

### 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. 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. "MARIJUANA" MEANS ALL PARTS OF THE PLANT OF THE GENUS CANNABIS, WHETHER GROWING OR NOT, AS WELL AS THE SEEDS FROM THE PLANT, THE RESIN EXTRACTED FROM ANY PART OF THE PLANT AND EVERY COMPOUND, MANUFACTURE, SALT, DERIVATIVE, MIXTURE OR PREPARATION OF THE PLANT, ITS SEEDS OR RESIN.

26. "MARIJUANA PRODUCTS" MEANS MARIJUANA CONCENTRATE AND PRODUCTS THAT ARE COMPOSED OF MARIJUANA AND OTHER INGREDIENTS AND THAT INTENDED FOR THE USE OR CONSUMPTION, INCLUDING EDIBLE PRODUCTS, OINTMENTS, INHALANTS AND TINCTURES.

27. "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.

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

29. "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.

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

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

32. "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.

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

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

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

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

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

38. "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.

39. "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.

40. "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.

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

42. "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.

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

44. "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.

13-3405. Possession, use, production, sale or transportation of marijuana; classification; exceptions

A. 1. A person UNDER TWENTY ONE YEARS OF AGE shall not knowingly possess or use marijuana.

2. A PERSON OVER TWENTY ONE YEARS OF AGE MAY POSSESS ONE OUNCE OF MARIJUANA OR A MARIJUANA PRODUCT.

3. A PERSON THAT HOLDS A REGISTRY IDENTIFICATION CARD ISSUED PURSUANT TO TITLE 36, CHAPTER 28.1 SECTION 2804.04 MAY POSSESS THE ALLOWABLE AMOUNT OF MARIJUANA AUTHORIZED PURSUANT TO TITLE 36, CHAPTER 28.1.

4. A PERSON SHALL NOT KNOWINGLY POSSESS marijuana for sale UNLESS LICENSED TO DO SO PURSUANT TO TITLE 4, CHAPTER 1, ARTICLE 1.

5. Produce marijuana, EXCEPT A PERSON OVER 21 YEARS MAY POSSESS SIX MARIJUANA PLANTS IN THEIR RESIDENCE NOT TO EXCEED A TOTAL OF TWELVE MARIJUANA PLANTS REGARDLESS OF THE NUMBER OF PERSON OVER TWENTY ONE YEARS OF AGE LIVING IN THE RESIDENCE.

6. Transport for sale, import into this state or offer to transport for sale or import into this state, sell, transfer or offer to sell or transfer marijuana UNLESS LICENSED TO DO SO PURSUANT TO TITLE 36, CHAPTER 28.1 OR TITLE 4, CHAPTER 1.

7. PERSONS EMPLOYED BY A DISPENSARY REGISTERED PURSUANT TO TITLE 36, CHAPTER 28.1 OR A FACILITY LICENSED PURSUANT TO TITLE 4, CHAPTER 1, ARTICLE 1, SECTION 112.01 ARE NOT DEEMED TO BE IN VIOLATION OF THIS SECTION WHILE ON THE PREMISES OF THEIR EMPLOYER PERFORMING DUTIES WITHIN THE SCOPE OF THEIR EMPLOYMENT.

B. A person who violates:

1. Subsection A, paragraph 1 of this section involving an amount of marijuana not possessed for sale having a weight of less than two pounds is guilty of a class 6 felony.

2. Subsection A, paragraph 1 of this section involving an amount of marijuana not possessed for sale having a weight of at least two pounds but less than four pounds is guilty of a class 5 felony.

3. Subsection A, paragraph 1 of this section involving an amount of marijuana not possessed for sale having a weight of four pounds or more is guilty of a class 4 felony.

4. Subsection A, paragraph 2 of this section involving an amount of marijuana having a weight of less than two pounds is guilty of a class 4 felony.

5. Subsection A, paragraph 2 of this section involving an amount of marijuana having a weight of at least two pounds but not more than four pounds is guilty of a class 3 felony.

