglas Grant was charged with first and second degree murder for drowning his wife, Faylene Grant, in the couple’s bathtub. Douglas claimed that Faylene committed suicide in the couple’s Gilbert home. An autopsy determined that Faylene’s cause of death was drowning. In addition, she had heavy amounts of prescription sleep aids in her system.\textsuperscript{44} Douglas was the beneficiary of Faylene’s $300,000.00 life insurance policy. Faylene also held an interest in Douglas’ company that grossed millions of dollars annually.\textsuperscript{45}

Lack of evidence and a desire for conviction prompted the prosecutor to add manslaughter charges. The jury was split on the first degree murder charge and 10-to-2 on the second degree murder charge. The jury was unanimous on the manslaughter charge. The jury found that Douglas was responsible for Faylene’s death. The jury also found that Douglas acted for financial gain, in an unusually cruel manner, and in a way that caused emotional harm to the family. But, the jury could not agree that Douglas killed his wife in the first or second degree.\textsuperscript{46} Consequently, under the pre-2012 Arizona slayer statute, Douglas was not a slayer and the slayer statute did not apply. Douglas was convicted for being responsible for his wife’s death (manslaughter) and yet, was entitled to inherit her property.

\textbf{B. Loophole #2: Murder-Suicide}

Murder-suicide provided a way for slayers to financially benefit designated individuals of their choosing. A slayer could designate a life insurance beneficiary, murder his family and himself, and the

\textsuperscript{42} See n. 72, infra.
\textsuperscript{45} See n. 72, infra.
Arizona slayer statute could not deprive the slayer’s life insurance beneficiaries from receiving the insurance proceeds because of the lack of criminal judgment.\textsuperscript{47} A recent multistate study revealed that an average of ten murder-suicides occur in each state annually.\textsuperscript{48} No slayer statute in the nation addressed this loophole.\textsuperscript{49} Murder-suicide did not fall under Arizona’s slayer statute because the statute only applied to the slayer. In murder-suicide cases, the slayer cannot profit because he is dead.\textsuperscript{50}

**Case Example: Gilbert Ramos\textsuperscript{51}**

On September 21, 2010, Gilbert Ramos shot his wife, Sandra Ramos, and his young son and daughter in their San Tan Valley home while they slept.\textsuperscript{52} Then, Gilbert shot himself.\textsuperscript{53} At the time of the shooting, Gilbert and his sister, Marivel, were under investigation for insurance fraud. Gilbert had intentionally damaged Marivel’s vehicle and Marivel attempted to collect the insurance proceeds. Prior to his death, Gilbert named his wife Sandra and his sister Marivel as the beneficiaries of his life insurance policy.\textsuperscript{54}

Two hours before the murder, Gilbert wrote the following email:

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I’m writing this to let you know about my sister’s Stratus. I alone am responsible for the damage to the Stratus. My sister dropped it off for me to do maintenance and repairs, but I chose to damage it and drive it next door to her apartment and then
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called my sister afterward telling her that somebody had stolen it. I did this on my own choice. My sister had no knowledge of this to this day. I ruined my family financially. I’m sorry for what I have done and what I am about to do.55

Just before he killed his family and himself, Gilbert called his life insurance company to verify that his sister was still named as a beneficiary.56 Sandra had another minor child (K.T.) from a previous marriage who was not home the morning Gilbert killed the rest of the family. Under Arizona intestacy laws, K.T. was entitled to her mother’s half of the community property and half of her mother’s separate property.57

However, the life insurance policy was a non-probate transfer, which passes to a beneficiary of the decedent’s choosing and outside of probate. Gilbert killed his family and himself knowing that by doing so his sister Marivel would be the sole beneficiary and receive all of insurance proceeds. K.T., represented by the Never Again Foundation, brought suit to recover the life insurance proceeds on behalf of her mother’s estate. But, because the slayer statute did not cover murder-suicide, K.T. was not able to disinherit Marivel.

