

13-101. Purposes

It is declared that the public policy of this state and the general purposes of the provisions of this title are:

1. To proscribe conduct that unjustifiably and inexcusably causes or threatens substantial harm to individual or public interests;
2. To give fair warning of the nature of the conduct proscribed and of the sentences authorized upon conviction;
3. To define the act or omission and the accompanying mental state which constitute each offense and limit the condemnation of conduct as criminal when it does not fall within the purposes set forth;
4. To differentiate on reasonable grounds between serious and minor offenses and to prescribe proportionate penalties for each;
5. To insure the public safety by preventing the commission of offenses through the deterrent influence of the sentences authorized;
6. To impose just and deserved punishment on those whose conduct threatens the public peace; and
7. To promote truth and accountability in sentencing.

13-101.01. Additional purposes of the criminal law

In order to preserve and protect the rights of crime victims to justice and the right of the people to safety, it is a fundamental purpose of the criminal law to identify and remove from society persons whose conduct continues to threaten public safety through the commission of violent or aggravated felonies after having been convicted twice previously of violent or aggravated felony offenses.

13-102. Applicability of title

A. Except as otherwise provided by law, the procedure governing the accusation, prosecution, conviction and punishment of offenders and offenses is not regulated by this title but by the rules of criminal procedure.

B. This title does not affect any power conferred by law upon a court-martial or other military authority or officer to prosecute and punish conduct and offenders violating military codes or laws, nor any power conferred by law to impose or inflict punishment for contempt.

C. This title does not bar, suspend or otherwise affect any right or liability to damages, penalty, forfeiture or other remedy authorized by law to be recovered or enforced in a civil action, regardless of whether the conduct involved in the proceeding constitutes an offense defined in this title.

D. Except as otherwise expressly provided, or unless the context otherwise requires, the provisions of this title shall govern the construction of and punishment for any offense defined outside this title.

13-103. Abolition of common law offenses and affirmative defenses; definition

A. All common law offenses and affirmative defenses are abolished. No conduct or omission constitutes an offense or an affirmative defense unless it is an offense or an affirmative defense under this title or under another statute or ordinance.

B. For the purposes of this section, "affirmative defense" means a defense that is offered and that attempts to excuse the criminal actions of the accused or another person for whose actions the accused may be deemed to be accountable. Affirmative defense does not include any justification defense pursuant to chapter 4 of this title or any defense that either denies an element of the offense charged or denies responsibility, including alibi, misidentification or lack of intent.

13-104. Rule of construction

The general rule that a penal statute is to be strictly construed does not apply to this title, but the provisions herein must be construed according to the fair meaning of their terms to promote justice and effect the objects of the law, including the purposes stated in section 13-101.

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 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.

13-106. Death of convicted defendant; dismissal of appellate and postconviction proceedings

A. On a convicted defendant's death, the court shall dismiss any pending appeal or postconviction proceeding.

B. A convicted defendant's death does not abate the defendant's criminal conviction or sentence of imprisonment or any restitution, fine or assessment imposed by the sentencing court.

13-107. Time limitations

A. A prosecution for any homicide, any conspiracy to commit homicide that results in the death of a person, any offense that is listed in chapter 14 or 35.1 of this title and that is a class 2 felony, any violent sexual assault pursuant to section 13-1423, any violation of section 13-2308.01, any misuse of public monies or a felony involving falsification of public records or any attempt to commit an offense listed in this subsection may be commenced at any time.

B. Except as otherwise provided in this section and section 28-672, prosecutions for other offenses must be commenced within the following periods after actual discovery by the state or the political subdivision having jurisdiction of the offense or discovery by the state or the political subdivision that should have occurred with the exercise of reasonable diligence, whichever first occurs:

1. For a class 2 through a class 6 felony, seven years.
2. For a misdemeanor, one year.
3. For a petty offense, six months.

C. For the purposes of subsection B of this section, a prosecution is commenced when an indictment, information or complaint is filed.

