

REFERENCE TITLE: historical prior felony conviction; sentencing

State of Arizona
House of Representatives
Fifty-second Legislature
First Regular Session
2015

HB 2301

Introduced by
Representative Farnsworth E

AN ACT

AMENDING SECTIONS 13-105 AND 13-703, 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. FOR THE PURPOSES OF THIS SUBDIVISION, "PRIOR FELONY CONVICTION"
7 INCLUDES ANY OFFENSE COMMITTED OUTSIDE THE JURISDICTION OF THIS STATE THAT
8 WAS PUNISHABLE BY THAT JURISDICTION AS A FELONY.

9 (e) Any offense committed outside the jurisdiction of this state that
10 was punishable by that jurisdiction as a felony, ~~AND~~ AND that was committed
11 within the five years immediately preceding the date of the present offense.
12 Any time spent on absconder status while on probation, on escape status or
13 incarcerated is excluded in calculating if the offense was committed within
14 the preceding five years. If a court determines a person was not on
15 absconder status while on probation or escape status, that time is not
16 excluded. For the purposes of this subdivision, "escape" has the same
17 meaning prescribed in subdivision (b) of this paragraph.

18 (f) Any offense committed outside the jurisdiction of this state that
19 involved the discharge, use or threatening exhibition of a deadly weapon or
20 dangerous instrument or the intentional or knowing infliction of death or
21 serious physical injury AND that was punishable by that jurisdiction as a
22 felony. A person who has been convicted of a felony weapons possession
23 violation in any court outside the jurisdiction of this state that would not
24 be punishable as a felony under the laws of this state is not subject to this
25 paragraph.

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

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

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

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

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

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

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

1 30. "Person" means a human being and, as the context requires, an
2 enterprise, a public or private corporation, an unincorporated association, a
3 partnership, a firm, a society, a government, a governmental authority or an
4 individual or entity capable of holding a legal or beneficial interest in
5 property.

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

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

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

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

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

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

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

20 38. "Public servant":

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

25 (b) Does not include jurors or witnesses.

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

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

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

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

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

41 43. "Voluntary intoxication" means intoxication caused by the knowing
42 use of drugs, toxic vapors or intoxicating liquors by a person, the tendency
43 of which to cause intoxication the person knows or ought to know, unless the
44 person introduces them pursuant to medical advice or under such duress as
45 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 of this section and if at least two aggravating
30 circumstances listed in section 13-701, subsection D apply or at least two
31 mitigating circumstances listed in section 13-701, subsection E apply, the
32 court may impose a mitigated or aggravated sentence pursuant to subsection I
33 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
44 Class 3	2 years	2.5 years	3.5 years	7 years	8.75 years
45 Class 4	1 year	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 .25 years .5 years 1 year 1.5 years 2 years

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

	<u>Felony</u>	<u>Mitigated</u>	<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>	<u>Aggravated</u>
5						
6	Class 2	4.5 years	6 years	9.25 years	18.5 years	23 years
7	Class 3	3.25 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:

	<u>Felony</u>	<u>Mitigated</u>	<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>	<u>Aggravated</u>
13						
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 was punishable by that
35 jurisdiction as a felony is subject to this section. A person who has been
36 convicted as an adult of an offense punishable as a felony under the
37 provisions of any prior code in this state or the jurisdiction in which the
38 offense was committed is subject to this section. A person who has been
39 convicted of a felony weapons possession violation in any court outside the
40 jurisdiction of this state that would not be punishable as a felony under the
41 laws of this state is not subject to this section.

42 N. The penalties prescribed by this section shall be substituted for
43 the penalties otherwise authorized by law if an allegation of prior
44 conviction is charged in the indictment or information and admitted or found
45 by the court. The release provisions prescribed by this section shall not be

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

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

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

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