C. Loophole #3: Appeal Duration

Arizona’s legal system struggled to interpret the slayer statute in relationship to the slayer’s criminal case. Courts read the slayer statute to mean that the disposition of the victim’s property was contingent upon the slayer’s criminal conviction and exhausted appeals.58 Given the longevity of the appeal process, this interpretation could delay the victim’s estate from being distributed for decades. The victim’s heirs are the parties with standing to bring a civil action to prevent the slayer from inheriting. If the victim’s heirs are elderly, this presented a significant problem. The slayer merely had to extend the appeals to outlast the lives of the victim’s heirs.59

Case Example: Grace Pianka60

Adam Kostewicz was an only child, immigrant from communist Poland. He left his elderly parents, Nazi concentration camp

55 See n. 72, infra (Mr. Perkins reading email suicide note).
56 See n. 72, infra.
58 See n. 72, infra; see also Ariz. Rev. Stat. Ann. § 14-2803(F).
59 See n. 72, infra.
survivors, at the age of twenty to come to America. After arriving in the United States, he met Grace Pianka, also a Polish immigrant. After arriving in the United States, he met Grace Pianka, also a Polish immigrant.61 The two moved to Ahwatukee and started a life together. Adam worked as a computer engineer and sent a portion of his earnings to his elderly parents in Poland for support.62 On April 15, 2006, Grace discovered Adam was having an affair. After a day of drinking, Grace shot and killed Adam in the couple’s bedroom.63

Grace was the beneficiary of Adam’s $800,000.00 life insurance policy. Adam’s elderly Polish parents, represented by the Never Again Foundation, brought a civil action to prevent Grace’s receipt of policy benefits and to disinherit Grace using Arizona’s slayer statute.64 But, the civil court ruling required Adam’s parents to wait yearly pending a verdict in Grace’s criminal proceedings.65 However, Grace’s criminal case was appealed year after year. At the parent’s annual review conferences, the civil case judge would merely verify that Grace’s criminal proceedings were still in progress and delay case action until the next scheduled court review, one year later.

After four years of delay pending Grace’s exhaustion of appeal, Adam’s parents argued to the court that the slayer statute actually provided two ways that a victim’s heir could revoke the designation of disinherit the slayer’s beneficiaries. The first was the by way of criminal conviction in the first or second degree. The second was through civil action. Courts had previously confused the evidentiary burden required in the victim’s civil action with the burden required in slayer’s criminal case.66 A victim-heir had the right to bring a civil suit under the civil statute and prove with a lower burden of proof that the killer was a slayer.67 If a victim-heir was successful, then the court would place the victim’s property in constructive trust,68

61 See Dateline: In the Bedroom (NBC television broadcast Aug. 24, 2009), http://www.nbcnews.com/id/32541488/ns/dateline_nbc-crime_reports/t/bedroom/#.UZqUgLXVDwM.
62 See n. 72, infra.
63 See n. 61, supra.
64 See n. 72, infra.
65 See n. 72, infra.
66 See n. 72, infra; see also Castro v. Ballesteros-Suarez, 222 Ariz. 48, 51 (Ct. App. 2009) (holding that in the absence of a criminal conviction for feloniously and intentionally killing of another, the slayer statute could be invoked if a civil trier of fact found by a preponderance of the evidence that the slayer would be found criminally accountable for the felonious and intentional killing of the decedent).
68 A constructive trust is an equitable remedy that a court imposes against one who has obtained property by wrongdoing. A constructive trust, imposed to prevent unjust enrichment, creates no fiduciary relationship. See Black's Law Dictionary (9th ed. 2009), available at Westlaw “Trust.”
protected from the slayer. However, this still could require a considerable amount of time. For those parties that did not physically have time, this loophole presented a grave problem.

IV. 2012 Changes to Close Loopholes

In 2012, the Never Again Foundation and Mr. Perkins sought to amend Arizona’s slayer statute to close the previously discussed loopholes. Arizona’s slayer statute had remained untouched by the legislature since 1994. The Foundation’s objective was to close the loopholes that Mr. Perkins had encountered during his years of litigating slayer cases. In Mr. Perkins’ own words: “We got tired of these loopholes, and we went down to the legislature and we wrote a new amendment to the statute to take care of these loopholes.” Mr. Perkins enlisted the help of Representative Javan Mesnard to be the primary sponsor of House Bill 2742 (Bill), designed to close the loopholes discussed above.