D. The period of limitation does not run during any time when the accused is absent from the state or has no reasonably ascertainable place of abode within the state.

E. The period of limitation does not run for a serious offense as defined in section 13-706 during any time when the identity of the person who commits the offense or offenses is unknown.

F. The time limitation within which a prosecution of a class 6 felony shall commence shall be determined pursuant to subsection B, paragraph 1 of this section, irrespective of whether a court enters a judgment of conviction for or a prosecuting attorney designates the offense as a misdemeanor.

G. If a complaint, indictment or information filed before the period of limitation has expired is dismissed for any reason, a new prosecution may be commenced within six months after the dismissal becomes final even if the period of limitation has expired at the time of the dismissal or will expire within six months of the dismissal.

13-108. Territorial applicability

A. This state has jurisdiction over an offense that a person commits by his own conduct or the conduct of another for which such person is legally accountable if:

1. Conduct constituting any element of the offense or a result of such conduct occurs within this state; or
2. The conduct outside this state constitutes an attempt or conspiracy to commit an offense within this state and an act in furtherance of the attempt or conspiracy occurs within this state; or
3. The conduct within this state constitutes an attempt, solicitation, conspiracy or facilitation to commit or establishes criminal accountability for the commission of an offense in another jurisdiction that is also an offense under the law of this state; or
4. The offense consists of an omission to perform a duty imposed by the law of this state regardless of the location of the defendant at the time of the offense; or
5. The offense is a violation of a statute of this state that prohibits conduct outside the state.

B. When the offense involves a homicide, either the death of the victim or the bodily impact causing death constitutes a result within the meaning of subsection A, paragraph 1. If the body of a homicide victim is found in this state it is presumed that the result occurred in this state.

C. This state includes the land and water and the air space above the land and water.

13-109. Place of trial

A. Criminal prosecutions shall be tried in the county in which conduct constituting any element of the offense or a result of such conduct occurred, unless otherwise provided by law.

B. The following special provisions apply:

1. If conduct constituting an element of an offense or a result constituting an element of an offense occurs in two or more counties, trial of the offense may be held in any of the counties concerned; or

2. A person who in one county solicits, aids, abets or attempts to aid another in the planning or commission of an offense in another county may be tried for the offense in either county; or

3. If an offense is committed in or upon any railroad, train, automobile, aircraft, vessel or other conveyance in transit and it cannot readily be determined in which county the offense was committed, trial of the offense may be held in any county through or over which the conveyance passed; or

4. If the cause of death is inflicted in one county and death ensues in another county, trial of the offense may be held in either county. If the cause of death is inflicted in one county and death ensues out of the state, trial of the offense shall be in the county where the cause was inflicted. If the body of a homicide victim is found in a county, it is presumed that the cause of death was inflicted in that county; or

5. If an offense is committed on the boundary of two or more counties or within one mile of such boundary, trial of the offense may be held in any of the counties concerned; or

6. A person who obtains property unlawfully may be tried in any county in which such person exerts control over the property; or

7. A person who commits a preparatory offense may be tried in any county in which any act that is an element of the offense, including the agreement in conspiracy, is committed.

C. If an offense has been committed within the state and it cannot readily be determined within which county or counties the commission took place, trial may be held in the county in which the defendant resides or, if the defendant has no fixed residence, in the county in which the defendant is apprehended or to which the defendant is extradited.

13-110. Conviction for attempt although crime perpetrated

A person may be convicted of an attempt to commit a crime, although it appears upon the trial that the crime intended or attempted was perpetrated by the person in pursuance of such an attempt, unless the court, in its discretion, discharges the jury and directs the person to be tried for the crime.

13-111. Former jeopardy or acquittal as bar to same or lesser offenses

When the defendant is convicted or acquitted, or has once been placed in jeopardy upon an indictment or information, the conviction, acquittal or jeopardy is a bar to another indictment or information for the offense charged in either, or for an attempt to commit the offense, or for any offense necessarily included therein, of which he might have been convicted under the indictment or information.

