

§ 13-703. Repetitive offenders; sentencing

A. A person shall be sentenced as a category one repetitive offender **FOR THE SECOND OFFENSE** 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. **FOR THE FIRST OFFENSE, THE PERSON SHALL BE SENTENCED AS A FIRST TIME OFFENDER AS PROVIDED BY A.R.S. §13-702**

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. **THE PERSON SHALL BE SENTENCED AS A CATEGORY TWO REPETITIVE OFFENDER FOR THE THIRD AND ANY ADDITIONAL FELONY CONVICTONS. THE PERSON SHALL BE SENTENCED AS A CATEGORY ONE REPETITIVE OFFENDER FOR THE SECOND OFFENSE AND AS PROVIDED BY § 13-702 FOR THE FIRST OFFENSE.**

2. Except as provided in § 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 § 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 § 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 § 13-701, subsection D apply or at least two mitigating circumstances listed in § 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 § 13-701, subsection D apply or at least two mitigating circumstances listed in § 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 § 13-701, subsection D or at least two mitigating circumstances listed in § 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:

<u>Felony</u>	<u>Mitigated</u>	<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>	<u>Aggravated</u>
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 years .5 years 1 year 1.5 years 1.8 years

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

<u>Felony</u>	<u>Mitigated</u>	<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>	<u>Aggravated</u>
Class 2	4.5 years	6 years	9.25 years	18.5 years	23 years
Class 3	3.3 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:

<u>Felony</u>	<u>Mitigated</u>	<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>	<u>Aggravated</u>
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 § 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 § 31-233, subsection A or B, until the sentence imposed by the court has been served, the person is eligible for release pursuant to § 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.

13-708. Offenses committed while released from confinement

A. A person who is convicted of any felony involving a dangerous offense that is committed while the person is on probation for a conviction of a felony offense or parole, work furlough, community supervision or any other release or has escaped from confinement for conviction of a felony offense shall be sentenced to imprisonment for not less than the presumptive sentence authorized under this chapter and is not eligible for suspension or commutation or release on any basis until the sentence imposed is served. **A SENTENCE IMPOSED PURSUANT TO THIS SUBSECTION SHALL REVOKE THE CONVICTED PERSON'S RELEASE IF THE PERSON WAS ON RELEASE AND SHALL BE CONSECUTIVE TO ANY OTHER SENTENCE FROM WHICH THE CONVICTED PERSON HAD BEEN TEMPORARILY RELEASED OR HAD ESCAPED, UNLESS THE SENTENCE FROM WHICH THE CONVICTED PERSON HAD BEEN PAROLED OR PLACED ON PROBATION WAS IMPOSED BY A JURISDICTION OTHER THAN THIS STATE.**

B. A person who is convicted of a dangerous offense that is committed while the person is on release or has escaped from confinement for a conviction of a serious offense as defined in section 13-706, an offense resulting in serious physical injury or an offense involving the use or exhibition of a deadly weapon or dangerous instrument shall be sentenced to the maximum sentence authorized under this chapter and is not eligible for suspension or commutation or release on any basis until the sentence imposed is served. If the court finds that at least two substantial aggravating circumstances listed in section 13-701, subsection D apply, the court may increase the maximum sentence authorized under this chapter by up to twenty-five per cent. A sentence imposed pursuant to this subsection shall revoke the convicted person's release if the person was on release and shall be consecutive

to any other sentence from which the convicted person had been temporarily released or had escaped, unless the sentence from which the convicted person had been paroled or placed on probation was imposed by a jurisdiction other than this state.

C. A person who is convicted of any felony offense that is not included in subsection A or B of this section and that is committed while the person is on probation for a conviction of a felony offense or parole, work furlough, community supervision or any other release or escape from confinement for conviction of a felony offense shall be sentenced to a term of not less than the presumptive sentence authorized for the offense and the person 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. The release provisions prescribed by this section shall not be substituted for any penalties required by the substantive offense or provision of law that specifies a later release or completion of the sentence imposed before release. A sentence imposed pursuant to this subsection shall revoke the convicted person's release if the person was on release and shall be consecutive to any other sentence from which the convicted person had been temporarily released or had escaped, unless the sentence from which the convicted person had been paroled or placed on probation was imposed by a jurisdiction other than this state. For the purposes of this subsection, "substantive offense" means the felony, misdemeanor or petty offense that the trier of fact found beyond a reasonable doubt the defendant committed. Substantive offense does not include allegations that, if proven, would enhance the sentence of imprisonment or fine to which the defendant would otherwise be subject.

D. A person who is convicted of committing any felony offense that is committed while the person is released on bond or on the person's own recognizance on a separate felony offense or while the person is escaped from preconviction custody for a separate felony offense shall be sentenced to a term of imprisonment two years longer than would otherwise be imposed for the felony offense committed while on release. The additional sentence imposed under this subsection is in addition to any enhanced punishment that may be applicable under section 13-703, section 13-704, section 13-1204, subsection C or section 13-714. The person 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 two years are served, the person is eligible for release pursuant to section 41-1604.07 or the sentence is commuted. The penalties prescribed by this subsection shall be substituted for the penalties otherwise authorized by law if the allegation that the person committed a felony while released on bond or on the person's own recognizance or while escaped from preconviction custody is charged in the indictment or information and admitted or found by the court. The release provisions prescribed by this subsection shall not be substituted for any penalties required by the substantive offense or provision of law that specifies a later release or completion of the sentence imposed before release. The court shall allow the allegation that the person committed a felony while released on bond or on the person's own recognizance on a separate felony offense or while escaped from preconviction custody on a separate felony offense at any time before 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. The allegation that the person committed a felony while released on bond or on the person's own recognizance or while escaped from preconviction custody 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.