The Foundation’s efforts were successful. After Mr. Perkins testified in support of the Bill and answered questions from the House committee, the Bill unanimously passed the House and Senate. The Bill was signed into law by Governor Jan Brewer on April 17, 2012. Mr. Perkins described his perception of the Bill saying, “The House and Senate unanimously agreed. Republicans,
Democrats, the Governor agreed – and they passed the strongest slayer statute in the nation."77

A. Change #1: Expressly Defined “Felonious and Intentional”

Because the prior slayer statute left “felonious and intentional” undefined, Arizona courts had interpreted felonious and intentional to mean a conviction of first or second degree murder. Consequently, individuals that killed a decedent yet pled down to manslaughter, were not subject to the slayer statute. In response to killers escaping slayer designation by way of manslaughter plea deals, the Bill added an express definition for the term “felonious and intentional.”78 Arizona is the first state in the nation to statutorily define “felonious and intentional” for purposes of the slayer statute.79 Now included in the slayer statute’s express definition of “felonious and intentional” are the convictions of first or second degree murder, or manslaughter.80 The terms “felonious and intentional” are no longer dependent upon judicial interpretation for purposes of the slayer statute.

The newly codified definition reads: “Felonious and intentional means a conviction or a finding of guilty except insane for homicide pursuant to section 13-1103 [(manslaughter)], 13-1104 [(second degree murder)] or 13-1105 [(first degree murder)].”81 As the law stands today in Arizona, individuals convicted of first or second degree murder, or manslaughter, are now slayers for purposes of legal disinheritance. Individuals convicted of lesser charges of manslaughter, like Douglas Grant, are no longer able to profit from their murder.

B. Change #2: Constructive Trust “Built-in”

One of the biggest concerns in the Pianka case was the elderly age of Adam’s parents. If Grace continued to appeal her conviction and the civil court judge was not willing to put Adam’s estate in constructive trust, it was likely that Adam’s parents might have died before a final criminal conviction ever came. In response, the Bill built constructive trust language into the slayer statute. It reads:

The decedent’s estate may petition the court to establish a constructive trust on the property or the estate of the killer, effective from the time of

77 See n. 72, supra (emphasis added).
78 See n. 74, supra.
79 See n. 72, supra.
the killer’s act that caused the death, in order to secure the payment of all damages and judgments form that . . . resulted in criminal conviction of either spouse in which the other spouse or a child was the victim.\footnote{Ariz. Rev. Stat. Ann. § 14-2803(K).}

What this added language now does, is it gives the civil case judge a pre-criminal judgment remedy. The civil case judge now has power to hold the victim’s estate in trust, upon petition of the decedent’s estate. Under the previous slayer statute, a judge’s authority to create a constructive trust was not expressed.\footnote{See n. 72, supra.} Furthermore, notice that the added language gives the civil case judge a time marker. The constructive trust can revert back to the moment in time, in which the killing occurred. Meaning, a judge can now revert back to and subject all property held by decedent at the time of the killing to the constructive trust for the benefit of the family or remaining successors.

In the Pianka case, Adam’s elderly parents waited for years, while Grace’s criminal proceedings exhausted appeal. This newly added language would have allowed Adam’s parents to immediately put Adam’s estate property in constructive trust for their benefit from the time of the Adam’s killing.

C. Change #3: Slayer’s Estate Property Subject to Constructive Trust

Murder-suicide was not addressed in any slayer statute in the nation, because nationwide, slayer statutes only disinherited the living slayers.\footnote{See n. 72, supra.} In the Ramos case, Gilbert named his wife and sister as beneficiaries on his life insurance policy. Then, Gilbert killed his family and himself in an effort to financially benefit his sister as sole beneficiary to his life insurance policy. Gilbert’s wife had another minor child, from another marriage, who was entitled to her mother’s half of the community property and half of her mother’s separate property under Arizona intestacy laws.

Because Arizona’s slayer statute only addressed disinheriting living slayers, the statute could not be used to disinherit Gilbert’s sister. To address murder-suicides, the Bill added express language that allows a victim’s successors to not only place the victim’s estate property in constructive trust, but also the slayer’s estate property, without limitation.\footnote{Ariz. Rev. Stat. Ann.§ 14-2803(K) (establish a constructive trust on . . . the estate of the killer); see also n. 72, supra.} Arizona’s slayer statute now provides a right to
civil action against killer's estate to recover and be placed in constructive trust (e.g., life insurance benefits). \(^{86}\)

D. **Summary of 2012 Changes**

Arizona's slayer statute now 1) expressly defines “intentional and felonious” to mean any individual who is found guilty of murder in the first or second degree, or the lesser crime of manslaughter; 2) allows victims to place the decedent's estate in constructive trust immediately from the time of the killing; and 3) allows the victims to place the slayer's estate (i.e., life insurance benefits) in constructive trust, in the case of murder-suicide. The Never Again Foundation and Mr. Perkins were successful in closing the loopholes they had encountered through years of litigating slayer cases. The Arizona legislature closed the perceived loopholes; however, it failed to consider the adverse impact on the trending social issue of euthanasia.

