

State of Arizona  
Senate  
Fiftieth Legislature  
First Regular Session  
2011

# SENATE BILL 1368

AN ACT

AMENDING SECTION 13-105, ARIZONA REVISED STATUTES; AMENDING TITLE 13, CHAPTER 7, ARIZONA REVISED STATUTES, BY ADDING SECTION 13-709.06; AMENDING TITLE 13, CHAPTER 23, ARIZONA REVISED STATUTES, BY ADDING SECTION 13-2323; RELATING TO HUMAN SMUGGLING ORGANIZATIONS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 13-105, Arizona Revised Statutes, is amended to  
3 read:

4 13-105. Definitions

5 In this title, unless the context otherwise requires:

6 1. "Absconder" means a probationer who has moved from the  
7 probationer's primary residence without permission of the probation officer,  
8 who cannot be located within ninety days of the previous contact and against  
9 whom a petition to revoke has been filed in the superior court alleging that  
10 the probationer's whereabouts are unknown. A probationer is no longer deemed  
11 an absconder when the probationer is voluntarily or involuntarily returned to  
12 probation service.

13 2. "Act" means a bodily movement.

14 3. "Benefit" means anything of value or advantage, present or  
15 prospective.

16 4. "Calendar year" means three hundred sixty-five days' actual time  
17 served without release, suspension or commutation of sentence, probation,  
18 pardon or parole, work furlough or release from confinement on any other  
19 basis.

20 5. "Community supervision" means that portion of a felony sentence  
21 that is imposed by the court pursuant to section 13-603, subsection I and  
22 that is served in the community after completing a period of imprisonment or  
23 served in prison in accordance with section 41-1604.07.

24 6. "Conduct" means an act or omission and its accompanying culpable  
25 mental state.

26 7. "Crime" means a misdemeanor or a felony.

27 8. "Criminal street gang" means an ongoing formal or informal  
28 association of persons in which members or associates individually or  
29 collectively engage in the commission, attempted commission, facilitation or  
30 solicitation of any felony act and that has at least one individual who is a  
31 criminal street gang member.

32 9. "Criminal street gang member" means an individual to whom at least  
33 two of the following seven criteria that indicate criminal street gang  
34 membership apply:

35 (a) Self-proclamation.

36 (b) Witness testimony or official statement.

37 (c) Written or electronic correspondence.

38 (d) Paraphernalia or photographs.

39 (e) Tattoos.

40 (f) Clothing or colors.

41 (g) Any other indicia of street gang membership.

42 10. "Culpable mental state" means intentionally, knowingly, recklessly  
43 or with criminal negligence as those terms are defined in this paragraph:

1 (a) "Intentionally" or "with the intent to" means, with respect to a  
2 result or to conduct described by a statute defining an offense, that a  
3 person's objective is to cause that result or to engage in that conduct.

4 (b) "Knowingly" means, with respect to conduct or to a circumstance  
5 described by a statute defining an offense, that a person is aware or  
6 believes that the person's conduct is of that nature or that the circumstance  
7 exists. It does not require any knowledge of the unlawfulness of the act or  
8 omission.

9 (c) "Recklessly" means, with respect to a result or to a circumstance  
10 described by a statute defining an offense, that a person is aware of and  
11 consciously disregards a substantial and unjustifiable risk that the result  
12 will occur or that the circumstance exists. The risk must be of such nature  
13 and degree that disregard of such risk constitutes a gross deviation from the  
14 standard of conduct that a reasonable person would observe in the situation.  
15 A person who creates such a risk but who is unaware of such risk solely by  
16 reason of voluntary intoxication also acts recklessly with respect to such  
17 risk.

18 (d) "Criminal negligence" means, with respect to a result or to a  
19 circumstance described by a statute defining an offense, that a person fails  
20 to perceive a substantial and unjustifiable risk that the result will occur  
21 or that the circumstance exists. The risk must be of such nature and degree  
22 that the failure to perceive it constitutes a gross deviation from the  
23 standard of care that a reasonable person would observe in the situation.

24 11. "Dangerous drug" means dangerous drug as defined in section  
25 13-3401.

26 12. "Dangerous instrument" means anything that under the circumstances  
27 in which it is used, attempted to be used or threatened to be used is readily  
28 capable of causing death or serious physical injury.

29 13. "Dangerous offense" means an offense involving the discharge, use  
30 or threatening exhibition of a deadly weapon or dangerous instrument or the  
31 intentional or knowing infliction of serious physical injury on another  
32 person.