13-113. Conviction or acquittal in one county as bar to prosecution in another

Where a person may be tried for an offense in two or more counties, a conviction or acquittal of the offense in one county shall be a bar to a prosecution for the same offense in another county.

13-114. Speedy trial; counsel; witnesses and confrontation

In a criminal action defendant is entitled:

1. To have a speedy public trial by an impartial jury of the county in which the offense is alleged to have been committed.

2. To have counsel.

3. To produce witnesses on his behalf, and to be confronted with the witnesses against him in the presence of the court, except that the testimony or deposition of a witness may be received in evidence at the trial as by law prescribed.

13-115. Presumption of innocence and benefit of doubt; degrees of guilt

A. A defendant in a criminal action is presumed to be innocent until the contrary is proved, and in case of a reasonable doubt whether his guilt is satisfactorily shown, he is entitled to be acquitted.

B. When it appears that a defendant has committed a crime or public offense, and there is reasonable ground of doubt in which of two or more degrees he is guilty, he may be convicted of the lowest of such degrees only.

13-116. Double punishment

An act or omission which is made punishable in different ways by different sections of the laws may be punished under both, but in no event may sentences be other than concurrent. An acquittal or conviction and sentence under either one bars a prosecution for the same act or omission under any other, to the extent the Constitution of the United States or of this state require.

13-117. Defendant as witness; no comment on failure to testify

A. A defendant in a criminal action or proceeding shall not be compelled to be a witness against himself, but may be a witness in his own behalf. If he offers himself as a witness in his own behalf, he may be cross-examined to the same extent and subject to the same rules as any other witness.

B. The defendant's neglect or refusal to be a witness in his own behalf shall not in any manner prejudice him, or be used against him on the trial or proceedings.

13-118. Sexual motivation special allegation; procedures; definition

A. In each criminal case involving an offense other than a sexual offense, the prosecutor may file a special allegation of sexual motivation if sufficient admissible evidence exists that would justify a finding of sexual motivation by a reasonable and objective finder of fact.

B. If the prosecutor files a special allegation of sexual motivation, the state shall prove beyond a reasonable doubt that the defendant committed the offense with a sexual motivation. The trier of fact shall find a special verdict as to whether the defendant committed the offense with a sexual motivation.

C. For purposes of this section "sexual motivation" means that one of the purposes for which the defendant committed the crime was for the purpose of the defendant's sexual gratification.

13-120. Disposition of property taken from defendant; receipts

A. When money or other property is taken from a defendant arrested upon a charge of a crime or public offense, the officer taking it shall at the time make duplicate receipts therefor, specifying particularly the amount of money or the kind of property taken. The officer shall deliver one receipt to the defendant and shall file the other forthwith with the magistrate or clerk of the court to which the officer makes the return of arrest.

B. When such money or property is taken by a police officer of an incorporated city or town, he shall deliver one receipt to the defendant and the other, with the property, forthwith to the clerk or other person in charge of the police office in the city or town.

13-121. Jurisdiction of the court in proceedings subsequent to trial and sentencing

Whenever any further proceedings are instituted before the trial court subsequent to the original trial and sentencing, excepting motions for new trial made within one year after the rendition of the verdict or the finding of the court, the court in the same action shall have jurisdiction to hear such matter only after due proof has been made that notice of such proceeding has been given to the attorney general at least ten days prior to such hearing.

13-122. Action for recovery of public monies

This state or any political subdivision of this state may maintain an action against any person convicted of an offense for the recovery of any public monies paid to the person. Venue for such an action is in the superior court in the county where the monies were paid, where a sale was made or where the defendant resides.

13-123. Certificate of special public importance

In any action for a prosecution involving a dangerous crime against children, the state may file a certificate stating that the case is of special public importance. The clerk shall immediately furnish a copy of the certificate to the chief judge of the superior court in the county in which the action is pending and, after receiving the copy, the chief judge shall immediately designate a judge to hear and determine the action. The judge designated shall, consistent with the rules of criminal procedure, expedite the action and the action shall take precedence over prosecution of any other proceeding.