6. Subsection A, paragraph 2 of this section involving an amount of marijuana having a weight of more than four pounds is guilty of a class 2 felony.

7. Subsection A, paragraph 3 of this section involving an amount of marijuana having a weight of less than two pounds is guilty of a class 5 felony.

8. Subsection A, paragraph 3 of this section involving an amount of marijuana having a weight of at least two pounds but not more than four pounds is guilty of a class 4 felony.

9. Subsection A, paragraph 3 of this section involving an amount of marijuana having a weight of more than four pounds is guilty of a class 3 felony.

10. Subsection A, paragraph 4 of this section involving an amount of marijuana having a weight of less than two pounds is guilty of a class 3 felony.

11. Subsection A, paragraph 4 of this section involving an amount of marijuana having a weight of two pounds or more is guilty of a class 2 felony.

C. If the aggregate amount of marijuana involved in one offense or all of the offenses that are consolidated for trial equals or exceeds the statutory threshold amount, a person who is sentenced pursuant to subsection B, paragraph 5, 6, 8, 9 or 11 of this section is not eligible for suspension of sentence, probation, pardon or release from confinement on any basis until the person has served the sentence imposed by the court, the person is eligible for release pursuant to section 41-1604.07 or the sentence is commuted.

D. In addition to any other penalty prescribed by this title, the court shall order a person who is convicted of a violation of any provision of this section to pay a fine of not less than seven hundred fifty dollars or three times the value as determined by the court of the marijuana involved in or giving rise to the charge, whichever is greater, and not more than the maximum authorized by chapter 8 of this title. A judge shall not suspend any part or all of the imposition of any fine required by this subsection.

E. A person who is convicted of a felony violation of any provision of this section for which probation or release before the expiration of the sentence imposed by the court is authorized

is prohibited from using any marijuana, dangerous drug or narcotic drug except as lawfully administered by a practitioner and as a condition of any probation or release shall be required to submit to drug testing administered under the supervision of the probation department of the county or the state department of corrections as appropriate during the duration of the term of probation or before the expiration of the sentence imposed.

F. If the aggregate amount of marijuana involved in one offense or all of the offenses that are consolidated for trial is less than the statutory threshold amount, a person who is sentenced pursuant to subsection B, paragraph 4, 7 or 10 and who is granted probation by the court shall be ordered by the court that as a condition of probation the person perform not less than two hundred forty hours of community restitution with an agency or organization providing counseling, rehabilitation or treatment for alcohol or drug abuse, an agency or organization that provides medical treatment to persons who abuse controlled substances, an agency or organization that serves persons who are victims of crime or any other appropriate agency or organization.

G. If a person who is sentenced pursuant to subsection B, paragraph 1, 2 or 3 of this section is granted probation for a felony violation of this section, the court shall order that as a condition of probation the person perform not less than twenty-four hours of community restitution with an agency or organization providing counseling, rehabilitation or treatment for alcohol or drug abuse, an agency or organization that provides medical treatment to persons who abuse controlled substances, an agency or organization that serves persons who are victims of crime or any other appropriate agency or organization.

H. If a person is granted probation for a misdemeanor violation of this section, the court shall order as a condition of probation that the person attend eight hours of instruction on the nature and harmful effects of narcotic drugs, marijuana and other dangerous drugs on the human system, and on the laws related to the control of these substances, or perform twenty-four hours of community restitution.

I. This section does not apply to either:

1. A person who is licensed pursuant to title 3, chapter 2, article 4.1 and who possesses, uses, sells, produces, manufactures or transports industrial hemp as defined in section 3-311.

2. A person who engages in the commercial production, processing, manufacturing, distribution or commerce of industrial hemp as defined in section 3-311 in this state outside of the agricultural pilot program established pursuant to title 3, chapter 2, article 4.1 if the person's actions are authorized under federal law.





