

REFERENCE TITLE: *criminal liability; enterprises*

State of Arizona
House of Representatives
Fifty-sixth Legislature
First Regular Session
2023

HB 2754

Introduced by
Representatives Jones: Kolodin, McGarr, Montenegro, Smith

AN ACT

AMENDING SECTIONS 13-105, 13-305 AND 13-2323, ARIZONA REVISED STATUTES;
RELATING TO CRIMINAL LIABILITY.

(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
33 at 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
2 union, **NONGOVERNMENTAL ORGANIZATION** 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. "Governmental function" means any activity that a public
16 servant is legally authorized to undertake on behalf of a government.

17 22. "Historical prior felony conviction" means:

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

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

22 (ii) Involved a dangerous offense.

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

24 (iv) Involved aggravated driving or actual physical control while
25 under the influence. This item applies only if the offense for which the
26 historical prior felony conviction is being alleged is a violation of
27 section 28-1383.

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

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

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

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

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

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

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

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

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

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

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

39 26. "Narcotic drug" means narcotic drugs as defined in section
40 13-3401.

41 27. "Offense" or "public offense" means conduct for which a
42 sentence to a term of imprisonment or of a fine is provided by any law of
43 the state in which it occurred or by any law, regulation or ordinance of a
44 political subdivision of that state and, if the act occurred in a state
45 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 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.

8 Sec. 2. Section 13-305, Arizona Revised Statutes, is amended to
9 read:

10 13-305. Criminal liability of enterprises; definitions

11 A. Notwithstanding any other ~~provisions of~~ law, an enterprise
12 commits an offense if **ANY OF THE FOLLOWING APPLIES**:

13 1. The conduct constituting the offense consists of a failure to
14 discharge a specific duty imposed by law. ~~;~~~~OR~~

15 2. The conduct undertaken in behalf of the enterprise and
16 constituting the offense is engaged in, authorized, solicited, commanded
17 or recklessly tolerated by the directors of the enterprise in any manner
18 or by a high managerial agent acting within the scope of employment. ~~;~~~~OR~~

19 3. The conduct constituting the offense is engaged in by an agent
20 of the enterprise while acting ~~within the scope of employment and in~~ **ON**
21 behalf of the enterprise~~;~~ and **EITHER OF THE FOLLOWING APPLIES**:

22 (a) The offense is a misdemeanor or petty offense. ~~;~~~~OR~~

23 (b) The offense is defined by a statute ~~which~~ **THAT** imposes criminal
24 liability on an enterprise.

25 B. ~~As used in~~ **FOR THE PURPOSES OF** this section:

26 1. "Agent" means any officer, director~~;~~ **OR** employee of an
27 enterprise or any other person who is authorized to act in behalf of the
28 enterprise.

29 2. "High managerial agent" means an officer of an enterprise or any
30 other agent in a position of comparable authority with respect to the
31 formulation of enterprise policy.

32 Sec. 3. Section 13-2323, Arizona Revised Statutes, is amended to
33 read:

34 13-2323. Participating in a human smuggling organization or
35 operation; classification

36 A. A person **OR ENTERPRISE** commits participating in a human
37 smuggling organization or operation by any of the following:

38 1. Intentionally or knowingly organizing, managing, directing,
39 supervising, coordinating, facilitating, leading, assisting, participating
40 in or financing a human smuggling organization or operation that furthers
41 the criminal objectives of the human smuggling organization or operation.

42 2. Knowingly directing or instructing others to engage in violence
43 or intimidation to promote or further the criminal objectives of a human
44 smuggling organization or operation.

1 3. Furnishing advice or direction in the conduct, financing or
2 management of a human smuggling organization's or operation's affairs with
3 the intent to promote or further the criminal objectives of a human
4 smuggling organization or operation.

5 4. Intentionally promoting or furthering the criminal objectives of
6 a human smuggling organization or operation by inducing or committing any
7 act or omission by a public servant in violation of the public servant's
8 official duty.

9 5. Knowingly assisting a human smuggling organization or operation
10 by transporting a person, or procuring the transportation for a person,
11 with the intent to do either of the following:

12 (a) Conceal the person from a peace officer.

13 (b) Assist the person with fleeing from a peace officer who is
14 attempting to lawfully arrest or detain the person.

15 B. Participating in a human smuggling organization or operation is
16 a class 2 felony.

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