

State of Arizona  
Senate  
Fiftieth Legislature  
Second Regular Session  
2012

# SENATE BILL 1151

AN ACT

AMENDING SECTIONS 13-105, 13-703 AND 13-704, ARIZONA REVISED STATUTES;  
RELATING TO SENTENCING.

(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 a dangerous offense.

21           (iii) Involved the illegal control of a criminal enterprise.

22           (iv) Involved aggravated driving under the influence of intoxicating  
23 liquor or drugs.

24           (v) Involved any dangerous crime against children as defined in  
25 section 13-705.

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

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

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

41           (c) Any class 4, 5 or 6 felony, except the offenses listed in  
42 subdivision (a) of this paragraph, that was committed within the five years  
43 immediately preceding the date of the present offense. Any time spent on  
44 absconder status while on probation, on escape status or incarcerated is  
45 excluded in calculating if the offense was committed within the preceding

1 five years. If a court determines a person was not on absconder status while  
2 on probation or escape status, that time is not excluded. For the purposes  
3 of this subdivision, "escape" has the same meaning prescribed in subdivision  
4 (b) of this paragraph.

5 (d) Any felony conviction that is a third or more prior felony  
6 conviction.

7 (e) ANY OFFENSE COMMITTED OUTSIDE THE JURISDICTION OF THIS STATE THAT  
8 WAS PUNISHABLE BY THAT JURISDICTION AS A FELONY, THAT WAS COMMITTED WITHIN  
9 THE FIVE YEARS IMMEDIATELY PRECEDING THE DATE OF THE PRESENT OFFENSE. ANY  
10 TIME SPENT ON ABSCONDER STATUS WHILE ON PROBATION, ON ESCAPE STATUS OR  
11 INCARCERATED IS EXCLUDED IN CALCULATING IF THE OFFENSE WAS COMMITTED WITHIN  
12 THE PRECEDING FIVE YEARS. IF A COURT DETERMINES A PERSON WAS NOT ON  
13 ABSCONDER STATUS WHILE ON PROBATION OR ESCAPE STATUS, THAT TIME IS NOT  
14 EXCLUDED. FOR THE PURPOSES OF THIS SUBDIVISION, "ESCAPE" HAS THE SAME  
15 MEANING PRESCRIBED IN SUBDIVISION (b) OF THIS PARAGRAPH.

16 (f) ANY OFFENSE COMMITTED OUTSIDE THE JURISDICTION OF THIS STATE THAT  
17 INVOLVED THE DISCHARGE, USE OR THREATENING EXHIBITION OF A DEADLY WEAPON OR  
18 DANGEROUS INSTRUMENT OR THE INTENTIONAL OR KNOWING INFLECTION OF DEATH OR  
19 SERIOUS PHYSICAL INJURY THAT WAS PUNISHABLE BY THAT JURISDICTION AS A  
20 FELONY. A PERSON WHO HAS BEEN CONVICTED OF A FELONY WEAPONS POSSESSION  
21 VIOLATION IN ANY COURT OUTSIDE THE JURISDICTION OF THIS STATE THAT WOULD NOT  
22 BE PUNISHABLE AS A FELONY UNDER THE LAWS OF THIS STATE IS NOT SUBJECT TO THIS  
23 PARAGRAPH.

24 23. "Human smuggling organization" means an ongoing formal or informal  
25 association of persons in which members or associates individually or  
26 collectively engage in the smuggling of human beings.

27 24. "Intoxication" means any mental or physical incapacity resulting  
28 from use of drugs, toxic vapors or intoxicating liquors.

29 25. "Misdemeanor" means an offense for which a sentence to a term of  
30 imprisonment other than to the custody of the state department of corrections  
31 is authorized by any law of this state.

32 26. "Narcotic drug" means narcotic drugs as defined in section 13-3401.

33 27. "Offense" or "public offense" means conduct for which a sentence to  
34 a term of imprisonment or of a fine is provided by any law of the state in  
35 which it occurred or by any law, regulation or ordinance of a political  
36 subdivision of that state and, if the act occurred in a state other than this  
37 state, it would be so punishable under the laws, regulations or ordinances of  
38 this state or of a political subdivision of this state if the act had  
39 occurred in this state.

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

42 29. "Peace officer" means any person vested by law with a duty to  
43 maintain public order and make arrests and includes a constable.