V. **THE EUTHANASIA TREND**

A. **What Is Euthanasia?**

For those individuals suffering from chronic illness and pain, euthanasia has emerged as a way to alleviate the agony. Black's Law Dictionary defines euthanasia as the act or practice of causing or hastening the death of a person who suffers from an incurable or terminal disease or condition, especially a painful one, for reasons of mercy. \(^{87}\) Euthanasia can take on several different forms (e.g., active, involuntary, non-voluntary, passive, and voluntary). \(^{88}\) For purposes of this Article, euthanasia will only mean active-voluntary euthanasia (e.g., mercy killing and assisted suicide)—meaning, the terminally ill person consented to the euthanasia performed by a facilitator.

Euthanasia is not a license to kill, in all cases. Euthanasia is generally considered to be criminal homicide, except in the few states

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\(^{87}\) Black's Law Dictionary (9th ed. 2009), available at Westlaw “Euthanasia.” The translation of the Greek word *euthanasia* — 'easy death' — contains an ambiguity. It connotes that the means responsible for death are painless, so that the death is an easy one. But it also suggests that the death sought would be a relief from a distressing or intolerable condition of living (or dying), so that death, and not merely the means through which it is achieved, is good or right in itself. Usually, both aspects are intended when the term *euthanasia* is used. See Alexander Morgan Capron, “Euthanasia,” in 2 Encyclopedia of Crime and Justice 709, 709 (Sanford H. Kadish ed., 1983).

\(^{88}\) See *id.*
that have legalized it. And, even in those states that have legalized euthanasia in some form, the state legislature has enacted strict statutory guidelines that limit its abuse. This Article does not attempt to take a position on the morality or legality of euthanasia. Rather, this section of the Article merely presents the issues and advocates for a procedure where the testator’s intent can be protected.

B. Euthanasia: An Emerging Trend

Early American courts made no reference to euthanasia practices when deciding common law slayer cases. The concept of euthanasia was rarely a topic of conversation prior to 1969. In 1969, Dr. Elisabeth Kübler-Ross published *On Death and Dying*. This book broke the ice on a topic that was once considered taboo. Dr. Kübler-Ross and her book demanded that the medical profession change its view of dying patients. As a result, concepts such as hospice care, “dying with dignity” and living wills became much more common. More and more professionals now encourage individuals preparing estate plans to discuss end-of-life issues in order protect the loved ones they will leave behind.

In 1991, Derek Humphry published *Final Exit*, a how-to book of lethal drug dosages designed to bring personal autonomy to the forefront. Mr. Humphry has written several books discussing the “liberating” benefits of rational suicide. In his books, Mr. Humphry

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89 See Capron, n. 87, *supra* (noting most states have enacted criminal laws to discourage the practice of euthanasia); see also n. 104, *infra* (listing states that have enacted laws decriminalizing euthanasia in certain circumstances).

90 For example, Oregon’s Death With Dignity Act only allows terminally ill individuals to end their lives through self-administration of lethal medications, expressly prescribed by a physician for that purpose. See *Death with Dignity Act*, *OREGON HEALTH AUTHORITY*, http://public.health.oregon.gov/ProviderPartnerResources/Evaluationresearch/deathwithdignityact/Pages/index.aspx (last visited May 17, 2013).

91 Based on author’s extensive research of early pre-slayer statute cases (notes on file with author).


93 *Id.*


suggests that people take comfort in being able to exercise the human desire to control one’s destiny.  

The United States has seen considerable legal controversy in the area of death during the last few decades as the baby boomer generation approaches death. In 1991, California passed the Natural Death Act, which gave patients the right to refuse life-prolonging treatment when faced with terminal illness. In 1997, the U.S. Supreme Court considered the issue of physician-assisted suicide in Washington v. Glucksberg and Vacco v. Quill. The Court did not hold that physician-assisted suicide was a constitutional right, but the Court did hold that states are free to make their own laws regarding the legality of physician-assisted suicide.

