

Ala. Code § 13A-5-9

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Current through the 2019 Regular and Special Sessions

(a) In all cases when it is shown that a criminal defendant has been previously convicted of a Class A, Class B, or Class C felony and after the conviction has committed another Class A, Class B, or Class C felony, he or she must be punished as follows:

(1) On conviction of a Class C felony, he or she must be punished for a Class B felony.

(2) On conviction of a Class B felony, he or she must be punished for a Class A felony.

(3) On conviction of a Class A felony, he or she must be punished by imprisonment for life or for any term of not more than 99 years but not less than 15 years.

(b) In all cases when it is shown that a criminal defendant has been previously convicted of any two felonies that are Class A, Class B, or Class C felonies and after such convictions has committed another Class A, Class B, or Class C felony, he or she must be punished as follows:

(1) On conviction of a Class C felony, he or she must be punished for a Class A felony.

(2) On conviction of a Class B felony, he or she must be punished by imprisonment for life or for any term of not more than 99 years but not less than 15 years.

(3) On conviction of a Class A felony, he or she must be punished by imprisonment for life or for any term of not less than 99 years.

(c) In all cases when it is shown that a criminal defendant has been previously convicted of any three felonies that are Class A, Class B, or Class C felonies and after such convictions has committed another Class A, Class B, or Class C felony, he or she must be punished as follows:

(1) On conviction of a Class C felony, he or she must be punished by imprisonment for life or for any term of not more than 99 years but not less than 15 years.

(2) On conviction of a Class B felony, he or she must be punished by imprisonment for life or any term of not less than 20 years.

(3) On conviction of a Class A felony, where the defendant has no prior convictions for any Class A felony, he or she must be punished by imprisonment for life or life without the possibility of parole, in the discretion of the trial court.

(4) On conviction of a Class A felony, where the defendant has one or more prior convictions for any Class A felony, he or she must be punished by imprisonment for life without the possibility of parole.

(d) In all cases when it is shown that a criminal defendant has been previously convicted of any two or more felonies that are Class A or Class B felonies and after such convictions has committed a Class D felony, upon conviction, he or she must be punished for a Class C felony.

(e) In all cases when it is shown that a criminal defendant has been previously convicted of any three or more felonies and after such convictions has committed a Class D felony, upon conviction, he or she must be punished for a Class C felony.

Ala. Code § 13A-5-9 (1975)

Amended by Act 2015-185, § 2, eff. 1/30/2016 if the Director of Finance certifies that specific funding to implement the provisions of this act has been appropriated to the Board of Pardons and Paroles and the Department of Corrections.

Acts 1977, No. 607, p. 812, §1235; Acts 1979, No. 79-664, p. 1163, §1; Act 2000-759, p. 1736, §1.

Ark. Code § 5-4-501

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Current through the 2019 Legislative Session, Acts 1 through 1092

(a)

(1) A defendant meeting the following criteria may be sentenced to pay any fine authorized by law for the felony conviction and to an extended term of imprisonment as set forth in subdivision (a)(2) of this section:

(A) A defendant who:

(i) Is convicted of a felony other than those enumerated in subsections (c) and (d) of this section committed after June 30, 1993; and

(ii) Has previously been convicted of more than one (1) felony but fewer than four (4) felonies or who has been found guilty of more than one (1) but fewer than four (4) felonies;

(B) A defendant who:

(i) Is convicted of any felony enumerated in subsection (c) of this section committed after August 31, 1997; and

(ii) Has previously been convicted of more than one (1) felony but fewer than four (4) felonies not enumerated in subsection (c) of this section or who has been found guilty of more than one (1) but fewer than four (4) felonies not enumerated in subsection (c) of this section; or

(C) A defendant who:

(i) Is convicted of any felony enumerated in subsection (d) of this section committed after August 31, 1997; and

(ii) Has previously been convicted of more than one (1) felony but fewer than four (4) felonies not enumerated in subsection (d) of this section or has been found guilty of more than one (1) but fewer than four (4) felonies not enumerated in subsection (d) of this section.

(2) The extended term of imprisonment for a defendant described in subdivision (a)(1) of this section is as follows:

(A) For a conviction of a Class Y felony, a term of imprisonment of not less than ten (10) years nor more than sixty (60) years, or life;

(B) For a conviction of a Class A felony, a term of imprisonment of not less than six (6) years nor more than fifty (50) years;

(C) For a conviction of a Class B felony, a term of imprisonment of not less than five (5) years nor more than thirty (30) years;

(D) For a conviction of a Class C felony, a term of imprisonment of not less than three (3) years nor more than twenty (20) years;

(E) For a conviction of a Class D felony, a term of imprisonment of not more than twelve (12) years;

(F) For a conviction of an unclassified felony punishable by less than life imprisonment, a term of imprisonment not more than five (5) years more than the maximum sentence for the unclassified felony; and

(G) For a conviction of an unclassified felony punishable by life imprisonment, a term of imprisonment not less than ten (10) years nor more than fifty (50) years, or life.

(b)

(1) A defendant meeting the following criteria may be sentenced to pay any fine authorized by law for the felony conviction and to an extended term of imprisonment as set forth in subdivision (b)(2) of this section:

(A) A defendant who:

(i) Is convicted of a felony other than a felony enumerated in subsections (c) and (d) of this section committed after June 30, 1993; and

(ii) Has previously been convicted of four (4) or more felonies or who has been found guilty of four (4) or more felonies;

(B) A defendant who:

(i) Is convicted of any felony enumerated in subsection (c) of this section committed after June 30, 1997; and

(ii) Has previously been convicted of four (4) or more felonies not enumerated in subsection (c) of this section or who has been found guilty of four (4) or more felonies not enumerated in subsection (c) of this section; or

(C) A defendant who:

(i) Is convicted of any felony enumerated in subsection (d) of this section committed after June 30, 1997; and

(ii) Has previously been convicted of four (4) or more felonies not enumerated in subsection (d) of this section or who has been found guilty of four (4) or more felonies not enumerated in subsection (d) of this section.

(2) The extended term of imprisonment for a defendant described in subdivision (b)(1) of this section is as follows:

(A) For a conviction of a Class Y felony, a term of imprisonment of not less than ten (10) years nor more than life;

(B) For a conviction of a Class A felony, a term of imprisonment of not less than six (6) years nor more than sixty (60) years;

(C) For a conviction of a Class B felony, a term of imprisonment of not less than five (5) years nor more than forty (40) years;

(D) For a conviction of a Class C felony, a term of imprisonment of not less than three (3) years nor more than thirty (30) years;

(E) For a conviction of a Class D felony, a term of imprisonment of not more than fifteen (15) years;

(F) For a conviction of an unclassified felony punishable by less than life imprisonment, a term of imprisonment not more than two (2) times the maximum sentence for the unclassified felony offense; and

(G) For a conviction of an unclassified felony punishable by life imprisonment, a term of imprisonment not less than ten (10) years nor more than fifty (50) years, or life.

(c)

(1) Except as provided in subdivision (c)(3) of this section, a defendant who is convicted of a serious felony involving violence enumerated in subdivision (c)(2) of this section and who previously has been convicted of one (1) or more of the serious felonies involving violence enumerated in subdivision (c)(2) of this section may be sentenced to pay any fine authorized by law for the serious felony involving violence conviction and shall be sentenced:

(A) To imprisonment for a term of not less than forty (40) years nor more than eighty (80) years, or life; and

(B) Without eligibility for parole or community correction transfer except under § 16-93-615.

(2) As used in this subsection, "serious felony involving violence" means:

(A) Any of the following felonies:

(i) Murder in the first degree, § 5-10-102;

(ii) Murder in the second degree, § 5-10-103;

(iii) Kidnapping, § 5-11-102, involving an activity making it a Class Y felony;

(iv) Aggravated robbery, § 5-12-103;

(v) Terroristic act, § 5-13-310, involving an activity making it a Class Y felony;

(vi) Rape, § 5-14-103;

(vii) Sexual assault in the first degree, § 5-14-124;

(viii) Causing a catastrophe, § 5-38-202(a);

(ix) Aggravated residential burglary, § 5-39-204; or

(x) Aggravated assault upon a law enforcement officer or an employee of a correctional facility, § 5-13-211, if a Class Y felony; or

(B) A conviction of a comparable serious felony involving violence from another jurisdiction.

(3) A defendant who is convicted of rape, § 5-14-103, or sexual assault in the first degree, § 5-14-124, involving a victim less than fourteen (14) years of age and who has previously been convicted of one (1) or more of the serious felonies involving violence enumerated in subdivision (c)(2) of this section may be sentenced to pay any fine authorized by law for the rape or sexual assault in the first degree conviction and shall be sentenced to life in prison without the possibility of parole.

(4)

(A) The following procedure governs a trial at which a sentence to an extended term of imprisonment is sought pursuant to this subsection:

(i) The jury shall first hear all evidence relevant to the serious felony involving violence with which the defendant is currently charged and shall retire to reach a verdict of guilt or innocence on this charge;

(ii)

(a) If the defendant is found guilty of the serious felony involving violence, out of the hearing of the jury the trial court shall hear evidence of whether

the defendant has pleaded guilty or nolo contendere to or been found guilty of a prior serious felony involving violence and shall determine the number of prior serious felony involving violence convictions, if any.

(b) The defendant has the right to hear and controvert evidence described in subdivision (c)(4)(A)(ii)(a) of this section and to offer evidence in his or her support;

(iii)

(a) The trial court shall then instruct the jury as to the number of prior convictions for a serious felony involving violence and the statutory sentencing range.

(b) The jury may be advised as to the nature of a prior serious felony involving violence conviction and the date and place of a prior serious felony involving violence conviction; and

(iv) The jury shall retire again and then determine a sentence within the statutory range.

(B) The determination of whether a felony conviction from another jurisdiction is comparable to an enumerated serious felony involving violence under Arkansas criminal law lies within the discretion of the trial judge at the time of sentencing.

(d)

(1) A defendant who is convicted of a felony involving violence enumerated in subdivision (d)(2) of this section and who previously has been convicted of two (2) or more of the felonies involving violence enumerated in subdivision (d)(2) of this section may be sentenced to pay any fine authorized by law for the felony involving violence conviction and shall be sentenced to an extended term of imprisonment without eligibility for parole or community correction transfer except under § 16-93-615 as follows:

(A) For a conviction of a Class Y felony, a term of imprisonment of not less than life in prison;

(B) For a conviction of a Class A felony, a term of imprisonment of not less than forty (40) years nor more than life in prison;

(C) For a conviction of a Class B felony or for a conviction of an unclassified felony punishable by life imprisonment, a term of imprisonment of not less than thirty (30) years nor more than sixty (60) years;

(D) For a conviction of a Class C felony, a term of imprisonment of not less than twenty-five (25) years nor more than forty (40) years;

(E) For a conviction of a Class D felony, a term of imprisonment of not less than twenty (20) years nor more than forty (40) years; and

(F) For a conviction of an unclassified felony punishable by less than life imprisonment, a term of imprisonment not more than three (3) times the maximum sentence for the unclassified felony offense.