44 30. "Person" means a human being and, as the context requires, an  
45 enterprise, a public or private corporation, an unincorporated association, a

1 partnership, a firm, a society, a government, a governmental authority or an  
2 individual or entity capable of holding a legal or beneficial interest in  
3 property.

4 31. "Petty offense" means an offense for which a sentence of a fine  
5 only is authorized by law.

6 32. "Physical force" means force used upon or directed toward the body  
7 of another person and includes confinement, but does not include deadly  
8 physical force.

9 33. "Physical injury" means the impairment of physical condition.

10 34. "Possess" means knowingly to have physical possession or otherwise  
11 to exercise dominion or control over property.

12 35. "Possession" means a voluntary act if the defendant knowingly  
13 exercised dominion or control over property.

14 36. "Preconviction custody" means the confinement of a person in a jail  
15 in this state or another state after the person is arrested for or charged  
16 with a felony offense.

17 37. "Property" means anything of value, tangible or intangible.

18 38. "Public servant":

19 (a) Means any officer or employee of any branch of government, whether  
20 elected, appointed or otherwise employed, including a peace officer, and any  
21 person participating as an advisor or consultant or otherwise in performing a  
22 governmental function.

23 (b) Does not include jurors or witnesses.

24 (c) Includes those who have been elected, appointed, employed or  
25 designated to become a public servant although not yet occupying that  
26 position.

27 39. "Serious physical injury" includes physical injury that creates a  
28 reasonable risk of death, or that causes serious and permanent disfigurement,  
29 serious impairment of health or loss or protracted impairment of the function  
30 of any bodily organ or limb.

31 40. "Unlawful" means contrary to law or, where the context so requires,  
32 not permitted by law.

33 41. "Vehicle" means a device in, upon or by which any person or  
34 property is, may be or could have been transported or drawn upon a highway,  
35 waterway or airway, excepting devices moved by human power or used  
36 exclusively upon stationary rails or tracks.

37 42. "Voluntary act" means a bodily movement performed consciously and  
38 as a result of effort and determination.

39 43. "Voluntary intoxication" means intoxication caused by the knowing  
40 use of drugs, toxic vapors or intoxicating liquors by a person, the tendency  
41 of which to cause intoxication the person knows or ought to know, unless the  
42 person introduces them pursuant to medical advice or under such duress as  
43 would afford a defense to an offense.

1           Sec. 2. Section 13-703, Arizona Revised Statutes, is amended to read:  
2           13-703. Repetitive offenders; sentencing

3           A. A person shall be sentenced as a category one repetitive offender  
4 if the person is convicted of two felony offenses that were not committed on  
5 the same occasion but that either are consolidated for trial purposes or are  
6 not historical prior felony convictions.

7           B. A person shall be sentenced as a category two repetitive offender  
8 if the person either:

9           1. Is convicted of three or more felony offenses that were not  
10 committed on the same occasion but that either are consolidated for trial  
11 purposes or are not historical prior felony convictions.

12           2. Except as provided in section 13-704 or 13-705, is at least  
13 eighteen years of age or has been tried as an adult and stands convicted of a  
14 felony and has one historical prior felony conviction.

15           C. Except as provided in section 13-704 or 13-705, a person shall be  
16 sentenced as a category three repetitive offender if the person is at least  
17 eighteen years of age or has been tried as an adult and stands convicted of a  
18 felony and has two or more historical prior felony convictions.

19           D. The presumptive term set by this section may be aggravated or  
20 mitigated within the range under this section pursuant to section 13-701,  
21 subsections C, D and E.

22           E. If a person is sentenced as a category one repetitive offender  
23 pursuant to subsection A of this section and if at least two aggravating  
24 circumstances listed in section 13-701, subsection D apply or at least two  
25 mitigating circumstances listed in section 13-701, subsection E apply, the  
26 court may impose a mitigated or aggravated sentence pursuant to subsection H  
27 of this section.

28           F. If a person is sentenced as a category two repetitive offender  
29 pursuant to subsection B, paragraph 2 of this section and if at least two  
30 aggravating circumstances listed in section 13-701, subsection D apply or at  
31 least two mitigating circumstances listed in section 13-701, subsection E  
32 apply, the court may impose a mitigated or aggravated sentence pursuant to  
33 subsection I of this section.

34           G. If a person is sentenced as a category three repetitive offender  
35 pursuant to subsection C of this section and at least two aggravating  
36 circumstances listed in section 13-701, subsection D or at least two  
37 mitigating circumstances listed in section 13-701, subsection E apply, the  
38 court may impose a mitigated or aggravated sentence pursuant to subsection J  
39 of this section.