Oregon, Washington, Montana, and most recently, Vermont have since legalized physician-assisted suicide. Arizona has so far stayed with the status quo and has not permitted assisted suicide. In Arizona, assisted suicide is manslaughter. Many legislators fear that insurance companies or families burdened with the escalating costs of caring for the chronically ill, will abuse the opportunity to kill aging loved ones.

Pain and end-of-life considerations have become an important facet of health care as America’s baby boomers age and more of them develop chronic illnesses. One hundred million Americans live

103 See supra nn. 101 & 102.
with chronic pain daily and twice as many elderly adults die in hospice care compared to a decade ago. America has also seen a spike in suicide rates as baby boomers age and near the end of their lives.

Arizona’s suicide rate among baby boomers is one of the highest in the nation. In 2010, Arizona’s suicide rate had shown a sixteen percent increase from a decade earlier. Many chronically ill baby boomers do not want to be a burden on their loved ones. They choose to end their lives rather than burden families and friends with medical bills, debt, and worry. Many of these individuals are not alone in their decision or act. Many have loved ones offering support and even assistance in some cases. However, assisting suicide in Arizona is a crime. By assisting a loved one with suicide in Arizona, the assisting individual has committed manslaughter—and now because of the 2012 amendments to the slayer statute, is subject to disinheritance.

VI. UNINTENDED CONSEQUENCES

A. The Problem

Mr. Perkins and the Never Again Foundation found that thirty to forty percent of murderers in Arizona were profiting from their

108 See Board of Health Sciences Policy, Relieving Pain in America: A Blueprint for Transforming Prevention, Care, Education, and Research 2 (2011), http://books.nap.edu/openbook.php?record_id=13172&page=1; see also Janice Loyd, Hospice Care Used More, but Often Too Late, USA Today (Feb. 5, 2013 18:40 PST), http://www.usatoday.com/story/news/nation/2013/02/05/hospice-hospital-time/1881205/ (last visited May 18, 2013). In Arizona, up to eighty percent of hospice patients are sixty-five or older. A third of those patients are eighty and older. People use hospice services for diseases that have a high burden for caregivers, such as cancer, kidney disease, and Alzheimer’s, heart disease, stroke, and lung disease. See Hospice Care Statistics, University of Arizona, http://www.uahshealth.com/library/sections/article/hospice-care-statistics (last visited May 18, 2013).


111 See id.

112 See n. 96, supra.

113 See n. 96, supra.

114 See n. 96, supra.
crime of murder because of loopholes in Arizona’s slayer statute.\textsuperscript{115} In 2012, the Never Again Foundation and Mr. Perkins pushed legislation to amend Arizona’s slayer statute to close the loopholes by 1) expressly defining “felonious and intentional” to include the lesser charge of manslaughter; and 2) providing a mechanism for victims to place the decedent’s estate and the slayer’s estate in constructive trust immediately from the time of the killing.\textsuperscript{116} But, by defining “felonious and intentional” to include manslaughter, the slayer statute now unintentionally subjects individuals not guilty of “felonious and intentional” murder, as historically defined, to disinheritance.

Now in Arizona, individuals guilty of manslaughter, even for euthanasia reasons, are slayers for purposes of the slayer statute. Therefore, participants of euthanasia in Arizona are now subject to disinheritance in civil court. This means that individuals like George Sanders, who shot his ailing wife, are subject to having their property and that of their loved one placed in constructive trust, thereby denying them any benefit of it. This results even if the testator directed their own killing by a successor and left a will saying that the successor should inherit.

The slayer statute bars participants of euthanasia from taking under a testator’s will, regardless of whether the testator intended to leave property to their loved one who assisted in their killing. Is this what the testator would have wanted? The answer is most likely not. In most cases, it is likely that the testator did not know that by having a successor aid in his or her killing, the aiding successor would be subjected to disinheritance. Arizona as a whole may not be ready for a dramatic change of law, legalizing euthanasia, but one thing is becoming increasingly certain; our community does not view euthanasia as “felonious and intentional” murder, contrary to the definition in the Arizona’s current slayer statute.