(2) As used in this subsection, "felony involving violence" means:

(A) Any of the following felonies:

(i) Murder in the first degree, § 5-10-102;

(ii) Murder in the second degree, § 5-10-103;

(iii) Kidnapping, § 5-11-102;

(iv) Aggravated robbery, § 5-12-103;

(v) Rape, § 5-14-103;

(vi) Battery in the first degree, § 5-13-201;

(vii) Terroristic act, § 5-13-310;

- (viii)** Sexual assault in the first degree, § 5-14-124;
- (ix)** Sexual assault in the second degree, § 5-14-125;
- (x)** Domestic battering in the first degree, § 5-26-303;
- (xi)** Residential burglary, § 5-39-201(a);
- (xii)** Aggravated residential burglary, § 5-39-204;
- (xiii)** Unlawful discharge of a firearm from a vehicle, § 5-74-107;
- (xiv)** Criminal use of prohibited weapons, § 5-73-104, involving an activity making it a Class B felony;
- (xv)** A felony attempt, solicitation, or conspiracy to commit:
 - (a)** Capital murder, § 5-10-101;
 - (b)** Murder in the first degree, § 5-10-102;
 - (c)** Murder in the second degree, § 5-10-103;
 - (d)** Kidnapping, § 5-11-102;
 - (e)** Aggravated robbery, § 5-12-103;
 - (f)** Aggravated assault upon a law enforcement officer or an employee of a correctional facility, § 5-13-211, if a Class Y felony;
 - (g)** Rape, § 5-14-103;
 - (h)** Battery in the first degree, § 5-13-201;
 - (i)** Domestic battering in the first degree, § 5-26-303;
 - (j)** Residential burglary, § 5-39-201(a); or
 - (k)** Aggravated residential burglary, § 5-39-204; or

(xvi) Aggravated assault upon a law enforcement officer or an employee of a correctional facility, § 5-13-211, if a Class Y felony; or

(B) A conviction of a comparable felony involving violence from another jurisdiction.

(3)

(A) The following procedure governs a trial at which a sentence to an extended term of imprisonment is sought pursuant to this subsection:

(i) The jury shall first hear all evidence relevant to the felony involving violence with which the defendant is currently charged and shall retire to reach a verdict of guilt or innocence on this charge;

(ii)

(a) If the defendant is found guilty of the felony involving violence, out of the hearing of the jury the trial court shall hear evidence of whether the defendant has pleaded guilty or nolo contendere to or been found guilty of two (2) or more prior felonies involving violence and shall determine the number of prior felony involving violence convictions, if any.

(b) The defendant has the right to hear and controvert evidence described in subdivision (d)(3)(A)(ii)(a) of this section and to offer evidence in his or her support;

(iii)

(a) The trial court shall then instruct the jury as to the number of prior felony involving violence convictions and the statutory sentencing range.

(b) The jury may be advised as to the nature of a prior felony involving violence conviction and the date and place of a prior felony involving violence conviction; and

(iv) The jury shall retire again and then determine a sentence within the statutory range.

(B) The determination of whether a felony conviction from another jurisdiction is comparable to an enumerated felony involving violence under Arkansas criminal law lies within the discretion of the trial judge at the time of sentencing.

(e)

(1) For the purpose of determining whether a defendant has previously been convicted or found guilty of two (2) or more felonies, a conviction or finding of guilt of burglary, § 5-39-201, and of the felony that was the object of the burglary are considered a single felony conviction or finding of guilt.

(2) A conviction or finding of guilt of an offense that was a felony under the law in effect prior to January 1, 1976, is considered a previous felony conviction or finding of guilt.

(f) For the purposes of determining whether a defendant has previously been convicted of a serious felony involving violence or a felony involving violence under subsections (c) and (d) of this section, the entry of a plea of guilty or nolo contendere or a finding of guilt by a court to a felony enumerated in subsections (c) and (d) of this section, respectively, as a result of which a court places the defendant on a suspended imposition of sentence, a suspended sentence, or probation, or sentences the defendant to the Division of Correction, is considered a previous felony conviction.

(g) Any defendant deemed eligible to be sentenced under a provision of both subsections (c) and (d) of this section shall be sentenced only under subsection (d) of this section.

(h) If the provisions of subsection (c) or (d) of this section, or both, are held invalid by a court, the defendant's case shall be remanded to the trial court for resentencing of the defendant under the provisions of subsections (a) and (b) of this section.

Ark. Code § 5-4-501

Amended by Act 2019, No. 910, § 659, eff. 7/1/2019.

Amended by Act 2017, No. 367, § 4, eff. 8/1/2017.

Amended by Act 2017, No. 367, § 3, eff. 8/1/2017.

Amended by Act 2017, No. 367, § 2, eff. 8/1/2017.

Amended by Act 2015, No. 895, § 3, eff. 4/1/2015.

Acts 1975, No. 280, § 1001; 1977, No. 474, § 4; 1981, No. 620, § 9; 1983, No. 409, § 3; A.S.A. 1947, § 41-1001; Acts 1993, No. 532, § 7; 1993, No. 550, § 7; 1995, No. 1009, § 1; 1995, No. 1011, § 1; 1997, No. 1197, § 1; 2001, No. 1553, § 6; 2003, No. 1390, § 2; 2006 (1st Ex. Sess.), No. 5, § 1; 2007, No. 827, §§ 15, 16; No. 852, § 1; 2009, No. 1395, §§ 1, 2; 2011, No. 570, §§ 19, 20.

Ariz. Rev. Stat. § 13-703

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Current through L. 2019, ch. 321

- A.** If a person is convicted of multiple 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 first time felony offender pursuant to section 13-702 for the first offense, as a category one repetitive offender for the second offense, and as a category two repetitive offender for the third and subsequent offenses.
- B.** Except as provided in section 13-704 or 13-705, a person shall be sentenced as a category two 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 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 A or 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 Class | 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 | 75 days | 1.5 years | 2 years | 2.5 years | |
| Class 6 | 25 years | 5 years | 1 year | 1.5 years | 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 3.25 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 subsections B and C of this section.

M. 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.

A.R.S. § 13-703

Amended by L. 2016, ch. 43, s. 2, eff. 8/5/2016.

Amended by L. 2015, ch. 74, s. 2, eff. 7/2/2015.

Amended by L. 2015, ch. 51, s. 1, eff. 7/2/2015.

Amended by L. 2013, ch. 55, s. 3, eff. 9/13/2013

Colo. Rev. Stat. § 18-1.3-801

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Current through the 2019 Legislative Session

(1)

(a) A person shall be adjudged an habitual criminal and shall be punished by a term in the department of corrections of life imprisonment if the person:

(I) Is convicted of:

(A) Any class 1 or 2 felony or level 1 drug felony; or

(B) Any class 3 felony that is a crime of violence, as defined in section 18-1.3-406(2); and

(II) Has been twice convicted previously for any of the offenses described in subparagraph (I) of this paragraph (a).

(b) A felony described in subparagraph (I) of paragraph (a) of this subsection (1) is:

(I) One based upon charges separately brought and tried, and arising out of separate and distinct criminal episodes, in this or any other state; or

(II) A crime under the laws of any other state, the United States, or any territory subject to the jurisdiction of the United States, which, if committed within this state, would be such a felony described in paragraph (a) of this subsection (1).

(c) No person sentenced pursuant to this subsection (1) shall be eligible for parole until such person has served at least forty calendar years.

(d) Nothing in this subsection (1) prohibits the governor from issuing a pardon or a clemency order on a case-by-case basis; however, the governor shall submit a

report to the general assembly on each such pardon or clemency order in accordance with section 7 of article IV of the state constitution.

(e) Nothing in this subsection (1) is to be construed to prohibit a person convicted of a class 1 felony from being sentenced pursuant to section 18-1.3-1201, 18-1.3-1302, or 18-1.4-102.

(f) This subsection (1) shall not apply to a person convicted of first or second degree burglary, which person shall be subject to subsections (1.5), (2), and (2.5) of this section and section 18-1.3-804.

(1.5) Except as otherwise provided in subsection (5) of this section, every person convicted in this state of any class 1, 2, 3, 4, or 5 felony or level 1, 2, or 3 drug felony who, within ten years of the date of the commission of the said offense, has been twice previously convicted upon charges separately brought and tried, and arising out of separate and distinct criminal episodes, either in this state or elsewhere, of a felony or, under the laws of any other state, the United States, or any territory subject to the jurisdiction of the United States, of a crime which, if committed within this state, would be a felony shall be adjudged an habitual criminal and shall be punished:

(a) For the felony offense of which such person is convicted by imprisonment in the department of corrections for a term of three times the maximum of the presumptive range pursuant to section 18-1.3-401 for the class or level of felony of which such person is convicted; or

(b) For the level 1 drug felony offense of which such person is convicted by imprisonment in the department of corrections for a term of forty-eight years.

(2)

(a)

(I) Except as otherwise provided in paragraph (b) of this subsection (2) and in subsection (5) of this section, every person convicted in this state of any felony, who has been three times previously convicted, upon charges separately brought and tried, and arising out of separate and distinct criminal episodes, either in this

state or elsewhere, of a felony or, under the laws of any other state, the United States, or any territory subject to the jurisdiction of the United States, of a crime which, if committed within this state, would be a felony, shall be adjudged an habitual criminal and shall be punished:

(A) For the felony offense of which such person is convicted by imprisonment in the department of corrections for a term of four times the maximum of the presumptive range pursuant to section 18-1.3-401 for the class or level of felony of which such person is convicted; or

(B) For the level 1 drug felony offense of which such person is convicted by imprisonment in the department of corrections for a term of sixty-four years.

(II) Such former conviction or convictions and judgment or judgments shall be set forth in apt words in the indictment or information. Nothing in this part 8 shall abrogate or affect the punishment by death in any and all crimes punishable by death on or after July 1, 1972.

(b) The provisions of subsection (2)(a) of this section do not apply to a conviction for a level 4 drug felony committed on or after March 1, 2020, pursuant to section 18-18-403.5(2), or a conviction for a level 4 drug felony committed on or after March 1, 2020, for attempt or conspiracy to commit unlawful possession of a controlled substance, as described in section 18-18-403.5(2), if the amount of the controlled substance possessed is not more than four grams of any material, compound, mixture, or preparation containing any quantity of gamma hydroxybutyrate, including its salts, isomers, and salts of isomers, or not more than two grams of cathinones or ketamine, or not more than four milligrams of flunitrazepam, even if the person has been previously convicted of three or more qualifying felony convictions.

(2.5) Any person who is convicted and sentenced pursuant to subsection (2) of this section, or section 16-13-101(2), C.R.S., as it existed prior to October 1, 2002, who is thereafter convicted of a felony which is a crime of violence pursuant to section 18-1.3-406, shall be adjudged an habitual criminal and shall be punished by a term in the department of corrections of life imprisonment. No person sentenced

pursuant to this subsection (2.5) shall be eligible for parole until such person has served at least forty calendar years.

(3) No drug law conviction shall be counted as a prior felony conviction under this section unless such prior offense would be a felony if committed in this state at the time of the commission of the new offense.

(4) A person who meets the criteria set forth in subsection (1) of this section shall be adjudged an habitual criminal and sentenced only in accordance with that subsection and not pursuant to subsections (1.5), (2), and (2.5) of this section.

(5) A current or prior conviction for escape, as described in section 18-8-208(1), (2), or (3), or attempt to escape, as described in section 18-8-208.1(1), (1.5), or (2), may not be used for the purpose of adjudicating a person an habitual criminal as described in subsection (1.5) or subsection (2) of this section unless the conviction is based on the offender's escape or attempt to escape from a correctional facility, as defined in section 17-1-102, or from physical custody within a county jail; except that, for the purposes of this section, "correctional facility" does not include a community corrections facility, as defined in section 17-27-102 (2.5), or a halfway house, as defined in section 19-1-103(62).

C.R.S. § 18-1.3-801

Amended by 2019 Ch. 291, § 8, eff. 3/1/2020.

Amended by 2017 Ch. 374, § 1, eff. 8/9/2017.

Amended by 2014 Ch. 391, § 13, eff. 7/1/2014.

Amended by 2013 Ch. 333, § 36, eff. 10/1/2013.

L. 2002: Entire article added with relocations, p. 1426, § 2, effective October 1. L. 2002, 3rd Ex. Sess.: (1) (e) amended, p. 33, § 28, effective October 1. L. 2003: (2.5) amended, p. 978, § 16, effective April 17; IP(1)(a), (1.5), (2), and (2.5) amended, p. 1426, § 5, effective April 29. L. 2011: (2) amended, (SB 11-096), ch. 57, p. 151, § 1, effective March 25. L. 2012: (1.5) and (2)(a) amended and (5) added, (HB 12-1213), ch. 183, p. 695, § 1, effective May 17. L. 2013: (1)(a)(I)(A), (1.5), and (2) amended, (SB 13-250), ch. 333, p. 1927, § 36, effective October 1. L. 2014: (2)(b) amended, (SB 14-163), ch. 391, p. 1975, § 13, effective July 1. L. 2017: (5) amended, (HB 17-1330), ch. 374, p. 1937, § 1, effective August 9.