33 14. "Deadly physical force" means force that is used with the purpose  
34 of causing death or serious physical injury or in the manner of its use or  
35 intended use is capable of creating a substantial risk of causing death or  
36 serious physical injury.

37 15. "Deadly weapon" means anything designed for lethal use, including a  
38 firearm.

39 16. "Economic loss" means any loss incurred by a person as a result of  
40 the commission of an offense. Economic loss includes lost interest, lost  
41 earnings and other losses that would not have been incurred but for the  
42 offense. Economic loss does not include losses incurred by the convicted  
43 person, damages for pain and suffering, punitive damages or consequential  
44 damages.

1           17. "Enterprise" includes any corporation, association, labor union or  
2 other legal entity.

3           18. "Felony" means an offense for which a sentence to a term of  
4 imprisonment in the custody of the state department of corrections is  
5 authorized by any law of this state.

6           19. "Firearm" means any loaded or unloaded handgun, pistol, revolver,  
7 rifle, shotgun or other weapon that will or is designed to or may readily be  
8 converted to expel a projectile by the action of expanding gases, except that  
9 it does not include a firearm in permanently inoperable condition.

10          20. "Government" means the state, any political subdivision of the  
11 state or any department, agency, board, commission, institution or  
12 governmental instrumentality of or within the state or political subdivision.

13          21. "Government function" means any activity that a public servant is  
14 legally authorized to undertake on behalf of a government.

15          22. "Historical prior felony conviction" means:

16           (a) Any prior felony conviction for which the offense of conviction  
17 either:

18           (i) Mandated a term of imprisonment except for a violation of chapter  
19 34 of this title involving a drug below the threshold amount.

20           (ii) Involved the intentional or knowing infliction of serious  
21 physical injury.

22           (iii) Involved the use or exhibition of a deadly weapon or dangerous  
23 instrument.

24           (iv) Involved the illegal control of a criminal enterprise.

25           (v) Involved aggravated driving under the influence of intoxicating  
26 liquor or drugs.

27           (vi) Involved any dangerous crime against children as defined in  
28 section 13-705.

29           (b) Any class 2 or 3 felony, except the offenses listed in subdivision  
30 (a) of this paragraph, that was committed within the ten years immediately  
31 preceding the date of the present offense. Any time spent on absconder  
32 status while on probation, on escape status or incarcerated is excluded in  
33 calculating if the offense was committed within the preceding ten years. If  
34 a court determines a person was not on absconder status while on probation or  
35 escape status, that time is not excluded. For the purposes of this  
36 subdivision, "escape" means:

37           (i) A departure from custody or from a juvenile secure care facility,  
38 a juvenile detention facility or an adult correctional facility in which the  
39 person is held or detained, with knowledge that the departure is not  
40 permitted, or the failure to return to custody or detention following a  
41 temporary leave granted for a specific purpose or for a limited period.

42           (ii) A failure to report as ordered to custody or detention to begin  
43 serving a term of incarceration.

44           (c) Any class 4, 5 or 6 felony, except the offenses listed in  
45 subdivision (a) of this paragraph, that was committed within the five years

1 immediately preceding the date of the present offense. Any time spent on  
2 absconder status while on probation, on escape status or incarcerated is  
3 excluded in calculating if the offense was committed within the preceding  
4 five years. If a court determines a person was not on absconder status while  
5 on probation or escape status, that time is not excluded. For the purposes  
6 of this subdivision, "escape" has the same meaning prescribed in subdivision  
7 (b) of this paragraph.

8 (d) Any felony conviction that is a third or more prior felony  
9 conviction.

10 ~~23.~~ **23.** "HUMAN SMUGGLING ORGANIZATION" MEANS AN ONGOING FORMAL OR INFORMAL  
11 ASSOCIATION OF PERSONS IN WHICH MEMBERS OR ASSOCIATES INDIVIDUALLY OR  
12 COLLECTIVELY ENGAGE IN THE SMUGGLING OF HUMAN BEINGS.

13 ~~23.~~ **24.** "Intoxication" means any mental or physical incapacity  
14 resulting from use of drugs, toxic vapors or intoxicating liquors.

15 ~~24.~~ **25.** "Misdemeanor" means an offense for which a sentence to a term  
16 of imprisonment other than to the custody of the state department of  
17 corrections is authorized by any law of this state.