**B. Euthanasia Is Not the Same as “Felonious and Intentional”**

1. Nationally

Early American courts did not address situations of euthanasia in slayer cases. At common law, the majority of courts followed the No Profit theory and disinherited slayers because of the slayer’s murderous act. Courts applied the traditional definition of murder (i.e., the killing of a human being with malice aforethought), which was seen as reprehensible to American society and therefore could

\textsuperscript{115} See n. 72, supra.

not be tolerated. Euthanasia seems to be a different kind of murder than the murder referred to in early American slayer cases. This is in part because the act of euthanasia is not killing another with malice aforethought, rather it is killing another because of mercy and compassion.

In the United States, fifty-four percent of medical practitioners support euthanasia. American’s support, as a whole, for euthanasia for the terminally ill or those on life support is much higher. More than eighty-six percent of individuals surveyed supported euthanasia for terminally ill or life support patients.

Federally, the government has chosen to leave the legalization of euthanasia up to the individual states, like the U.S. Supreme Court decided. In 2010, the Obama administration aggressively pushed The Patient Protection and Affordability Act (Affordable Care Act) through Congress in an effort to curb rising health care costs by mandating that all citizens carry medical insurance. Euthanasia was seen by the federal government as a health cost savings mechanism. End-of-life counseling language was included in early drafts of the legislation, but was later removed after the Republican-led House threatened to repeal the legislation if the

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117 See Black’s Law Dictionary (9th ed. 2009), available at Westlaw “Murder.” At common law, the crime of murder was not subdivided. Id. English common law treated murder as a wrong that violated the laws of nature. 4 W. Blackstone, Commentaries on the Laws of England, 360-375. The term “murder” was historically applied to the secret killing of another. Anciently, it was defined as “homicide, committed privately, no one witnessing, no one knowing it.” See id.


119 See n. 118, supra; see also David Moore, Three in Four American Support Euthanasia, GALLUP (May 17, 2005), http://www.gallup.com/poll/16333/three-four-americans-support-euthanasia.aspx#1x#1 (last visited May 20, 2013).

120 See nn. 101 & 102, supra.

121 In the government’s eyes, it is cheaper to provide one dose of lethal drugs than it is to provide months of life prolonging treatment. For example, Barbara Wagner was a sixty-four-year-old Oregon citizen with terminal lung cancer. See Susan Donaldson James, Death Drugs Cause Uproar in Oregon, ABC NEWS (Aug. 6, 2008), http://abcnews.go.com/Health/story?id=5517492&page=1#1UZuyD7XVdW (last visited May 21, 2013). Barbara was on an Oregon state funded health plan. Id. Her doctor prescribed her a new chemotherapy drug called Tarceva (at the cost of $4000 per month) in an effort to prolong her life. Id. Barbara soon received a letter from Oregon Health Plan declining to pay for Tarceva. Id. However the same letter said that it would pay for the physician-assisted suicide drugs (at the one-time cost of $50). Id. In her own words, “It was horrible. I got a letter in the mail that basically said if you want to take the pills, we will help you get that from the doctor and we will stand there and watch you die. But, we won’t give you the medication to live.” Id.
language remained. The end-of-life counseling language was subsequently removed, but the Affordable Care Act did not prohibit euthanasia services—suggesting that in the eyes of the federal government, euthanasia is not the same type of murder as traditionally defined in slayer cases.

2. Arizona

*Hoover*¹²⁴

In 1984, the Arizona Supreme Court considered the issue of whether a manslaughter conviction, committed by “recklessly causing the death of another person,” was the same thing as “felonious and intentional” for purposes of disinherittance under the slayer statute.¹²⁵ In *Hoover*, Linda Hoover shot and killed her husband Kenneth Hoover after a heated argument.¹²⁶ Prior to doing so, Linda had loaded a handgun and written a suicide note, which prompted the dispute between the couple.¹²⁷ Linda was indicted on charges of first degree murder, but later plead guilty to manslaughter.¹²⁸ First Interstate Bank (Bank), as personal representative of the husband’s estate, petitioned the probate court for a determination that Linda was barred from inheriting her husband’s estate because she had killed him.¹²⁹

The Bank argued that a conviction for manslaughter under Arizona’s manslaughter statute was conclusively a conviction of “felonious and intentional” for purposes of the slayer statute.¹³⁰ Linda argued that the intentional commission of a reckless act remained mere negligence and did not rise to the level of the intent necessary to trigger the application of the slayer statute.¹³¹ The court held that Linda’s manslaughter conviction did not rise to the

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¹²⁵ *Id.* at 464.