(1) This section is similar to former § 16-13-101 as it existed prior to 2002. (2) Amendments to subsection (2.5) by Senate Bill 03-147 and House Bill 03-1236 were harmonized.

2019 Ch. 291, was passed without a safety clause. See Colo. Const. art. V, § 1(3).

This section is set out twice. See also C.R.S. § 18-1.3-8011, effective until 3/1/2020.

For the legislative declaration contained in the 2002 act amending subsection (1)(e), see section 16 of chapter 1 of the supplement to the Session Laws of Colorado 2002, Third Extraordinary Session.

Conn. Gen. Stat. § 53a-40

 Download

Current through the 2019 July Special Session

(a) A persistent dangerous felony offender is a person who:

(1)

(A) Stands convicted of manslaughter, arson, kidnapping, robbery in the first or second degree, assault in the first degree, home invasion, burglary in the first degree or burglary in the second degree with a firearm, and

(B) has been, prior to the commission of the present crime, convicted of and imprisoned under a sentence to a term of imprisonment of more than one year or of death, in this state or in any other state or in a federal correctional institution, for any of the following crimes:

(i) The crimes enumerated in subparagraph (A) of this subdivision or an attempt to commit any of said crimes; or

(ii) murder, sexual assault in the first or third degree, aggravated sexual assault in the first degree or sexual assault in the third degree with a firearm, or an attempt to commit any of said crimes; or

(iii) prior to October 1, 1975, any of the crimes enumerated in section 53a-72, 53a-75 or 53a-78 of the general statutes, revision of 1958, revised to 1975, or prior to October 1, 1971, in this state, assault with intent to kill under section 54-117, or any of the crimes enumerated in sections 53-9, 53-10, 53-11, 53-12 to 53-16, inclusive, 53-19, 53-21, 53-69, 53-78 to 53-80, inclusive, 53-82, 53-83, 53-86, 53-238 and 53-239 of the general statutes, revision of 1958, revised to 1968, or any predecessor statutes in this state, or an attempt to commit any of said crimes; or

(iv) in any other state, any crimes the essential elements of which are substantially the same as any of the crimes enumerated in subparagraph (A) of this subdivision or this subparagraph; or

(2)

(A) Stands convicted of sexual assault in the first or third degree, aggravated sexual assault in the first degree or sexual assault in the third degree with a firearm, and

(B) has been, prior to the commission of the present crime, convicted of and imprisoned under a sentence to a term of imprisonment of more than one year or of death, in this state or in any other state or in a federal correctional institution, for any of the following crimes:

(i) Murder, manslaughter, arson, kidnapping, robbery in the first or second degree, assault in the first degree, home invasion, burglary in the first degree or burglary in the second degree with a firearm, or an attempt to commit any of said crimes; or

(ii) prior to October 1, 1971, in this state, assault with intent to kill under section 54-117, or any of the crimes enumerated in sections 53-9, 53-10, 53-11, 53-12 to 53-16, inclusive, 53-19, 53-21, 53-69, 53-78 to 53-80, inclusive, 53-82, 53-83 and 53-86 of the general statutes, revision of 1958, revised to 1968, or any predecessor statutes in this state, or an attempt to commit any of said crimes; or

(iii) in any other state, any crimes the essential elements of which are substantially the same as any of the crimes enumerated in subparagraph (A) of this subdivision or this subparagraph.

(b) A persistent dangerous sexual offender is a person who (1) stands convicted of sexual assault in the first or third degree, aggravated sexual assault in the first degree or sexual assault in the third degree with a firearm, and (2) has been, prior to the commission of the present crime, convicted of and imprisoned under a sentence to a term of imprisonment of more than one year, in this state or in any other state or

in a federal correctional institution, for (A) any of the crimes enumerated in subdivision (1) of this subsection, or (B) prior to October 1, 1975, any of the crimes enumerated in section 53a-72, 53a-75 or 53a-78 of the general statutes, revision of 1958, revised to 1975, or prior to October 1, 1971, in this state, any of the crimes enumerated in section 53-238 or 53-239 of the general statutes, revision of 1958, revised to 1968, or any predecessor statutes in this state, or an attempt to commit any of said crimes, or (C) in any other state, any crimes the essential elements of which are substantially the same as any of the crimes enumerated in subdivision (1) of this subsection or this subdivision.

(c) A persistent serious felony offender is a person who (1) stands convicted of a felony, and (2) has been, prior to the commission of the present felony, convicted of and imprisoned under an imposed term of more than one year or of death, in this state or in any other state or in a federal correctional institution, for a crime. This subsection shall not apply where the present conviction is for a crime enumerated in subdivision (1) of subsection (a) of this section and the prior conviction was for a crime other than those enumerated in subsection (a) of this section.

(d) A persistent serious sexual offender is a person, other than a person who qualifies as a persistent dangerous sexual offender under subsection (b) of this section, who qualifies as a persistent serious felony offender under subsection (c) of this section and the felony of which such person presently stands convicted is a violation of section 53a-70b of the general statutes, revision of 1958, revised to January 1, 2019, or subdivision (2) of subsection (a) of section 53-21, or section 53a-70, 53a-70a, 53a-71, 53a-72a or 53a-72b and the prior conviction is for a violation of section 53-21 of the general statutes, revised to January 1, 1995, involving sexual contact, committed prior to October 1, 1995, a violation of subdivision (2) of section 53-21 of the general statutes, committed on or after October 1, 1995, and prior to October 1, 2000, a violation of section 53a-70b of the general statutes, revision of 1958, revised to January 1, 2019, or a violation of subdivision (2) of subsection (a) of section 53-21 or a violation of section 53a-70, 53a-70a, 53a-71, 53a-72a or 53a-72b.

(e) A persistent larceny offender is a person who (1) stands convicted of larceny in the third degree in violation of the provisions of section 53a-124 in effect prior to

October 1, 1982, or larceny in the fourth, fifth or sixth degree, and (2) has been, at separate times, twice convicted of the crime of larceny for violations committed during the ten years prior to the commission of the present larceny.

(f) A persistent offender for possession of a controlled substance is a person who (1) stands convicted of possession of a controlled substance in violation of the provisions of section 21a-279, and (2) has been, at separate times prior to the commission of the present possession of a controlled substance, twice convicted of the crime of possession of a controlled substance.

(g) A persistent felony offender is a person who (1) stands convicted of a felony other than a class D felony, and (2) has been, at separate times prior to the commission of the present felony, twice convicted of a felony other than a class D felony.

(h) It shall be an affirmative defense to the charge of being a persistent offender under this section that (1) as to any prior conviction on which the state is relying the defendant was pardoned on the ground of innocence, and (2) without such conviction, the defendant was not two or more times convicted and imprisoned as required by this section.

(i) When any person has been found to be a persistent dangerous felony offender, the court, in lieu of imposing the sentence of imprisonment authorized by the general statutes for the crime of which such person presently stands convicted, shall (1) sentence such person to a term of imprisonment that is not (A) less than twice the minimum term of imprisonment authorized for such crime, or (B) more than twice the maximum term of imprisonment authorized for such crime or forty years, whichever is greater, provided, if a mandatory minimum term of imprisonment is authorized for such crime, such sentence shall include a mandatory minimum term of imprisonment that is twice such authorized mandatory minimum term of imprisonment, and (2) if such person has, at separate times prior to the commission of the present crime, been twice convicted of and imprisoned for any of the crimes enumerated in subsection (a) of this section, sentence such person to a term of imprisonment that is not less than three times the minimum term of imprisonment authorized for such crime or more than life, provided, if a mandatory minimum term of imprisonment is authorized for such crime, such sentence shall include a

mandatory minimum term of imprisonment that is three times such authorized mandatory minimum term of imprisonment.

(j) When any person has been found to be a persistent dangerous sexual offender, the court, in lieu of imposing the sentence of imprisonment authorized by section 53a-35a for the crime of which such person presently stands convicted, shall sentence such person to a term of imprisonment and a period of special parole pursuant to subsection (b) of section 53a-28 which together constitute a sentence of imprisonment for life, as defined in section 53a-35b.

(k) When any person has been found to be a persistent serious felony offender, the court in lieu of imposing the sentence of imprisonment authorized by section 53a-35 for the crime of which such person presently stands convicted, or authorized by section 53a-35a if the crime of which such person presently stands convicted was committed on or after July 1, 1981, may impose the sentence of imprisonment authorized by said section for the next more serious degree of felony.

(l) When any person has been found to be a persistent serious sexual offender, the court, in lieu of imposing the sentence of imprisonment authorized by section 53a-35a for the crime of which such person presently stands convicted, may impose a sentence of imprisonment and a period of special parole pursuant to subsection (b) of section 53a-28 which together constitute the maximum sentence specified by section 53a-35a for the next more serious degree of felony.

(m)

(1) When any person has been found to be a persistent larceny offender, the court, in lieu of imposing the sentence authorized by section 53a-36 for the crime of which such person presently stands convicted, may impose the sentence of imprisonment for a class D felony authorized by section 53a-35, if the crime of which such person presently stands convicted was committed prior to July 1, 1981, or authorized by section 53a-35a, if the crime of which such person presently stands convicted was committed on or after July 1, 1981, but prior to October 1, 2019.

(2) When any person has been found to be a persistent larceny offender, the court, in lieu of imposing the sentence authorized by section 53a-36 for the crime of which such person presently stands convicted for a violation committed on or

after October 1, 2019, may impose the sentence of (A) imprisonment for a class E felony authorized by section 53a-35a, if such person presently stands convicted of a violation of section 53a-125, or (B) imprisonment authorized by section 53a-36 for the next more serious degree of misdemeanor authorized under section 53a-36 if such person presently stands convicted of a violation of section 53a-125a or 53a-125b.

(n) When any person has been found to be a persistent offender for possession of a controlled substance, the court, in lieu of imposing the sentence authorized by section 53a-36 for the crime of which such person presently stands convicted, may impose the sentence of imprisonment for a class E felony authorized by section 53a-35a.

(o) When any person has been found to be a persistent felony offender, the court, in lieu of imposing the sentence authorized by section 53a-35a for the crime of which such person presently stands convicted, may impose the sentence of imprisonment authorized by said section for the next more serious degree of felony; provided the sentence imposed may not be less than three years, and provided further three years of the sentence so imposed may not be suspended or reduced by the court.

(p)

(1) Whenever a person is arrested for any of the crimes enumerated in subsection (a) of this section, the prosecuting authority shall investigate and ascertain whether such person has, at separate times prior to the commission of the present crime, been twice convicted of and imprisoned for any of the crimes enumerated in said subsection (a) and would be eligible to be sentenced under subsection (i) of this section if convicted of such crime.

(2) If the prosecuting authority ascertains that such person has, at separate times prior to the commission of the present crime, been twice convicted of and imprisoned for any of the crimes enumerated in subsection (a) of this section and such person has been presented to a geographical area courthouse, the prosecuting authority shall cause such person to be transferred to a judicial district courthouse.

(3) No court shall accept a plea of guilty, not guilty or nolo contendere from a person arrested for any of the crimes enumerated in subsection (a) of this section unless it finds that the prosecuting authority has complied with the requirements of subdivision (1) of this subsection.

(4) If the prosecuting authority ascertains that such person has, at separate times prior to the commission of the present crime, been twice convicted of and imprisoned for any of the crimes enumerated in subsection (a) of this section but decides not to initiate proceedings to seek the sentence enhancement provided by subsection (i) of this section, the prosecuting authority shall state for the record the specific reason or reasons for not initiating such proceedings.

