

REFERENCE TITLE: historical prior felony conviction; definition

State of Arizona  
Senate  
Fifty-fifth Legislature  
Second Regular Session  
2022

## **SB 1449**

Introduced by  
Senators Quezada: Terán; Representatives Andrade, Hernandez M

AN ACT

AMENDING SECTION 13-105, 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  
8 officer, who cannot be located within ninety days of the previous contact  
9 and against whom a petition to revoke has been filed in the superior court  
10 alleging that the probationer's whereabouts are unknown. A probationer is  
11 no longer deemed an absconder when the probationer is voluntarily or  
12 involuntarily returned to 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  
23 or 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  
30 or solicitation of any felony act and that has at least one individual who  
31 is a criminal street gang member.

32 9. "Criminal street gang member" means an individual to whom at  
33 least two of the following seven criteria that indicate criminal street  
34 gang 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,  
43 recklessly or with criminal negligence as those terms are defined in this  
44 paragraph:

1 (a) "Intentionally" or "with the intent to" means, with respect to  
2 a 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  
7 circumstance exists. It does not require any knowledge of the  
8 unlawfulness of the act or omission.

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

25 11. "Dangerous drug" means dangerous drug as defined in section  
26 13-3401.

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

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

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

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

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

1        17. "Enterprise" includes any corporation, association, labor union  
2 or 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,  
7 revolver, rifle, shotgun or other weapon that will or is designed to or  
8 may readily be converted to expel a projectile by the action of expanding  
9 gases, except that it does not include a firearm in permanently inoperable  
10 condition.

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

15       21. "~~Government~~ GOVERNMENTAL function" means any activity that a  
16 public servant is legally authorized to undertake on behalf of a  
17 government.

18       22. "Historical prior felony conviction" means:

19       (a) Any prior felony conviction for which the offense of conviction  
20 either:

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

23       (ii) Involved a dangerous offense.

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

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

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

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

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

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

(d) Any felony conviction that is a third or more prior felony conviction. For the purposes of this subdivision, "prior felony conviction" includes any offense committed outside the jurisdiction of this state that was punishable by that jurisdiction as a felony.

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

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

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

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

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

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

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

1 regulations or ordinances of this state or of a political subdivision of  
2 this state if the act had occurred in this state.

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

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

7 30. "Person" means a human being and, as the context requires, an  
8 enterprise, a public or private corporation, an unincorporated  
9 association, a partnership, a firm, a society, a government, a  
10 governmental authority or an individual or entity capable of holding a  
11 legal or beneficial interest in property.

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

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

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

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

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

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

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

26 38. "Public servant":

27 (a) Means any officer or employee of any branch of government,  
28 whether elected, appointed or otherwise employed, including a peace  
29 officer, and any person participating as an advisor or consultant or  
30 otherwise in performing a governmental function.

31 (b) Does not include jurors or witnesses.

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

35 39. "Serious physical injury" includes physical injury that creates  
36 a reasonable risk of death, or that causes serious and permanent  
37 disfigurement, serious impairment of health or loss or protracted  
38 impairment of the function of any bodily organ or limb.

39 40. "Unlawful" means contrary to law or, where the context so  
40 requires, not ~~permitted~~ ALLOWED by law.

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

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

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