¹²⁶ *Id.* at 465.

¹²⁷ *Id.*

¹²⁸ *Id.*

¹²⁹ *Id.*

¹³⁰ *Id.* at 466.

¹³¹ *Id.*
level of “felonious and intentional” for purposes of the slayer statute, and remanded the case back to the trial level.132

Final Exit Network

On April 15, 2007, relatives found the body of Jana Van Voorhis in her Phoenix home and initially thought that Jana had died of natural causes.133 Jana’s body was found neatly tucked under the covers of her bed, with her hands to her sides, and hair delicately fanned out on her pillow.134 The position of Jana’s body caused the relatives to investigate Jana’s personal items, where they found references to the Final Exit Network in her personal belongings.135 The Final Exit Network is a nonprofit assisted-suicide association founded on the principles of “self-deliverance” promulgated in Humphry’s Final Exit.136

Through investigation, police found that Jana had died from helium asphyxiation in the company of Final Exit Network volunteers Wye Hale-Rowe and Frank Langsner. Maricopa County indicted Langsner, along with the Final Exit Network’s medical director Dr. Larry Egbert, on charges of manslaughter.137 At trial, a Maricopa County jury found that Dr. Egbert was not guilty of manslaughter. The jury was hung regarding Langsner’s involvement in Jana’s suicide.138 The jury was unwilling to convict these individuals on charges of manslaughter.

George Sanders Re-visited

132 Id. at 468.
134 See Rubin, n. 133, supra.
135 See Rubin, n. 133, supra.
136 See Rubin, n. 133, supra; see also n. 96, supra.
Assisted suicide is still manslaughter in Arizona. It seems that popular opinion defines it as something else. When George Sanders shot and killed his wife of 62 years, it was not out of “malice aforethought,” it was because of mercy and compassion. George’s prosecutor, Blaine Gadow, saw George’s act as something different than the type of murder historically applied in slayer cases. Mr. Gadow requested that the court not sentence George to prison.\(^\text{139}\) In his statement to the court, Mr. Gadow recognized euthanasia as a trending social issue, and said: “The family very much loved their mother. I don’t know where our society is going to go with cases like this, judge. At this point in time, what Mr. Sanders did was a crime. However, no one in the courtroom has forgotten the victim in this case.”\(^\text{140}\) The judge agreed with Prosecutor Gadow, alluding that he also saw George’s act as something different than traditional murder, and only sentenced George to unsupervised probation. The judge and said his judgment “temper[ed] justice with mercy.”\(^\text{141}\)

Regardless of the state’s euthanasia law, it seems the Arizona community considers euthanasia to be something different than traditional murder. However, this does not mean that Arizona, as a whole, is ready for a dramatic change of law that would legalize euthanasia practices. It does tend to show, that to most Arizonans, euthanasia does not rise to the level of “felonious and intentional” murder as historically applied in slayer cases.

3. Other Jurisdictions

Four states have legalized assisted suicide: Oregon, Washington, Montana, and Vermont.\(^\text{142}\) Following the U.S. Supreme Court rulings in *Glucksberg*\(^\text{143}\) and *Quill*,\(^\text{144}\) Wisconsin amended its slayer statute to include certain exceptions and changed previous statute wording from “felonious and intentional” to “unlawful and intentional.”\(^\text{145}\) Wisconsin’s slayer statute now contains the following exception: “This [statute] does not apply if . . . [t]he decedent provided in his or her will, by specific reference to this [statute], that this [statute] does not apply.”\(^\text{146}\) In 2008, the Wisconsin Court of Appeals

\(^\text{139}\) See n. 1, *supra*.

\(^\text{140}\) See n. 1, *supra*.

\(^\text{141}\) See n. 1, *supra*.

\(^\text{142}\) See n. 104, *supra*.

\(^\text{143}\) See n. 101, *supra*.

