

Criminal code; conforming changes

Section 1. **8-382. Definitions**

In this article, unless the context otherwise requires:

1. "Accused" means a juvenile who is referred to juvenile court for committing a delinquent act.
2. "Appellate proceeding" means any contested matter before the state court of appeals, the state supreme court, a federal court of appeals or the United States supreme court.
3. "Arrest" means the actual custodial restraint or temporary custody of a person.
4. "Court" means the juvenile division of the superior court when exercising its jurisdiction over children in any proceeding relating to delinquency.
5. "Crime victim advocate" means a person who is employed or authorized by a public or private entity to provide counseling, treatment or other supportive assistance to crime victims.
6. "Custodial agency" means any law enforcement officer or agency, a sheriff, a county juvenile detention center, the department of juvenile corrections or a secure mental health facility that has custody of a person who is arrested or in custody for a delinquent or incorrigible offense.
6. "CRIMINAL OFFENSE" MEANS CONDUCT THAT GIVES A PEACE OFFICER OR PROSECUTOR PROBABLE CAUSE TO BELIEVE THAT A FELONY, A MISDEMEANOR, A PETTY OFFENSE OR A VIOLATION OF A LOCAL CRIMINAL ORDINANCE HAS OCCURRED.
- 7 8. "Delinquency proceeding" means any hearing, argument or other matter that is scheduled or held by a juvenile court judge, commissioner or hearing officer and that relates to an alleged or adjudicated delinquent offense.
- 8 9. "Delinquent" means a child who is adjudicated to have committed a delinquent act.
- 9 10. "Delinquent act" means an act to which this article applies pursuant to section 8-381.
- 10 11. "Detention hearing" means the accused's initial appearance before the court to determine release before adjudication.
- 11 12. "Final disposition" means the ultimate termination of the delinquency proceeding by a court, including dismissal, acquittal, transfer to adult court or imposition of a disposition after an adjudication for a delinquent offense.
- 12 13. "Immediate family" means a victim's spouse, parent, child, sibling, grandparent or lawful guardian.
- 13 14. "Juvenile defendant" means a juvenile against whom a petition is filed seeking to have the juvenile adjudicated delinquent.
- 14 15. "Lawful representative" means a person who is designated by the victim or appointed by the court and who will act in the best interests of the victim.
- 15 16. "Postadjudication release" means release on probation, intensive probation, work furlough, community supervision or home detention, release on conditional liberty

pursuant to section 41-2818 by the department of juvenile corrections or any other permanent, conditional or temporary release from confinement, discharge or completion of commitment by the department of juvenile corrections, a sheriff, a municipal jail, a juvenile detention center, a residential treatment facility or a secure mental health facility.

16 17. "Postadjudication review hearing" means a hearing that is held in open court and that involves a request by the juvenile for review of a disposition.

17 18. "Postarrest release" means the discharge of the accused from confinement.

18 19. "Release" means no longer in the custody of the custodial agency and includes transfer from one custodial agency to another custodial agency.

19 20. "Rights" means any right granted to the victim by the laws of this state.

20 21. "Victim" means a person against whom the delinquent act was committed, or if the person is killed or incapacitated, the person's spouse, parent, child, grandparent or sibling, any other person related to the person by consanguinity or affinity to the second degree or any other lawful representative of the person, except if the person or the person's spouse, parent, child, grandparent, sibling, other person related to the person by consanguinity or affinity to the second degree or other lawful representative is in custody for an offense or is the accused.

Section 2. **13-105.** Definitions

In this title, unless the context otherwise requires:

1. "Absconder" means a probationer who has moved from the probationer's primary residence without permission of the probation officer, who cannot be located within ninety days of the previous contact and against whom a petition to revoke has been filed in the superior court alleging that the probationer's whereabouts are unknown. A probationer is no longer deemed an absconder when the probationer is voluntarily or involuntarily returned to probation service.
2. "Act" means a bodily movement.
3. "Benefit" means anything of value or advantage, present or prospective.
4. "Calendar year" means three hundred sixty-five days' actual time served without release, suspension or commutation of sentence, probation, pardon or parole, work furlough or release from confinement on any other basis.
5. "Community supervision" means that portion of a felony sentence that is imposed by the court pursuant to section 13-603, subsection I and that is served in the community after completing a period of imprisonment or served in prison in accordance with section 41-1604.07.
6. "Conduct" means an act or omission and its accompanying culpable mental state.
7. "Crime" means a misdemeanor or a felony.
8. "Criminal street gang" means an ongoing formal or informal association of persons in which members or associates individually or collectively engage in the commission,

attempted commission, facilitation or solicitation of any felony act and that has at least one individual who is a criminal street gang member.

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

- (a) Self-proclamation.
- (b) Witness testimony or official statement.
- (c) Written or electronic correspondence.
- (d) Paraphernalia or photographs.
- (e) Tattoos.
- (f) Clothing or colors.
- (g) Any other indicia of street gang membership.