(5) If the prosecuting authority ascertains that such person has, at separate times prior to the commission of the present crime, been twice convicted of and imprisoned for any of the crimes enumerated in subsection (a) of this section and initiates proceedings to seek the sentence enhancement provided by subsection (i) of this section, but subsequently decides to terminate such proceedings, the prosecuting authority shall state for the record the specific reason or reasons for terminating such proceedings.

Conn. Gen. Stat. § 53a-40

(1969, P.A. 828, S. 40; 1971, P.A. 871, S. 15; P.A. 73-616, S. 40; P.A. 76-336, S. 20; P.A. 80-442, S. 12, 28; P.A. 83-4, S. 1, 2; P.A. 85-603; P.A. 92-260, S. 18; P.A. 94-37, S. 1; June Sp. Sess. P.A. 99-2, S. 48; P.A. 01-84, S. 18, 26; Jan. Sp. Sess. P.A. 08-1, S. 6, 7; P.A. 08-51, S. 1, 2; June Sp. Sess. P.A. 15-2, S. 19.)

Amended by P.A. 19-0189, S. 19 of the Connecticut Acts of the 2019 Regular Session, eff. 10/1/2019.

Amended by P.A. 19-0151, S. 3 of the Connecticut Acts of the 2019 Regular Session, eff. 10/1/2019.

Amended by P.A. 15-0002, S. 19 of the Connecticut Acts of the 2015 Special Session, eff. 10/1/2015.

Cited. 176 Conn. 270; 180 C. 660; 184 C. 215; 188 C. 27; 191 C. 180; 192 Conn. 471; 194 C. 573; Id., 692; 195 Conn. 326; 197 C. 280; 198 Conn. 158; Id., 273; 203 Conn. 506; 207 C. 619; 218 Conn. 273; 224 C. 397; 226 Conn. 601; 227 C. 751; 234 C. 324; 240 C. 317; 242 C. 143. Finding by trial court, rather than jury, that imposing extended incarceration would best serve the public interest clearly violated defendant's

constitutional rights under the sixth amendment to U.S. Constitution; section is unconstitutional to the extent it does not provide that defendant is entitled to have jury make a required finding that exposes defendant to a greater punishment than that authorized by jury's guilty verdict. 283 C. 748. Cited. 9 Conn.App. 686; 12 Conn.App. 1; 31 Conn.App. 140; 36 CA 401; 37 Conn.App. 733; 45 CA 369; Id., 390. Admission of certified copy of judgment sufficient to prove persistent dangerous felony offender. 50 CA 521. Section constitutes a sentence enhancement and not an independent criminal offense. 117 CA 486. Rule in 283 Conn. 748 does not apply retroactively. 130 CA 435. Defendant's status as a persistent felony offender and his resulting sentence enhancements do not run contrary to the plain language of section which permits enhancement of defendant's conviction of robbery in the first degree under Subsec. (a) and of his conviction of attempt to escape from custody under Subsec. (b) and defendant's arguments that his conviction of robbery in the first degree under Subsec. (a) precludes a sentence enhancement under Subsec. (b) and that the legislature did not intend for more than one recidivist enhancement to apply to the conviction of multiple current charges because he was not afforded the opportunity to reform are without merit. 173 CA 119. Subsec. (a): Constitutionality of dangerous felony offender statutes has long been upheld. 173 C. 545. Cited. 193 C. 273. Nothing in statute precludes state from offering probative evidence to clarify an official judgment of conviction in order to prove defendant a second offender. 194 Conn. 573. No viable basis for challenge to statute on the grounds of vagueness. 195 Conn. 326. Cited. Id., 475; 200 C. 350; Id., 453; 202 C. 509; 203 C. 81; 206 Conn. 621; 207 C. 276; 210 C. 573; 213 C. 97; 216 Conn. 220; 224 C. 445; 232 Conn. 455. Cited. 17 CA 490; 19 Conn.App. 571; 29 CA 274; 37 Conn.App. 672; Id., 733; 39 Conn.App. 82; 46 CA 131. Jury improperly found defendant to be a persistent dangerous felony offender because his conviction of attempted assault in the first degree is not one of the qualifying felonies enumerated in Subsec. 51 CA 171. Cited. 43 CS 77. Subsec. (b): Presentence report used to prove that defendant was not persistent felony offender under Subsec. 169 Conn. 263. Cited. 182 C. 176. Failure to allege imprisonment under provisions of statute not considered reversible error where proof of imprisonment was established during trial and defendant failed to request complete statement of facts. 184 Conn. 215. Cited. Id., 369; 187 C. 264; 224 Conn. 397; 227 C. 711; Id., 751; 232 Conn. 455. Cited. 9 CA 133; 10 CA 279; 12 CA 375; 13 CA 438; 20 CA 586; 31 CA 178; 34 CA 1; 35 Conn.App. 405; 37 Conn.App. 733; 39 Conn.App. 82; Id., 789; 45 Conn.App. 369. Subsec. (c): Cited. 202 C. 369. By pleading nolo contendere to charge of being a persistent larceny offender, defendant waived her right to appeal this issue. 4 Conn.App. 676. Cited. 14 CA 88; 21 CA 331; 37 Conn.App. 228. The word "and" in the exemption contained in subsection is used in a conjunctive manner. 168 CA 37. Subsec. (d): Language of section and its legislative purpose require sequence of offense, conviction and punishment for each prior felony before enhanced penalty as a persistent offender attaches.

240 Conn. 317. Cited. 41 CA 391. Subsec. (g) (former Subsec. (f)): Cited. 169 Conn. 263; 187 Conn. 264; 200 C. 453; 207 Conn. 276. Purpose is to allow sentencing court to impose a more severe sentence than would be allowed for the substantive offense; Subsec. requires sentencing court to consider defendant's history and character and the nature and circumstances of his criminal conduct and whether extended incarceration and lifetime supervision will best serve the public interest; there is no requirement that sentences imposed be strictly proportional to the nature of substantive offense or offenses of which defendant was convicted; nature of substantive offense is only one factor to be considered by sentencing court. 254 C. 613. Cited. 19 Conn.App. 571. Under plain and unambiguous language of Subsec., only class D felonies, which carry a lesser maximum punishment than unclassified felonies, are excluded as predicate felonies, the legislature having specifically chosen not to exclude unclassified felonies. 128 CA 765. When defendant knowingly, voluntarily and intelligently pleads guilty to a sentence enhancement provision, defendant waives right to jury trial thereon, and no constitutional violation occurs where defendant's increased penalty allegedly results from trial court's, rather than jury's, consideration of factors other than defendant's previous convictions. 141 CA 814. Subsec. (i) (former Subsec. (h)): Under 2001 revision, section clearly reflected legislature's negative view of persistent dangerous felony offenders and the degree of punishment it wished to impose on them at the time defendant committed the offenses such that defendant was on fair notice that the substantive provision of section would apply even if certain procedural provisions were later found to be unconstitutional; text and legislative history of section indicate that the term "public interest", as used in section, does not include the public interest in minimizing costs of incarceration. 303 C. 246. Cited. 21 Conn.App. 331; 37 Conn.App. 228. Court followed 283 Conn. 748 in holding that jury and not the court must make finding of whether defendant's extended incarceration will best serve the public interest. 105 CA 278. Section is not unconstitutionally vague as applied to defendant or on its face. 121 CA 672. Subsec. (k) (former Subsec. (j)): Under 2007 revision, and following 283 Conn. 748, where defendant's guilty plea effectively waived his right to a jury finding that enhancement of his sentence as a persistent serious felony offender was in the public interest, defendant was not presumed to have waived a court finding on the public interest determination and the court was the proper entity to make such public interest determination. 143 Conn.App. 76.

Del. Code tit. 11 § 4214

 Download

Current through 2019 Legislative Session Act 218

(a) Any person who has been 2 times convicted of a Title 11 violent felony, or attempt to commit such a violent felony, as defined in § 4201(c) of this title under the laws of this State, and/or any comparable violent felony as defined by another state, United States or any territory of the United States, and who shall thereafter be convicted of a subsequent Title 11 violent felony, or attempt to commit such a violent felony, as defined in § 4201(c) of this title, or any person who has been 3 times convicted of any felony under the laws of this State, and/or any other state, United States or any territory of the United States, and who shall thereafter be convicted of a subsequent felony is declared to be an habitual criminal. The court, upon the State's petition, shall impose the applicable minimum sentence pursuant to subsection (b), (c) or (d) of this section and may, in its discretion, impose a sentence of up to life imprisonment, unless the felony conviction allows and results in the imposition of capital punishment. Under no circumstances may the sentence imposed pursuant to this section be less than the minimum sentence provided for by the felony prompting the person's designation as a habitual offender.

(b) Any person who has been 3 times convicted of a felony under the laws of this State, and/or any other state, United States or any territory of the United States, and who shall thereafter be convicted of a subsequent felony, which is the person's first Title 11 violent felony, or attempt to commit such a violent felony, as defined in § 4201(c) of this title, shall receive a minimum sentence of one-half of the statutory maximum penalty provided elsewhere in this title, unless the maximum statutory penalty is life in which case the minimum sentence shall be 30 years, for the subsequent felony which forms the basis of the States petition to have the person declared to be an habitual criminal, up to life imprisonment, unless the felony conviction allows and results in the imposition of capital punishment.

(c) Any person who has been 2 times convicted of a felony under the laws of this State, and/or any other state, United States or any territory of the United States, and 1 time convicted of a Title 11 violent felony, or attempt to commit such a violent felony, as defined in § 4201(c) of this title under the laws of this State, and/or any comparable violent felony as defined by another state, United States or any territory of the United States, and who shall thereafter be convicted of a subsequent Title 11 violent felony, or attempt to commit such a violent felony, as defined by § 4201(c) of this title, shall receive a minimum sentence of the statutory maximum penalty provided elsewhere in this title for the 4th or subsequent felony which forms the basis of the State's petition to have the person declared to be an habitual criminal, up to life imprisonment, unless the felony conviction allows and results in the imposition of capital punishment.

(d) Any person who has been 2 times convicted of a Title 11 violent felony, or attempt to commit such a violent felony, as defined in § 4201(c) of this title under the laws of this State, and/or any comparable violent felony as defined by another state, United States or any territory of the United States, and who shall thereafter be convicted of a 3rd or subsequent felony which is a Title 11 violent felony, or an attempt to commit such a violent felony, as defined in § 4201(c), shall receive a minimum sentence of the statutory maximum statutory penalty provided elsewhere in this title for the 3rd or subsequent Title 11 violent felony which forms the basis of the State's petition to have the person declared to be an habitual criminal, up to life imprisonment, unless the felony conviction allows and results in the imposition of capital punishment.

(e) Notwithstanding any provision of this title to the contrary, any minimum sentence required to be imposed pursuant to subsection (b), (c), or (d) of this section shall not be subject to suspension by the court, and shall be served in its entirety at full custodial Level V institutional setting without the benefit of probation or parole, except that any such sentence shall be subject to the provisions of §§ 4205(h), 4381 and 4382 of this title. For purposes of the computation of good time under § 4381 of this title, a life sentence imposed pursuant only to this section shall equate to a sentence of 45 years.