18 ~~25.~~ **26.** "Narcotic drug" means narcotic drugs as defined in section  
19 13-3401.

20 ~~26.~~ **27.** "Offense" or "public offense" means conduct for which a  
21 sentence to a term of imprisonment or of a fine is provided by any law of the  
22 state in which it occurred or by any law, regulation or ordinance of a  
23 political subdivision of that state and, if the act occurred in a state other  
24 than this state, it would be so punishable under the laws, regulations or  
25 ordinances of this state or of a political subdivision of this state if the  
26 act had occurred in this state.

27 ~~27.~~ **28.** "Omission" means the failure to perform an act as to which a  
28 duty of performance is imposed by law.

29 ~~28.~~ **29.** "Peace officer" means any person vested by law with a duty to  
30 maintain public order and make arrests and includes a constable.

31 ~~29.~~ **30.** "Person" means a human being and, as the context requires, an  
32 enterprise, a public or private corporation, an unincorporated association, a  
33 partnership, a firm, a society, a government, a governmental authority or an  
34 individual or entity capable of holding a legal or beneficial interest in  
35 property.

36 ~~30.~~ **31.** "Petty offense" means an offense for which a sentence of a  
37 fine only is authorized by law.

38 ~~31.~~ **32.** "Physical force" means force used upon or directed toward the  
39 body of another person and includes confinement, but does not include deadly  
40 physical force.

41 ~~32.~~ **33.** "Physical injury" means the impairment of physical condition.

42 ~~33.~~ **34.** "Possess" means knowingly to have physical possession or  
43 otherwise to exercise dominion or control over property.

44 ~~34.~~ **35.** "Possession" means a voluntary act if the defendant knowingly  
45 exercised dominion or control over property.



1 FELONY. THE ADDITIONAL SENTENCE IMPOSED PURSUANT TO THIS SECTION IS IN  
2 ADDITION TO ANY ENHANCED SENTENCE THAT MAY BE APPLICABLE.

3 Sec. 3. Title 13, chapter 23, Arizona Revised Statutes, is amended by  
4 adding section 13-2323, to read:

5 13-2323. Participating in or assisting a human smuggling  
6 organization; classification

7 A. A PERSON COMMITS PARTICIPATING IN A HUMAN SMUGGLING ORGANIZATION BY  
8 ANY OF THE FOLLOWING:

9 1. INTENTIONALLY ORGANIZING, MANAGING, DIRECTING, SUPERVISING OR  
10 FINANCING A HUMAN SMUGGLING ORGANIZATION WITH THE INTENT TO PROMOTE OR  
11 FURTHER THE CRIMINAL OBJECTIVES OF THE HUMAN SMUGGLING ORGANIZATION.

12 2. KNOWINGLY DIRECTING OR INSTRUCTING OTHERS TO ENGAGE IN VIOLENCE OR  
13 INTIMIDATION TO PROMOTE OR FURTHER THE CRIMINAL OBJECTIVES OF A HUMAN  
14 SMUGGLING ORGANIZATION.

15 3. FURNISHING ADVICE OR DIRECTION IN THE CONDUCT, FINANCING OR  
16 MANAGEMENT OF A HUMAN SMUGGLING ORGANIZATION'S AFFAIRS WITH THE INTENT TO  
17 PROMOTE OR FURTHER THE CRIMINAL OBJECTIVES OF A HUMAN SMUGGLING ORGANIZATION.

18 4. INTENTIONALLY PROMOTING OR FURTHERING THE CRIMINAL OBJECTIVES OF A  
19 HUMAN SMUGGLING ORGANIZATION BY INDUCING OR COMMITTING ANY ACT OR OMISSION BY  
20 A PUBLIC SERVANT IN VIOLATION OF THE PUBLIC SERVANT'S OFFICIAL DUTY.

21 B. A PERSON COMMITS ASSISTING A HUMAN SMUGGLING ORGANIZATION BY  
22 COMMITTING ANY FELONY OFFENSE, WHETHER COMPLETED OR PREPARATORY, FOR THE  
23 BENEFIT OF, AT THE DIRECTION OF OR IN ASSOCIATION WITH ANY HUMAN SMUGGLING  
24 ORGANIZATION.

25 C. PARTICIPATING IN A HUMAN SMUGGLING ORGANIZATION IS A CLASS 2  
26 FELONY.

27 D. ASSISTING A HUMAN SMUGGLING ORGANIZATION IS A CLASS 3 FELONY.