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

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

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

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

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

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

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

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

14. "Deadly physical force" means force that is used with the purpose of causing death or serious physical injury or in the manner of its use or intended use is capable of creating a substantial risk of causing death or serious physical injury.
15. "Deadly weapon" means anything designed for lethal use, including a firearm.
16. "Economic loss" means any loss incurred by a person as a result of the commission of an offense. Economic loss includes lost interest, lost earnings and other losses that would not have been incurred but for the offense. Economic loss does not include losses incurred by the convicted person, damages for pain and suffering, punitive damages or consequential damages.
17. "Enterprise" includes any corporation, association, labor union or other legal entity.
18. "Felony" means an offense for which a sentence to a term of imprisonment in the custody of the state department of corrections is authorized by any law of this state.
19. "Firearm" means any loaded or unloaded handgun, pistol, revolver, rifle, shotgun or other weapon that will or is designed to or may readily be converted to expel a projectile by the action of expanding gases, except that it does not include a firearm in permanently inoperable condition.
20. "Government" means the state, any political subdivision of the state or any department, agency, board, commission, institution or governmental instrumentality of or within the state or political subdivision.
21. "Government function" means any activity that a public servant is legally authorized to undertake on behalf of a government.
22. "Historical prior felony conviction" means:
- (a) Any prior felony conviction for which the offense of conviction either:
 - (i) Mandated a term of imprisonment except for a violation of chapter 34 of this title involving a drug below the threshold amount.
 - (ii) Involved a dangerous offense.
 - (iii) Involved the illegal control of a criminal enterprise.
 - (iv) Involved aggravated driving under the influence of intoxicating liquor or drugs.
 - (v) Involved any dangerous crime against children as defined in section 13-705.
 - (b) Any class 2 or 3 felony, except the offenses listed in subdivision (a) of this paragraph, that was committed within the ten 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 ten 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" means:
 - (i) A departure from custody or from a juvenile secure care facility, a juvenile detention facility or an adult correctional facility in which the person is held or detained, with knowledge that the departure is not permitted, or the failure to return to custody or

detention following a temporary leave granted for a specific purpose or for a limited period.

(ii) A failure to report as ordered to custody or detention to 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.

(e) Any offense committed outside the jurisdiction of this state that was punishable by that jurisdiction as a felony, 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~~ **A DANGEROUS OFFENSE 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, regulations or

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

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

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

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

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

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

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

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

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

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

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

38. "Public servant":

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

(b) Does not include jurors or witnesses.

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

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

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

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

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

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

Section 3. 13-703. Repetitive offenders; sentencing

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

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

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

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

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

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

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

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

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

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

Felony Mitigated Minimum Presumptive Maximum Aggravated

Class 2 3 years 4 years 5 years 10 years 12.5 years

Class 3 2 years 2.5 years 3.5 years 7 years 8.75 years

Class 4 1 year 1.5 years 2.5 years 3 years 3.75 years
 Class 5 .5 years .75 years 1.5 years 2 years 2.5 years
 Class 6 ~~.3~~ .25 years 5 years 1 year 1.5 years ~~1.8~~ 2 years

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

Felony Mitigated Minimum Presumptive Maximum Aggravated

Class 2 4.5 years 6 years 9.25 years 18.5 years 23 years
 Class 3 ~~3.3~~ 3.25 years 4.5 years 6.5 years 13 years 16.25 years
 Class 4 2.25 years 3 years 4.5 years 6 years 7.5 years
 Class 5 1 year 1.5 years 2.25 years 3 years 3.75 years
 Class 6 .75 years 1 year 1.75 years 2.25 years 2.75 years

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

Felony Mitigated Minimum Presumptive Maximum Aggravated

Class 2 10.5 years 14 years 15.75 years 28 years 35 years
 Class 3 7.5 years 10 years 11.25 years 20 years 25 years
 Class 4 6 years 8 years 10 years 12 years 15 years
 Class 5 3 years 4 years 5 years 6 years 7.5 years
 Class 6 2.25 years 3 years 3.75 years 4.5 years 5.75 years

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

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

M. For the purposes of subsection B, paragraph 2 and subsection C of this section, a person who has been convicted in any court outside the jurisdiction of this state of an offense that was punishable by that jurisdiction as a felony is subject to this section. A person who has been convicted as an adult of an offense punishable as a felony under the provisions of any prior code in this state or the jurisdiction in which the offense was committed is subject to this section. 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 section.

N. The penalties prescribed by this section shall be substituted for the penalties otherwise authorized by law if an allegation of prior conviction is charged in the indictment or information and admitted or found by the court. The release provisions prescribed by this section shall not be substituted for any penalties required by the substantive offense or a

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

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

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

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

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