(f) Notwithstanding any statute, court rule or regulation to the contrary, beginning January 1, 2017, any person sentenced as an habitual criminal to a minimum sentence of not less than the statutory maximum penalty for a violent felony pursuant to subsection (a) of this section, or a life sentence pursuant to subsection (b) of this section prior to July 19, 2016, shall be eligible to petition the Superior Court for sentence modification after the person has served a sentence of incarceration equal to any applicable mandatory sentence otherwise required by this section or the statutes describing said offense or offenses, whichever is greater. Absent extraordinary circumstances, the petitioner may only file 1 application for sentence modification under this section. A Superior Court Judge upon consideration of a petition filed pursuant to this subsection may modify, reduce or suspend such petitioner's sentence, excepting any minimum or mandatory sentence required by this section or the statutes describing said offense or offenses. If a Superior Court Judge modifies such petitioner's sentence, the Judge may impose a suspended sentence that includes a probationary term. Nothing in this section, however, shall require the Court to grant such a petitioner a sentence modification pursuant to this section. For the purposes of this subsection, the "applicable mandatory sentence" shall be calculated by reference to the penalties prescribed for the relevant offense or offenses by this Code as of July 19, 2016, unless said offense has been repealed, in which case the penalties prescribed by this Code at the time of the act repealing said offense shall be controlling. The Superior Court shall establish rules to implement this subsection which are consistent with the statute, and those rules shall also provide that all petitions filed pursuant to this subsection where the felony establishing an inmate as a habitual offender was a Title 16 offense are heard first, followed by all petitions filed pursuant to this subsection where the felony establishing an inmate as a habitual offender was a crime against property, followed by all other petitions. Nothing in the rules or this subsection shall prohibit the Superior Court from hearing any petition without regard to this preferred sequence when the Department of Justice, through the personal authorization of the Attorney General, Chief Deputy Attorney General, State Prosecutor, or the Chief Prosecutor of a particular county, in response to a request authorized by the Chief Defender, Chief Deputy Defender, or Chief Conflicts Counsel, or private counsel if a

petitioner is not represented by the Office of Defense Services, consents to the hearing of that petition and the Superior Court determines it is in the interest of justice to do so. The rules shall also provide for an initial review, including review of a formal response by the Department of Justice after consulting with the victim or victims, of sentence modification petitions involving crimes against persons or property, for the purpose of ensuring that victims are not inconvenienced by petitions that should be denied based upon the documents submitted; in cases not denied in this manner, all victims shall be given an opportunity to be heard. The Superior Court's review of any petitions filed pursuant to this subsection shall include a review of the applicant's prior criminal history, including arrests and convictions, a review of the applicant's conduct while incarcerated, and available evidence as to the likelihood that the applicant will reoffend if released, including a formal, recent risk assessment. The Superior Court shall articulate on the record the results of its review and its rationale for granting or denying a petition. In all cases where sentence modifications are granted, modified sentences should provide for step-down provisions to ensure successful reintegration of persons into the community. By January 1, 2017, the Department of Correction shall notify any criminal defendant whose Level V sentence was imposed under a statutory sentencing regimen which was subsequently changed in a manner that reduced the sentence applicable to the defendant's convictions, including any criminal defendant who received a minimum mandatory sentence that no longer exists by virtue of the enactment of 80 Del. Laws, c. 28. The Department of Correction shall similarly notify the attorney of record, and if the attorney of record is unavailable to receive notice, the Office of Defense Services.

11 Del. C. § 4214

Amended by Laws 2017, ch. 313,s 1, eff. 7/11/2018.

Amended by Laws 2017, ch. 6,s 3, eff. 4/13/2017.

Amended by Laws 2017, ch. 6,s 2, eff. 4/13/2017.

Amended by Laws 2017, ch. 6,s 1, eff. 4/13/2017.

Amended by Laws 2015, ch. 321,s 1, eff. 7/19/2016.

Amended by Laws 2013, ch. 89,s 1, eff. 7/3/2013.

11 Del. C. 1953, § 4213; 58 Del. Laws, c. 497, § 2; 59 Del. Laws, c. 547, §§ 19-21; 65 Del. Laws, c. 159, §1; 66 Del. Laws, c. 269, §7; 67 Del. Laws, c. 350, §37; 70 Del. Laws, c. 477, § 2; 71 Del. Laws, c. 285, §§ 15, 16; 72 Del. Laws, c. 34, § 4; 72 Del. Laws, c. 43, § 7; 72 Del. Laws, c. 197, § 8; 74 Del. Laws, c. 346, § 1; 77 Del. Laws, c. 318, § 15; 78 Del. Laws, c. 13, §§ 11, 12.;

Fla. Stat. § 775.084

 Download

Current through the 2019 Legislative Session

(1) As used in this act:

(a) "Habitual felony offender" means a defendant for whom the court may impose an extended term of imprisonment, as provided in paragraph (4)(a), if it finds that:

1. The defendant has previously been convicted of any combination of two or more felonies in this state or other qualified offenses.

2. The felony for which the defendant is to be sentenced was committed:

a. While the defendant was serving a prison sentence or other sentence, or court-ordered or lawfully imposed supervision that is imposed as a result of a prior conviction for a felony or other qualified offense; or

b. Within 5 years of the date of the conviction of the defendant's last prior felony or other qualified offense, or within 5 years of the defendant's release from a prison sentence, probation, community control, control release, conditional release, parole or court-ordered or lawfully imposed supervision or other sentence that is imposed as a result of a prior conviction for a felony or other qualified offense, whichever is later.

3. The felony for which the defendant is to be sentenced, and one of the two prior felony convictions, is not a violation of s. 893.13 relating to the purchase or the possession of a controlled substance.

4. The defendant has not received a pardon for any felony or other qualified offense that is necessary for the operation of this paragraph.

5. A conviction of a felony or other qualified offense necessary to the operation of this paragraph has not been set aside in any postconviction proceeding.

(b) "Habitual violent felony offender" means a defendant for whom the court may impose an extended term of imprisonment, as provided in paragraph (4)(b), if it finds that:

1. The defendant has previously been convicted of a felony or an attempt or conspiracy to commit a felony and one or more of such convictions was for:

a. Arson;

b. Sexual battery;

c. Robbery;

d. Kidnapping;

e. Aggravated child abuse;

f. Aggravated abuse of an elderly person or disabled adult;

g. Aggravated assault with a deadly weapon;

h. Murder;

i. Manslaughter;

j. Aggravated manslaughter of an elderly person or disabled adult;

k. Aggravated manslaughter of a child;

l. Unlawful throwing, placing, or discharging of a destructive device or bomb;

m. Armed burglary;

n. Aggravated battery; or

o. Aggravated stalking.

- 2.** The felony for which the defendant is to be sentenced was committed:
 - a.** While the defendant was serving a prison sentence or other sentence, or court-ordered or lawfully imposed supervision that is imposed as a result of a prior conviction for an enumerated felony; or
 - b.** Within 5 years of the date of the conviction of the last prior enumerated felony, or within 5 years of the defendant's release from a prison sentence, probation, community control, control release, conditional release, parole, or court-ordered or lawfully imposed supervision or other sentence that is imposed as a result of a prior conviction for an enumerated felony, whichever is later.
- 3.** The defendant has not received a pardon on the ground of innocence for any crime that is necessary for the operation of this paragraph.
- 4.** A conviction of a crime necessary to the operation of this paragraph has not been set aside in any postconviction proceeding.

(c) "Three-time violent felony offender" means a defendant for whom the court must impose a mandatory minimum term of imprisonment, as provided in paragraph (4)(c), if it finds that:

- 1.** The defendant has previously been convicted as an adult two or more times of a felony, or an attempt to commit a felony, and two or more of such convictions were for committing, or attempting to commit, any of the following offenses or combination thereof:
 - a.** Arson;
 - b.** Sexual battery;
 - c.** Robbery;
 - d.** Kidnapping;
 - e.** Aggravated child abuse;

- f.** Aggravated abuse of an elderly person or disabled adult;
 - g.** Aggravated assault with a deadly weapon;
 - h.** Murder;
 - i.** Manslaughter;
 - j.** Aggravated manslaughter of an elderly person or disabled adult;
 - k.** Aggravated manslaughter of a child;
 - l.** Unlawful throwing, placing, or discharging of a destructive device or bomb;
 - m.** Armed burglary;
 - n.** Aggravated battery;
 - o.** Aggravated stalking;
 - p.** Home invasion/robbery;
 - q.** Carjacking; or
 - r.** An offense which is in violation of a law of any other jurisdiction if the elements of the offense are substantially similar to the elements of any felony offense enumerated in sub-subparagraphs a.-q., or an attempt to commit any such felony offense.
- 2.** The felony for which the defendant is to be sentenced is one of the felonies enumerated in sub-subparagraphs 1.a.-q. and was committed:
- a.** While the defendant was serving a prison sentence or other sentence imposed as a result of a prior conviction for any offense enumerated in sub-subparagraphs 1.a.-r.; or
 - b.** Within 5 years after the date of the conviction of the last prior offense enumerated in sub-subparagraphs 1.a.-r., or within 5 years after the defendant's

release from a prison sentence, probation, community control, or other sentence imposed as a result of a prior conviction for any offense enumerated in sub-subparagraphs 1.a.-r., whichever is later.

3. The defendant has not received a pardon on the ground of innocence for any crime that is necessary for the operation of this paragraph.

4. A conviction of a crime necessary to the operation of this paragraph has not been set aside in any postconviction proceeding.

(d) "Violent career criminal" means a defendant for whom the court must impose imprisonment pursuant to paragraph (4)(d), if it finds that:

1. The defendant has previously been convicted as an adult three or more times for an offense in this state or other qualified offense that is:

a. Any forcible felony, as described in s. 776.08;

b. Aggravated stalking, as described in s. 784.048(3) and (4);

c. Aggravated child abuse, as described in s. 827.03(2)(a);

d. Aggravated abuse of an elderly person or disabled adult, as described in s. 825.102(2);

e. Lewd or lascivious battery, lewd or lascivious molestation, lewd or lascivious conduct, or lewd or lascivious exhibition, as described in s. 800.04 or s. 847.0135(5);

f. Escape, as described in s. 944.40; or

g. A felony violation of chapter 790 involving the use or possession of a firearm.

2. The defendant has been incarcerated in a state prison or a federal prison.

3. The primary felony offense for which the defendant is to be sentenced is a felony enumerated in subparagraph 1. and was committed on or after October 1,

1995, and:

a. While the defendant was serving a prison sentence or other sentence, or court-ordered or lawfully imposed supervision that is imposed as a result of a prior conviction for an enumerated felony; or

b. Within 5 years after the conviction of the last prior enumerated felony, or within 5 years after the defendant's release from a prison sentence, probation, community control, control release, conditional release, parole, or court-ordered or lawfully imposed supervision or other sentence that is imposed as a result of a prior conviction for an enumerated felony, whichever is later.

4. The defendant has not received a pardon for any felony or other qualified offense that is necessary for the operation of this paragraph.

5. A conviction of a felony or other qualified offense necessary to the operation of this paragraph has not been set aside in any postconviction proceeding.

(e) "Qualified offense" means any offense, substantially similar in elements and penalties to an offense in this state, which is in violation of a law of any other jurisdiction, whether that of another state, the District of Columbia, the United States or any possession or territory thereof, or any foreign jurisdiction, that was punishable under the law of such jurisdiction at the time of its commission by the defendant by death or imprisonment exceeding 1 year.

(2) For the purposes of this section, the placing of a person on probation or community control without an adjudication of guilt shall be treated as a prior conviction.

(3)

(a) In a separate proceeding, the court shall determine if the defendant is a habitual felony offender or a habitual violent felony offender. The procedure shall be as follows:

1. The court shall obtain and consider a presentence investigation prior to the imposition of a sentence as a habitual felony offender or a habitual violent felony offender.

2. Written notice shall be served on the defendant and the defendant's attorney a sufficient time prior to the entry of a plea or prior to the imposition of sentence in order to allow the preparation of a submission on behalf of the defendant.
3. Except as provided in subparagraph 1., all evidence presented shall be presented in open court with full rights of confrontation, cross-examination, and representation by counsel.
4. Each of the findings required as the basis for such sentence shall be found to exist by a preponderance of the evidence and shall be appealable to the extent normally applicable to similar findings.
5. For the purpose of identification of a habitual felony offender or a habitual violent felony offender, the court shall fingerprint the defendant pursuant to s. 921.241.
6. For an offense committed on or after October 1, 1995, if the state attorney pursues a habitual felony offender sanction or a habitual violent felony offender sanction against the defendant and the court, in a separate proceeding pursuant to this paragraph, determines that the defendant meets the criteria under subsection (1) for imposing such sanction, the court must sentence the defendant as a habitual felony offender or a habitual violent felony offender, subject to imprisonment pursuant to this section unless the court finds that such sentence is not necessary for the protection of the public. If the court finds that it is not necessary for the protection of the public to sentence the defendant as a habitual felony offender or a habitual violent felony offender, the court shall provide written reasons; a written transcript of orally stated reasons is permissible, if filed by the court within 7 days after the date of sentencing. Each month, the court shall submit to the Office of Economic and Demographic Research of the Legislature the written reasons or transcripts in each case in which the court determines not to sentence a defendant as a habitual felony offender or a habitual violent felony offender as provided in this subparagraph.