40           H. A category one repetitive offender shall be sentenced within the  
41 following ranges:

<u>Felony</u>	<u>Mitigated</u>	<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>	<u>Aggravated</u>
42 Class 2	3 years	4 years	5 years	10 years	12.5 years
43 Class 3	1.8 years	2.5 years	3.5 years	7 years	8.75 years
44 Class 4	1.1 years	1.5 years	2.5 years	3 years	3.75 years

1 Class 5 .5 years .75 years 1.5 years 2 years 2.5 years

2 Class 6 .3 years .5 years 1 year 1.5 years 1.8 years

3 I. A category two repetitive offender shall be sentenced within the  
4 following ranges:

5 Felony Mitigated Minimum Presumptive Maximum Aggravated

6 Class 2 4.5 years 6 years 9.25 years 18.5 years 23.1 years

7 Class 3 3.3 years 4.5 years 6.5 years 13 years 16.25 years

8 Class 4 2.25 years 3 years 4.5 years 6 years 7.5 years

9 Class 5 1 year 1.5 years 2.25 years 3 years 3.75 years

10 Class 6 .75 years 1 year 1.75 years 2.25 years 2.75 years

11 J. A category three repetitive offender shall be sentenced within the  
12 following ranges:

13 Felony Mitigated Minimum Presumptive Maximum Aggravated

14 Class 2 10.5 years 14 years 15.75 years 28 years 35 years

15 Class 3 7.5 years 10 years 11.25 years 20 years 25 years

16 Class 4 6 years 8 years 10 years 12 years 15 years

17 Class 5 3 years 4 years 5 years 6 years 7.5 years

18 Class 6 2.25 years 3 years 3.75 years 4.5 years 5.75 years

19 K. The aggravated or mitigated term imposed pursuant to subsection H,  
20 I or J of this section may be imposed only if at least two of the aggravating  
21 circumstances are found beyond a reasonable doubt to be true by the trier of  
22 fact or are admitted by the defendant, except that an aggravating  
23 circumstance under section 13-701, subsection D, paragraph 11 shall be found  
24 to be true by the court, or in mitigation of the crime are found to be true  
25 by the court, on any evidence or information introduced or submitted to the  
26 court or the trier of fact before sentencing or any evidence presented at  
27 trial, and factual findings and reasons in support of these findings are set  
28 forth on the record at the time of sentencing.

29 L. Convictions for two or more offenses committed on the same occasion  
30 shall be counted as only one conviction for the purposes of subsection B,  
31 paragraph 2 and subsection C of this section.

32 M. For the purposes of subsection B, paragraph 2 and subsection C of  
33 this section, a person who has been convicted in any court outside the  
34 jurisdiction of this state of an offense that ~~if committed in this state~~  
35 ~~would be~~ WAS punishable BY THAT JURISDICTION as a felony is subject to this  
36 section. A person who has been convicted as an adult of an offense  
37 punishable as a felony under the provisions of any prior code in this state  
38 OR THE JURISDICTION IN WHICH THE OFFENSE WAS COMMITTED is subject to this  
39 section. A PERSON WHO HAS BEEN CONVICTED OF A FELONY WEAPONS POSSESSION  
40 VIOLATION IN ANY COURT OUTSIDE THE JURISDICTION OF THIS STATE THAT WOULD NOT  
41 BE PUNISHABLE AS A FELONY UNDER THE LAWS OF THIS STATE IS NOT SUBJECT TO THIS  
42 SECTION.

1 N. The penalties prescribed by this section shall be substituted for  
 2 the penalties otherwise authorized by law if an allegation of prior  
 3 conviction is charged in the indictment or information and admitted or found  
 4 by the court. The release provisions prescribed by this section shall not be  
 5 substituted for any penalties required by the substantive offense or a  
 6 provision of law that specifies a later release or completion of the sentence  
 7 imposed before release. The court shall allow the allegation of a prior  
 8 conviction at any time before the date the case is actually tried unless the  
 9 allegation is filed fewer than twenty days before the case is actually tried  
 10 and the court finds on the record that the person was in fact prejudiced by  
 11 the untimely filing and states the reasons for these findings. If the  
 12 allegation of a prior conviction is filed, the state must make available to  
 13 the person a copy of any material or information obtained concerning the  
 14 prior conviction. The charge of previous conviction shall not be read to the  
 15 jury. For the purposes of this subsection, "substantive offense" means the  
 16 felony offense that the trier of fact found beyond a reasonable doubt the  
 17 person committed. Substantive offense does not include allegations that, if  
 18 proven, would enhance the sentence of imprisonment or fine to which the  
 19 person otherwise would be subject.