\(^\text{144}\) See n. 102, *supra*.


considered the issue of whether the act of assisting suicide barred an individual under Wisconsin’s slayer statute from taking or whether assisted suicide was included in the slayer statute’s exception.\footnote{In re Estate of Schunk, 750 N.W.2d 446, 446 (Wis. Ct. App. 2008).}

In \textit{Schunk}, decedent was terminally ill with non-Hodgkin’s lymphoma. He lived with his wife and younger daughter.\footnote{\textit{Id.} at 447.} Decedent also had six older children that were not wife’s children.\footnote{\textit{Id.}} Decedent was hospitalized several days before his death.\footnote{\textit{Id.}} On the day of his death, the doctor allowed him to leave on a one-day pass to see his home and his dogs.\footnote{\textit{Id.}} Wife and younger daughter brought him home.\footnote{\textit{Id.}} Knowing that decedent wanted to commit suicide, wife and younger daughter drove decedent to the family’s cabin on the family’s property, helped the decedent inside, and gave him a loaded shotgun, then left.\footnote{\textit{Id.}} Decedent was found dead later that day from a single gunshot wound to the chest.\footnote{\textit{Id.}}

Wife and daughter filed a petition for informal administration of decedent’s estate.\footnote{\textit{Id.}} Decedent’s older daughter filed a demand for formal proceedings, arguing that wife and younger daughter had assisted decedent’s death and by so doing “unlawfully and intentionally” killed the decedent for purposes of the slayer statute and was barred from inheriting.\footnote{\textit{Id.}} In its opinion, the court held that assisted suicide was not included in the common meaning of “unlawful and intentional killing.” and said:

\begin{quote}
[Wisconsin’s exception] plainly expresses the legislature’s intent to allow a testator to dispose of his or her property as the testator wishes notwithstanding the fact that an intended beneficiary has unlawfully and intentionally deprived the testator of his or her life. It may be unlikely a testator would choose to do so, but we cannot say it is illogical or absurd to think a testator would ever do so. A testator might, for example, contemplate that an intended beneficiary might kill the testator in an act of euthanasia—“the act ... of killing ... hopelessly sick ... individuals ... for
\end{quote}
reasons of mercy,” . . . and the testator might want this to happen.\(^{157}\)

Wisconsin’s slayer statute exception provided a mechanism for euthanasia participants to still inherit, even in a state that had not legalized euthanasia. Wisconsin’s “opt-out” exception is a model for Arizona.

C. A Solution

Arizona should amend its slayer statute to include an exception that would allow an individual to manifest his or her intent, in a testamentary document, to “opt-out” of the slayer statute. A statutory exception to the slayer statute provides a procedure where the testator’s intent can be protected even in euthanasia cases. The proposed amendment could simply read:

“M. This section does not apply if the decedent provided in his or her will, by specific reference to this section, that this section does not apply.”

A statutory “opt-out” exception, first and foremost, preserves testator intent by allowing a testator to direct his or her estate distribution, by will, to the individuals of choice, regardless of the slayer statute. Secondly, the exception can only occur if the testator drafts a will making specific reference to the slayer statute. This promotes the creation of wills, which is the primary purpose of intestacy law. Furthermore, an exception would allow for future advancements of euthanasia laws.

As the law stands today in Arizona, euthanasia is a crime of manslaughter. But, this may not always be the case, given current trends. This does not mean to suggest that Arizona is ready to legalize euthanasia at this point in time, but an exception to the slayer statute creates a mechanism, for Arizonans considering euthanasia, to “opt-out” of the slayer statute without subjecting all Arizonans to accept euthanasia. Finally, the slayer statute would still apply to killers that previously escaped disinheritance by taking pleas of the lesser charge of manslaughter, which was the purpose of amending the slayer statute to include manslaughter.

VII. CONCLUSION

Euthanasia is something different from what has historically been considered grounds for disinheritance using Arizona’s slayer statute. However, Arizona’s 2012 amendment to its slayer statute had the unintended effect of subjecting participants of euthanasia to

\(^{157}\) Schunk, 750 N.W.2d at 449-50.
disinheritance, regardless of whether the testator intended to leave property to their loved one who assisted in the testator’s killing. By amending its slayer statute to include an “opt-out” exception that allows for a testator’s intent to be protected, Arizona would truly create the “strongest”\textsuperscript{158} slayer statute in the nation—one that would serve as a model for every state in the union.

\textsuperscript{158} See n. 72, supra (“[Arizona] passed the strongest slayer statute in the nation”).