(b) In a separate proceeding, the court shall determine if the defendant is a three-time violent felony offender. The procedure shall be as follows:

1. The court shall obtain and consider a presentence investigation prior to the imposition of a sentence as a three-time violent felony offender.
2. Written notice shall be served on the defendant and the defendant's attorney a sufficient time prior to the entry of a plea or prior to the imposition of sentence in order to allow the preparation of a submission on behalf of the defendant.
3. Except as provided in subparagraph 1., all evidence presented shall be presented in open court with full rights of confrontation, cross-examination, and representation by counsel.
4. Each of the findings required as the basis for such sentence shall be found to exist by a preponderance of the evidence and shall be appealable to the extent normally applicable to similar findings.
5. For the purpose of identification of a three-time violent felony offender, the court shall fingerprint the defendant pursuant to s. 921.241.
6. For an offense committed on or after the effective date of this act, if the state attorney pursues a three-time violent felony offender sanction against the defendant and the court, in a separate proceeding pursuant to this paragraph, determines that the defendant meets the criteria under subsection (1) for imposing such sanction, the court must sentence the defendant as a three-time violent felony offender, subject to imprisonment pursuant to this section as provided in paragraph (4)(c).

(c) In a separate proceeding, the court shall determine whether the defendant is a violent career criminal with respect to a primary offense committed on or after October 1, 1995. The procedure shall be as follows:

1. Written notice shall be served on the defendant and the defendant's attorney a sufficient time prior to the entry of a plea or prior to the imposition of sentence in order to allow the preparation of a submission on behalf of the defendant.

2. All evidence presented shall be presented in open court with full rights of confrontation, cross-examination, and representation by counsel.
3. Each of the findings required as the basis for such sentence shall be found to exist by a preponderance of the evidence and shall be appealable only as provided in paragraph (d).
4. For the purpose of identification, the court shall fingerprint the defendant pursuant to s. 921.241.
5. For an offense committed on or after October 1, 1995, if the state attorney pursues a violent career criminal sanction against the defendant and the court, in a separate proceeding pursuant to this paragraph, determines that the defendant meets the criteria under subsection (1) for imposing such sanction, the court must sentence the defendant as a violent career criminal, subject to imprisonment pursuant to this section unless the court finds that such sentence is not necessary for the protection of the public. If the court finds that it is not necessary for the protection of the public to sentence the defendant as a violent career criminal, the court shall provide written reasons; a written transcript of orally stated reasons is permissible, if filed by the court within 7 days after the date of sentencing. Each month, the court shall submit to the Office of Economic and Demographic Research of the Legislature the written reasons or transcripts in each case in which the court determines not to sentence a defendant as a violent career criminal as provided in this subparagraph.

(d)

1. A person sentenced under paragraph (4)(d) as a violent career criminal has the right of direct appeal, and either the state or the defendant may petition the trial court to vacate an illegal sentence at any time. However, the determination of the trial court to impose or not to impose a violent career criminal sentence is presumed appropriate and no petition or motion for collateral or other postconviction relief may be considered based on an allegation either by the state or the defendant that such sentence is inappropriate, inadequate, or excessive.

2. It is the intent of the Legislature that, with respect to both direct appeal and collateral review of violent career criminal sentences, all claims of error or illegality be raised at the first opportunity and that no claim should be filed more than 2 years after the judgment and sentence became final, unless it is established that the basis for the claim could not have been ascertained at the time by the exercise of due diligence. Technical violations and mistakes at trials and sentencing proceedings involving violent career criminals that do not affect due process or fundamental fairness are not appealable by either the state or the defendant.

3. It is the intent of the Legislature that no funds, resources, or employees of the state or its political subdivisions be used, directly or indirectly, in appellate or collateral proceedings based on violent career criminal sentencing, except when such use is constitutionally or statutorily mandated.

(4)

(a) The court, in conformity with the procedure established in paragraph (3)(a), may sentence the habitual felony offender as follows:

- 1.** In the case of a life felony or a felony of the first degree, for life.
- 2.** In the case of a felony of the second degree, for a term of years not exceeding 30.
- 3.** In the case of a felony of the third degree, for a term of years not exceeding 10.

(b) The court, in conformity with the procedure established in paragraph (3)(a), may sentence the habitual violent felony offender as follows:

- 1.** In the case of a life felony or a felony of the first degree, for life, and such offender shall not be eligible for release for 15 years.
- 2.** In the case of a felony of the second degree, for a term of years not exceeding 30, and such offender shall not be eligible for release for 10 years.

3. In the case of a felony of the third degree, for a term of years not exceeding 10, and such offender shall not be eligible for release for 5 years.

(c)

1. The court, in conformity with the procedure established in paragraph (3)(b), must sentence the three-time violent felony offender to a mandatory minimum term of imprisonment, as follows:

a. In the case of a felony punishable by life, to a term of imprisonment for life;

b. In the case of a felony of the first degree, to a term of imprisonment of 30 years;

c. In the case of a felony of the second degree, to a term of imprisonment of 15 years; or

d. In the case of a felony of the third degree, to a term of imprisonment of 5 years.

2. Nothing in this subsection shall prevent a court from imposing a greater sentence of incarceration as authorized by law.

(d) The court, in conformity with the procedure established in paragraph (3)(c), shall sentence the violent career criminal as follows:

1. In the case of a life felony or a felony of the first degree, for life.

2. In the case of a felony of the second degree, for a term of years not exceeding 40, with a mandatory minimum term of 30 years' imprisonment.

3. In the case of a felony of the third degree, for a term of years not exceeding 15, with a mandatory minimum term of 10 years' imprisonment.

(e) If the court finds, pursuant to paragraph (3)(a) or paragraph (3)(c), that it is not necessary for the protection of the public to sentence a defendant who meets the criteria for sentencing as a habitual felony offender, a habitual violent felony

offender, or a violent career criminal, with respect to an offense committed on or after October 1, 1995, sentence shall be imposed without regard to this section.

(f) At any time when it appears to the court that the defendant is eligible for sentencing under this section, the court shall make that determination as provided in paragraph (3)(a), paragraph (3)(b), or paragraph (3)(c).

(g) A sentence imposed under this section shall not be increased after such imposition.

(h) A sentence imposed under this section is not subject to s. 921.002.

(i) The provisions of this section do not apply to capital felonies, and a sentence authorized under this section does not preclude the imposition of the death penalty for a capital felony.

(j) The provisions of s. 947.1405 shall apply to persons sentenced as habitual felony offenders and persons sentenced as habitual violent felony offenders.

(k)

1. A defendant sentenced under this section as a habitual felony offender, a habitual violent felony offender, or a violent career criminal is eligible for gain-time granted by the Department of Corrections as provided in s. 944.275(4)(b).

2. For an offense committed on or after October 1, 1995, a defendant sentenced under this section as a violent career criminal is not eligible for any form of discretionary early release, other than pardon or executive clemency, or conditional medical release granted pursuant to s. 947.149.

3. For an offense committed on or after July 1, 1999, a defendant sentenced under this section as a three-time violent felony offender shall be released only by expiration of sentence and shall not be eligible for parole, control release, or any form of early release.

(5) In order to be counted as a prior felony for purposes of sentencing under this section, the felony must have resulted in a conviction sentenced separately prior to the current offense and sentenced separately from any other felony conviction that is to be counted as a prior felony.

(6) The purpose of this section is to provide uniform punishment for those crimes made punishable under this section, and to this end, a reference to this section constitutes a general reference under the doctrine of incorporation by reference.

Fla. Stat. § 775.084

Amended by 2019 Fla. Laws, ch. 98, s 8, eff. 7/1/2019.

Amended by 2016 Fla. Laws, ch. 105, s 39, eff. 7/1/2016.

s. 5, ch. 71-136; s. 7, ch. 74-383; s. 1, ch. 75-116; s. 2, ch. 75-298; s. 1, ch. 77-174; s. 6, ch. 88-131; s. 1, ch. 89-280; s. 2, ch. 93-406; s. 2, ch. 95-182; s. 8, ch. 95-195; s. 14, ch. 96-322; s. 44, ch. 96-388; s. 12, ch. 97-78; s. 12, ch. 97-194; s. 11, ch. 98-204; s. 3, ch. 99-188; s. 3, ch. 99-201; s. 3, ch. 2000-246; ss. 1, 2, ch. 2002-210; s. 2, ch. 2003-23; s. 14, ch. 2008-172; s. 10, ch. 2012-155.

Haw. Rev. Stat. § 706-606.5

 Download

Current through Act 286 of the 2019 Legislative Session

(1) Notwithstanding section 706-669 and any other law to the contrary, any person convicted of murder in the second degree, any class A felony, any class B felony, or any of the following class C felonies:

(a) Section 134-7 relating to persons prohibited from owning, possessing, or controlling firearms or ammunition;

(b) Section 134-8 relating to ownership, etc., of certain prohibited weapons;

(c) Section 134-17 only as it relates to providing false information or evidence to obtain a permit under section 134-9;

(d) Section 188-23 relating to possession or use of explosives, electrofishing devices, and poisonous substances in state waters;

(e) Section 386-98(d)(1) relating to fraud violations and penalties;

(f) Section 431:2-403(b)(2) relating to insurance fraud;

(g) Section 707-703 relating to negligent homicide in the second degree;

(h) Section 707-711 relating to assault in the second degree;

(i) Section 707-713 relating to reckless endangering in the first degree;

(j) Section 707-716 relating to terroristic threatening in the first degree;

(k) Section 707-721 relating to unlawful imprisonment in the first degree;

- (l)** Section 707-732 relating to sexual assault in the third degree;
- (m)** Section 707-752 relating to promoting child abuse in the third degree;
- (n)** Section 707-757 relating to electronic enticement of a child in the second degree;
- (o)** Section 707-766 relating to extortion in the second degree;
- (p)** Section 708-811 relating to burglary in the second degree;
- (q)** Section 708-821 relating to criminal property damage in the second degree;
- (r)** Section 708-831 relating to theft in the second degree;
- (s)** Section 708-835.5 relating to theft of livestock;
- (t)** Section 708-836 relating to unauthorized control of propelled vehicle;
- (u)** Section 708-839.55 relating to unauthorized possession of confidential personal information;
- (v)** Section 708-839.8 relating to identity theft in the third degree;
- (w)** Section 708-852 relating to forgery in the second degree;
- (x)** Section 708-854 relating to criminal possession of a forgery device;
- (y)** Section 708-875 relating to trademark counterfeiting;
- (z)** Section 710-1071 relating to intimidating a witness;
- (aa)** Section 711-1103 relating to riot;
- (bb)** Section 712-1221 relating to promoting gambling in the first degree;
- (cc)** Section 712-1224 relating to possession of gambling records in the first degree;

(dd) Section 712-1247 relating to promoting a detrimental drug in the first degree;
or

(ee) Section 846E-9 relating to failure to comply with covered offender
registration requirements,

or who is convicted of attempting to commit murder in the second degree, any class A felony, any class B felony, or any of the class C felony offenses enumerated above and who has a prior conviction or prior convictions for the following felonies, including an attempt to commit the same: murder, murder in the first or second degree, a class A felony, a class B felony, any of the class C felony offenses enumerated above, or any felony conviction of another jurisdiction, shall be sentenced to a mandatory minimum period of imprisonment without possibility of parole as provided in subsection (2).