20 O. A person who is sentenced pursuant to this section is not eligible  
 21 for suspension of sentence, probation, pardon or release from confinement on  
 22 any basis, except as specifically authorized by section 31-233, subsection A  
 23 or B, until the sentence imposed by the court has been served, the person is  
 24 eligible for release pursuant to section 41-1604.07 or the sentence is  
 25 commuted.

26 P. The court shall inform all of the parties before sentencing occurs  
 27 of its intent to impose an aggravated or mitigated sentence pursuant to  
 28 subsection H, I or J of this section. If the court fails to inform the  
 29 parties, a party waives its right to be informed unless the party timely  
 30 objects at the time of sentencing.

31 Q. The court in imposing a sentence shall consider the evidence and  
 32 opinions presented by the victim or the victim's immediate family at any  
 33 aggravation or mitigation proceeding or in the presentence report.

34 Sec. 3. Section 13-704, Arizona Revised Statutes, is amended to read:

35 13-704. Dangerous offenders; sentencing

36 A. Except as provided in section 13-705, a person who is at least  
 37 eighteen years of age or who has been tried as an adult and who stands  
 38 convicted of a felony that is a dangerous offense shall be sentenced to a  
 39 term of imprisonment as follows:

	<u>Felony</u>	<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>
40	Class 2	7 years	10.5 years	21 years
41	Class 3	5 years	7.5 years	15 years
42	Class 4	4 years	6 years	8 years
43	Class 5	2 years	3 years	4 years
44	Class 6	1.5 years	2.25 years	3 years

1 B. Except as provided in section 13-705, a person who is convicted of  
 2 a class 4, 5 or 6 felony that is a dangerous offense and who has one  
 3 historical prior felony conviction involving a dangerous offense shall be  
 4 sentenced to a term of imprisonment as follows:

<u>Felony</u>	<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>
5 Class 4	8 years	10 years	12 years
7 Class 5	4 years	5 years	6 years
8 Class 6	3 years	3.75 years	4.5 years

9 C. Except as provided in section 13-705 or section 13-706, subsection  
 10 A, a person who is convicted of a class 4, 5 or 6 felony that is a dangerous  
 11 offense and who has two or more historical prior felony convictions involving  
 12 dangerous offenses shall be sentenced to a term of imprisonment as follows:

<u>Felony</u>	<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>
14 Class 4	12 years	14 years	16 years
15 Class 5	6 years	7 years	8 years
16 Class 6	4.5 years	5.25 years	6 years

17 D. Except as provided in section 13-705 or section 13-706, subsection  
 18 A, a person who is convicted of a class 2 or 3 felony involving a dangerous  
 19 offense and who has one historical prior felony conviction that is a class 1,  
 20 2 or 3 felony involving a dangerous offense shall be sentenced to a term of  
 21 imprisonment as follows:

<u>Felony</u>	<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>
23 Class 2	14 years	15.75 years	28 years
24 Class 3	10 years	11.25 years	20 years

25 E. Except as provided in section 13-705 or section 13-706, subsection  
 26 A, a person who is convicted of a class 2 or 3 felony involving a dangerous  
 27 offense and who has two or more historical prior felony convictions that are  
 28 class 1, 2 or 3 felonies involving dangerous offenses shall be sentenced to a  
 29 term of imprisonment as follows:

<u>Felony</u>	<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>
31 Class 2	21 years	28 years	35 years
32 Class 3	15 years	20 years	25 years

33 F. A person who is convicted of two or more felony offenses that are  
 34 dangerous offenses and that were not committed on the same occasion but that  
 35 are consolidated for trial purposes or that are not historical prior felony  
 36 convictions shall be sentenced, for the second or subsequent offense,  
 37 pursuant to this subsection. For a person sentenced pursuant to this  
 38 subsection, the minimum term prescribed shall be the presumptive term. If  
 39 the court increases or decreases a sentence pursuant to this subsection, the  
 40 court shall state on the record the reasons for the increase or decrease.  
 41 The court shall inform all of the parties before the sentencing occurs of its  
 42 intent to increase or decrease a sentence pursuant to this subsection. If  
 43 the court fails to inform the parties, a party waives its right to be  
 44 informed unless the party timely objects at the time of sentencing. The  
 45 terms are as follows:

1 1. For the second dangerous offense:

				<u>Increased</u>
	<u>Felony</u>	<u>Minimum</u>	<u>Maximum</u>	<u>Maximum</u>
4	Class 2	10.5 years	21 years	26.25 years
5	Class 3	7.5 years	15 years	18.75 years
6	Class 4	6 years	8 years	10 years
7	Class 5	3 years	4 years	5 years
8	Class 6	2.25 years	3 years	3.75 years

9 2. For any dangerous offense subsequent to the second dangerous felony  
10 offense:

				<u>Increased</u>
	<u>Felony</u>	<u>Minimum</u>	<u>Maximum</u>	<u>Maximum</u>
13	Class 2	15.75 years	28 years	35 years
14	Class 3	11.25 years	20 years	25 years
15	Class 4	10 years	12 years	15 years
16	Class 5	5 years	6 years	7.5 years
17	Class 6	3.75 years	4.5 years	5.6 years

18 G. A person who is sentenced pursuant to subsection A, B, C, D, E or F  
19 of this section is not eligible for suspension of sentence, probation, pardon  
20 or release from confinement on any basis, except as specifically authorized  
21 by section 31-233, subsection A or B, until the sentence imposed by the court  
22 has been served, the person is eligible for release pursuant to section  
23 41-1604.07 or the sentence is commuted.

24 H. The presumptive term authorized by this section may be mitigated or  
25 aggravated pursuant to the terms of section 13-701, subsections C, D and E.

26 I. For the purposes of determining the applicability of the penalties  
27 provided in subsection A, D or E of this section for second or subsequent  
28 class 2 or 3 felonies, the conviction for any felony committed before October  
29 1, 1978 that, if committed after October 1, 1978, could be a dangerous  
30 offense under subsection A, D or E of this section may be designated by the  
31 state as a prior felony.

32 J. Convictions for two or more offenses committed on the same occasion  
33 shall be counted as only one conviction for the purposes of subsection A, B,  
34 C, D or E of this section.

35 K. A person who has been convicted in any court outside the  
36 jurisdiction of this state of an offense that ~~if committed in this state~~  
37 ~~would be~~ WAS punishable BY THAT JURISDICTION as a felony is subject to  
38 subsection A, B, C, D or E of this section. A person who has been convicted  
39 of an offense punishable as a felony under the provisions of any prior code  
40 in this state OR THE JURISDICTION IN WHICH THE OFFENSE WAS COMMITTED is  
41 subject to subsection A, B, C, D or E of this section. A PERSON WHO HAS BEEN  
42 CONVICTED OF A FELONY WEAPONS POSSESSION VIOLATION IN ANY COURT OUTSIDE THE  
43 JURISDICTION OF THIS STATE THAT WOULD NOT BE PUNISHABLE AS A FELONY UNDER THE  
44 LAWS OF THIS STATE IS NOT SUBJECT TO THIS SECTION.

1 L. The penalties prescribed by this section shall be substituted for  
2 the penalties otherwise authorized by law if an allegation of prior  
3 conviction is charged in the indictment or information and admitted or found  
4 by the court or if an allegation of dangerous offense is charged in the  
5 indictment or information and admitted or found by the trier of fact. The  
6 release provisions prescribed by this section shall not be substituted for  
7 any penalties required by the substantive offense or provision of law that  
8 specifies a later release or completion of the sentence imposed before  
9 release. The court shall allow the allegation of a prior conviction or the  
10 allegation of a dangerous offense at any time before the date the case is  
11 actually tried unless the allegation is filed fewer than twenty days before  
12 the case is actually tried and the court finds on the record that the  
13 defendant was in fact prejudiced by the untimely filing and states the  
14 reasons for these findings. If the allegation of a prior conviction is  
15 filed, the state must make available to the defendant a copy of any material  
16 or information obtained concerning the prior conviction. The charge of prior  
17 conviction shall not be read to the jury. For the purposes of this  
18 subsection, "substantive offense" means the felony that the trier of fact  
19 found beyond a reasonable doubt the defendant committed. Substantive offense  
20 does not include allegations that, if proven, would enhance the sentence of  
21 imprisonment or fine to which the defendant otherwise would be subject.

22 M. Except as provided in section 13-705 or 13-751, if the victim is an  
23 unborn child in the womb at any stage of its development, the defendant shall  
24 be sentenced pursuant to this section.