(2) A mandatory minimum period of imprisonment without possibility of parole during that period shall be imposed pursuant to subsection (1), as follows:

(a) One prior felony conviction:

(i) Where the instant conviction is for murder in the second degree or attempted murder in the second degree--ten years;

(ii) Where the instant conviction is for a class A felony--six years, eight months;

(iii) Where the instant conviction is for a class B felony--three years, four months; and

(iv) Where the instant conviction is for a class C felony offense enumerated above--one year, eight months;

(b) Two prior felony convictions:

(i) Where the instant conviction is for murder in the second degree or attempted murder in the second degree--twenty years;

(ii) Where the instant conviction is for a class A felony--thirteen years, four months;

(iii) Where the instant conviction is for a class B felony--six years, eight months; and

(iv) Where the instant conviction is for a class C felony offense enumerated above--three years, four months; and

(c) Three or more prior felony convictions:

(i) Where the instant conviction is for murder in the second degree or attempted murder in the second degree--thirty years;

(ii) Where the instant conviction is for a class A felony--twenty years;

(iii) Where the instant conviction is for a class B felony--ten years; and

(iv) Where the instant conviction is for a class C felony offense enumerated above--five years.

(3) Except as provided in subsection (4), a person shall not be sentenced to a mandatory minimum period of imprisonment under this section unless the instant felony offense was committed during the period as follows:

(a) Within twenty years after a prior felony conviction where the prior felony conviction was for murder in the first degree or attempted murder in the first degree;

(b) Within twenty years after a prior felony conviction where the prior felony conviction was for murder in the second degree or attempted murder in the second degree;

(c) Within twenty years after a prior felony conviction where the prior felony conviction was for a class A felony;

(d) Within ten years after a prior felony conviction where the prior felony conviction was for a class B felony;

- (e) Within five years after a prior felony conviction where the prior felony conviction was for a class C felony offense enumerated above;
 - (f) Within the maximum term of imprisonment possible after a prior felony conviction of another jurisdiction.
- (4) If a person was sentenced for a prior felony conviction to a special term under section 706-667, then the person shall not be sentenced to a mandatory minimum period of imprisonment under this section unless the instant felony offense was committed during that period as follows:
- (a) Within eight years after a prior felony conviction where the prior felony conviction was for a class A felony;
 - (b) Within five years after the prior felony conviction where the prior felony conviction was for a class B felony;
 - (c) Within four years after the prior felony conviction where the prior felony conviction was for a class C felony offense enumerated above.
- (5) Notwithstanding any other law to the contrary, any person convicted of any of the following misdemeanor offenses:
- (a) Section 707-712 relating to assault in the third degree;
 - (b) Section 707-717 relating to terroristic threatening in the second degree;
 - (c) Section 707-733 relating to sexual assault in the fourth degree;
 - (d) Section 708-822 relating to criminal property damage in the third degree;
 - (e) Section 708-832 relating to theft in the third degree; and
 - (f) Section 708-833.5(2) relating to misdemeanor shoplifting,

and who has been convicted of any of the offenses enumerated above on at least three prior and separate occasions within three years of the date of the commission of the present offense, shall be sentenced to no less than nine months of

imprisonment. Whenever a court sentences a defendant under this subsection for an offense under section 707-733, the court shall order the defendant to participate in a sex offender assessment and, if recommended based on the assessment, participate in the sex offender treatment program established by chapter 353E.

(6) The sentencing court may impose the above sentences consecutive to any sentence imposed on the defendant for a prior conviction, but the sentence shall be imposed concurrent to the sentence imposed for the instant conviction. The court may impose a lesser mandatory minimum period of imprisonment without possibility of parole than that mandated by this section where the court finds that strong mitigating circumstances warrant the action. Strong mitigating circumstances shall include, but shall not be limited to the provisions of section 706-621. The court shall provide a written opinion stating its reasons for imposing the lesser sentence.

(7) A person who is imprisoned in a correctional institution pursuant to subsection (1) shall not be paroled prior to the expiration of the mandatory minimum term of imprisonment imposed pursuant to subsection (1).

(8) For purposes of this section:

(a) Convictions under two or more counts of an indictment or complaint shall be considered a single conviction without regard to when the convictions occur;

(b) A prior conviction in this or another jurisdiction shall be deemed a felony conviction if it was punishable by a sentence of death or of imprisonment in excess of one year; and

(c) A conviction occurs on the date judgment is entered.

HRS § 706-606.5

Amended by L 2016, c 231, § 20, eff. 7/1/2016.

Amended by L 2014, c 114, § 1, eff. 6/20/2014.

L 1976, c 181, §1; am L 1979, c 98, §1; am L 1980, c 284, §1; am L 1981, c 69, §1; am L 1986, c 314, §17; am L 1987, c 181, §3; am L 1990, c 28, §2; am L 1996, c 87, §1; am L 1997, c 277, §2; am L 1999, c 195, §10 and c 244, §1; am L 2006, c 80, §1 and c 139, §4; am L 2007, c 49, §2; am L 2008, c 80, §2; am

L 2009, c 149, §6 .

Section 707-703 as amended relates to negligent homicide in the second degree. Sections 707-735 and 707-736, referred to in text, are repealed. COMMENTARY ON § 706-606.5 This section was added by Act 181, Session Laws 1976. Finding a clear danger to the people of Hawaii in the high incidence of offenses being committed by repeat offenders, the legislature felt it necessary to provide for mandatory terms of imprisonment without possibility of parole in cases of repeated offenses by prior offenders. House Conference Committee Report No. 32, Senate Conference Committee Report No. 33. Act 98, Session Laws 1979, amended this section to provide that persons convicted of any of the crimes enumerated be punished as repeat offenders if they are subsequently convicted of any of the enumerated offenses within the time of the maximum sentence of the prior conviction. Under the prior law, a person had to be convicted of the same enumerated crime on more than one occasion. The Legislature felt this amendment was needed to alleviate concerns that the repeat offender problem be dealt with seriously. Conference Committee Report No. 11. Act 284, Session Laws 1980, completely revised this section. It expanded the list of offenses carrying the possibility of mandatory minimum sentences and divided the offenses into the two classes enumerated in subsections (1) and (2). Further, it introduced a degree of flexibility into the sentencing procedure by allowing the court, upon written opinion, to set a lesser minimum sentence than that prescribed if there were strong mitigating circumstances to warrant such action. Act 314, Session Laws 1986, amended the repeat offender law so that mandatory minimum terms of imprisonment are increased as the severity of the repeat offense increases. Thus, the mandatory minimum term for a class A repeat offender is greater than that term for a class B repeat offender. The period of time during which a felon is considered to have a prior felony conviction is dependent on the seriousness of the prior felony; the more severe the prior crime, the longer it remains a prior conviction. Only certain class C felonies were made subject to the repeat offender law since the legislature intended to have some latitude as to which of those crimes should fall within the repeat offender category. Conference Committee Report No. 51-86. Act 181, Session Laws 1987, added felony convictions of another jurisdiction to the list of crimes ("prior felonies") which are considered in the sentencing of repeat offenders. The Act also added, to the list of applicable periods, that the period within which the repeat offender statute applies is the maximum possible prison term of the prior felony conviction of another jurisdiction. The Act repealed subparagraph 706-606.5(4) (a) to clarify that this section requires only one felony conviction prior to the felony for which the defendant is sentenced pursuant to this section. Senate Standing Committee Report No. 1130. Act 87, Session Laws 1996, added the crime of unauthorized control of propelled vehicle to the class C felonies subject to repeat offender sentencing. The legislature found that vehicle thefts and property taken from the

vehicles was a serious problem in the State, and that this kind of theft affected a significant number of visitors and residents. The Act also amended the section to prohibit the parole of repeat offenders prior to the expiration of their mandatory minimum terms of imprisonment. Senate Standing Committee Report No. 2598. Act 277, Session Laws 1997, amended this section by including the offense of trademark counterfeiting in the list of offenses for repeat offenders. The legislature found that trademark counterfeiting was a recurring problem in Hawaii for retail boutiques and trademark products of the University of Hawaii, and that tourists are often the target for the scams. The legislature believed that the Act would safeguard not only consumers from the sale of counterfeit products, but would also protect the reputation and quality of trademarks and ensure that trademarks are used for their legitimate and intended purposes. House Standing Committee Report No. 1620, Senate Standing Committee Report No. 759. Act 195, Session Laws 1999, amended this section to include § 188-23 as an offense subject to repeat offender sentencing. Senate Standing Committee Report No. 1487. Act 244, Session Laws 1999, amended this section by, among other things, providing: (1) that the multiple offender of assault in the third degree, terroristic threatening in the second degree, sexual assault in the fourth degree, criminal property damage in the third degree, theft in the third degree, or misdemeanor shoplifting, shall be sentenced to no less than nine months of imprisonment in cases where a person is convicted on at least three prior and separate occasions of any of the specified misdemeanor offenses within a three-year period; and (2) that the court shall order a defendant sentenced under § 707-733, relating to sexual assault in the fourth degree, to participate in a sex offender assessment and participate in the sex offender treatment program, if necessary and appropriate. The legislature found that there are many criminals who repeatedly commit misdemeanor offenses; these persons know that under current law, if caught, the consequences of their conduct will be relatively minor. As such, there is currently no serious deterrent to their repeated criminal behavior. A mandatory sentence will send a strong message that repeated criminal behavior will not be tolerated. Conference Committee Report No. 42, House Standing Committee Report No. 1466. Act 80, Session Laws 2006, added electronic enticement of a child in the second degree to the list of class C felonies subject to repeat offender sentencing. Act 80 provided a means to ensure the safety of Hawaii's children, enhance enforcement efforts, and impose significant penalties against those who prey on the most vulnerable members of the community. Conference Committee Report No. 10-06, House Standing Committee Report No. 1520-06. Act 139, Session Laws 2006, increased the protection of personal information by providing for repeat felony offender sentencing of offenders with prior felony convictions who are convicted of unauthorized possession of confidential personal information or of identity theft in the third degree. Hawaii law enforcement has found it difficult to curb the rise in identity theft-related

crimes when identity thieves in possession of personal information who have not yet caused a monetary loss to the victim cannot be prosecuted for crimes other than petty misdemeanor thefts. The legislature found that increasing the penalties for identity theft by amending the law to make identity theft an enumerated offense within the repeat offender statute would help to deter identity theft crimes. Senate Standing Committee Report No. 2636, House Standing Committee Report No. 1295-06. Act 49, Session Laws 2007, amended this section to deter insurance fraud by including felony insurance fraud relating to workers' compensation, accident and health or sickness, and motor vehicle insurance, and insurance provided by mutual benefit societies and health maintenance organizations, among the offenses subject to repeat felony offender sentencing. The legislature found that while insurance [fraud] is often perceived as a nonviolent and victimless crime, the ramifications of insurance fraud affect everyone through higher insurance premiums. House Standing Committee Report No. 913, Senate Standing Committee Report No. 1589. Act 80, Session Laws 2008, amended subsection (1) by including the offense of failure to comply with covered offender registration requirements. Conference Committee Report No. 82-08. Act 149, Session Laws 2009, which amended subsection (1), established an insurance fraud investigations branch to replace the insurance fraud investigations unit, with expanded authority to prevent, investigate, and prosecute insurance fraud to include all lines of insurance except workers' compensation. Act 149 also established criminal and administrative penalties for insurance fraud in all covered lines of insurance and for different types of insurance fraud. The legislature found that because insurance fraud occurs in every line of insurance, the State's insurance fraud law should be expanded accordingly. Conference Committee Report No. 26, Senate Standing Committee Report No. 1338.

Not applicable to defendant who had no prior conviction for any offense for which now charged. 800 F.2d 861. Where defendant contended, inter alia, that federal sentencing guidelines preempted use of Hawaii repeat offender statute, defendant's conviction was subject to the statute, which applied to offenses committed on federal enclaves; district court did not err in applying the statute. 105 F.3d 463. "Prior conviction" includes convictions which occurred before the effective date of statute. 61 H. 262, 602 P.2d 914. Sentencing under section--procedural requirements. 61 Haw. 262, 602 P.2d 914. Statute as it applies to burglary in the first degree is not unconstitutional as violative of the cruel and unusual punishment, equal protection, due process, or ex post facto clauses. 61 Haw. 262, 602 P.2d 914. Proof of legal representation. 61 H. 281, 602 P.2d 927. Sufficiency of evidence of prior conviction. 61 Haw. 281, 602 P.2d 927. Mandatory minimum sentence for repeat offenders of § 712-1242 not constitutionally proscribed. 61 H. 285, 602 P.2d 930. Requirement of notice of intended application of section. 61 Haw. 285, 602 P.2d 930. State must show defendant was represented by counsel at prior conviction or had waived such representation. 61 Haw.

285,602 P.2d 930. Conviction on multiple counts considered as one prior conviction. 63 H. 509, 630 P.2d 633. Lesser mandatory minimum sentence under subsection (3) may be imposed for persons convicted prior to effective date of 1980 amendment but sentenced after it. 64 H. 210, 638 P.2d 319. Not ambiguous. 66 H. 182, 658 P.2d 882. Section does not apply to attempted felonies. 67 H. 476, 691 P.2d 1169. Sentence is illegal if not imposed on repeat offender in compliance with statute's requirements. 67 H. 531, 696 P.2d 344. Mandatory minimum sentence may not run consecutively to sentence for underlying conviction. 67 H. 616, 699 P.2d 988. "Conviction" refers to judgment entered upon finding of guilt. Two sentences on the same day for separate offenses charged in two indictments are two convictions. 68 H. 124, 706 P.2d 1293. Defendant's prior four-year sentence as young adult is the "maximum sentence of the prior conviction". 68 H. 169, 706 P.2d 1304. Defendant's two prior convictions did not merge into one prior conviction. 71 H. 153, 785 P.2d 1314. A sentencing court may order that a mandatory minimum term of imprisonment imposed under § 706-660.1 be served consecutively to a mandatory period of imprisonment imposed under this section in connection with a separate felony conviction arising out of a charge contained in the same indictment or complaint. 84 H. 476, 935 P.2d 1021. Section divests sentencing court of authority to impose consecutive mandatory minimum periods of imprisonment on a defendant convicted of multiple felony counts charged in the same indictment or complaint. 84 Haw. 476, 935 P.2d 1021. Trial court's refusal to find strong mitigating circumstances pursuant to subsection (4) (1998) and imposition of concurrent mandatory minimum ten-year terms not unconstitutional where defendant could have reasonably been deemed to pose a danger to society, more serious crimes by repeat offenders may be punished in Hawaii by longer mandatory minimum terms, and other jurisdictions permitted significantly lengthier sentences for repeat offenders. 93 Haw. 87, 997 P.2d 13. Inasmuch as the plain and unambiguous language of this section requires application of the repeat offender statute over "any other law to the contrary", the circuit court did not err in sentencing defendant as a repeat offender pursuant to this section; in all cases in which this section is applicable, including those in which a defendant would otherwise be eligible for probation under § 706-622.5, the circuit courts must sentence defendants pursuant to the provisions of this section. 103 H. 228, 81 P.3d 408. By its plain language, Act 44, L 2004, prospectively permitted greater discretion to sentencing courts confronted with conflicts between this section and § 706-622.5 than they previously possessed; thus, based on the legislative intent reflected in Act 44, the Act 161, L 2002 version of § 706-622.5, under which defendant was sentenced, did not trump the repeat offender statute. 106 H. 1, 100 P.3d 595. Trial court properly sentenced defendant as a repeat offender based on defendant's conviction of promoting a dangerous drug in the third degree under § 712-1243, an enumerated class C felony under this section. 106 H. 146, 102 P.3d 1044. A defendant is entitled, by timely HRPP rule 35 motion to correct sentence or by HRPP rule 40 petition, to move for

correction of an enhanced sentence once the defendant has successfully attacked a prior conviction on which the sentence was based in whole or part because that conviction no longer constitutes a proper basis for increased punishment for a subsequent offense under this section. 109 H. 458, 128 P.3d 340. Where defendant was a convicted felon subject to a mandatory minimum sentence for a repeat offense as of the date the judgment was entered, the trial court properly relied on the prior conviction in sentencing defendant because the prior conviction had not been vacated at the time of sentencing. 109 Haw. 458, 128 P.3d 340. Because defendant was charged on January 5 and April 13, 2004, prior to L 2004, Act 44's effective date of July 1, 2004, the trial court erred in applying Act 44's ameliorative amendments to defendant's sentence by failing to observe the statutory command of Act 44, §29; thus, as defendant conceded that defendant qualified as a repeat offender under this section in light of a prior conviction of unauthorized control of a propelled vehicle, the trial court was required to apply this section to sentence defendant to a mandatory minimum sentence of one year and eight months. 115 H. 79, 165 P.3d 980. By virtue of the directive "notwithstanding & any other law" present in this section, where mandatory minimum terms are imposed consecutively in the discretion of the court, indeterminate maximum sentences must also run consecutively despite § 706-668 (repealed 1986) because mandatory minimums are part of, and incorporated within, the period or term of the indeterminate maximum sentence involved, and indeterminate maximum terms must run consecutively in order for the mandatory minimum sentence to be imposed consecutively as permitted by this section. 118 H. 210, 188 P.3d 724. In considering how the term "maximum term of imprisonment possible" in subsection (2)(f) should be applied to sentencing schemes that do not fit the Hawaii mold, the words of the statute should be strictly applied, with the focus on "terms of imprisonment"; thus, appellate court erred in interpreting the mandatory parole term required by Colorado law to be served after the term of imprisonment as part of the "maximum term of imprisonment possible", even though reincarceration could subject a parolee to additional time in prison. 118 H. 425, 193 P.3d 341. The term "maximum term of imprisonment possible" in subsection (2)(f) refers to the maximum term of imprisonment to which a court in a foreign jurisdiction may possibly sentence a convicted defendant. 118 Haw. 425, 193 P.3d 341. Where, in light of defendant's stipulation, the combined evidence should have "reasonably satisfied" the trial court as to the prior conviction and its sentence date, the trial court abused its discretion in failing to accord the evidence its proper weight; thus, because defendant committed the promoting a dangerous drug offense within the "maximum term of imprisonment possible" after defendant's Colorado conviction, which was six years, application of the mandatory minimum term under subsection (2)(f) was appropriate. 118 Haw. 425, 193 P.3d 341. In determining voluntariness of guilty plea, judge should have established that petitioner was aware of mandatory minimum sentence to same extent as petitioner's awareness of maximum sentence. 9

H. App. 122, 826 P.2d 440. No merit to defendant's points on appeal that contended that: (1) circuit court violated right to due process when it assumed role of prosecutor and attempted to establish a record on which to base a minimum mandatory sentence; and (2) imposition of mandatory minimum sentence was unauthorized because circuit court's finding that defendant had prior felony conviction was not supported by sufficient evidence. 9 H. App. 583,854 P.2d 238.

Former conviction in another jurisdiction, see § 706-665. Negligent homicide in the first degree, see § 707-702.5.

Iowa Code § 902.8



Download

Current through 2019 Legislative Session

An habitual offender is any person convicted of a class "C" or a class "D" felony, who has twice before been convicted of any felony in a court of this or any other state, or of the United States. An offense is a felony if, by the law under which the person is convicted, it is so classified at the time of the person's conviction. A person sentenced as an habitual offender shall not be eligible for parole until the person has served the minimum sentence of confinement of three years.

Iowa Code § 902.8

S13, §4871-a, 5091-a; C24, 27, 31, 35, 39, §13396, 13400; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, § 747.1, 747.5; C79, 81, § 902.8

Referred to in § 821.4, 901.5, 903A.5 See § 901.5(7)

Idaho Code § 19-2514



Download

Current through Chapter 329 of the 2019 Regular Session

Any person convicted for the third time of the commission of a felony, whether the previous convictions were had within the state of Idaho or were had outside the state of Idaho, shall be considered a persistent violator of law, and on such third conviction shall be sentenced to a term in the custody of the state board of correction which term shall be for not less than five (5) years and said term may extend to life.

Idaho Code § 19-2514

730 ILCS 5/5-4.5-95

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Current through P.A. 101-0591 (2019-2020)

(a) HABITUAL CRIMINALS.

(1) Every person who has been twice convicted in any state or federal court of an offense that contains the same elements as an offense now (the date of the offense committed after the 2 prior convictions) classified in Illinois as a Class X felony, criminal sexual assault, aggravated kidnapping, or first degree murder, and who is thereafter convicted of a Class X felony, criminal sexual assault, or first degree murder, committed after the 2 prior convictions, shall be adjudged an habitual criminal.

(2) The 2 prior convictions need not have been for the same offense.

(3) Any convictions that result from or are connected with the same transaction, or result from offenses committed at the same time, shall be counted for the purposes of this Section as one conviction.

(4) This Section does not apply unless each of the following requirements are satisfied:

(A) The third offense was committed after July 3, 1980.

(B) The third offense was committed within 20 years of the date that judgment was entered on the first conviction; provided, however, that time spent in custody shall not be counted.

(C) The third offense was committed after conviction on the second offense.

(D) The second offense was committed after conviction on the first offense.

(5) Anyone who, having attained the age of 18 at the time of the third offense, is adjudged an habitual criminal shall be sentenced to a term of natural life imprisonment.

(6) A prior conviction shall not be alleged in the indictment, and no evidence or other disclosure of that conviction shall be presented to the court or the jury during the trial of an offense set forth in this Section unless otherwise permitted by the issues properly raised in that trial. After a plea or verdict or finding of guilty and before sentence is imposed, the prosecutor may file with the court a verified written statement signed by the State's Attorney concerning any former conviction of an offense set forth in this Section rendered against the defendant. The court shall then cause the defendant to be brought before it; shall inform the defendant of the allegations of the statement so filed, and of his or her right to a hearing before the court on the issue of that former conviction and of his or her right to counsel at that hearing; and unless the defendant admits such conviction, shall hear and determine the issue, and shall make a written finding thereon. If a sentence has previously been imposed, the court may vacate that sentence and impose a new sentence in accordance with this Section.

(7) A duly authenticated copy of the record of any alleged former conviction of an offense set forth in this Section shall be prima facie evidence of that former conviction; and a duly authenticated copy of the record of the defendant's final release or discharge from probation granted, or from sentence and parole supervision (if any) imposed pursuant to that former conviction, shall be prima facie evidence of that release or discharge.

(8) Any claim that a previous conviction offered by the prosecution is not a former conviction of an offense set forth in this Section because of the existence of any exceptions described in this Section, is waived unless duly raised at the hearing on that conviction, or unless the prosecution's proof shows the existence of the exceptions described in this Section.

(9) If the person so convicted shows to the satisfaction of the court before whom that conviction was had that he or she was released from imprisonment, upon

either of the sentences upon a pardon granted for the reason that he or she was innocent, that conviction and sentence shall not be considered under this Section.

(b) When a defendant, over the age of 21 years, is convicted of a Class 1 or Class 2 felony, except for an offense listed in subsection (c) of this Section, after having twice been convicted in any state or federal court of an offense that contains the same elements as an offense now (the date the Class 1 or Class 2 felony was committed) classified in Illinois as a Class 2 or greater Class felony, except for an offense listed in subsection (c) of this Section, and those charges are separately brought and tried and arise out of different series of acts, that defendant shall be sentenced as a Class X offender. This subsection does not apply unless:

- (1)** the first felony was committed after February 1, 1978 (the effective date of Public Act 80-1099);
- (2)** the second felony was committed after conviction on the first; and
- (3)** the third felony was committed after conviction on the second.

(c) Subsection (b) of this Section does not apply to Class 1 or Class 2 felony convictions for a violation of Section 16-1 of the Criminal Code of 2012.

A person sentenced as a Class X offender under this subsection (b) is not eligible to apply for treatment as a condition of probation as provided by Section 40-10 of the Substance Use Disorder Act (20 ILCS 301/40-10).

730 ILCS 5/5-4.5-95

Amended by P.A. 100-0759, § 110, eff. 1/1/2019.

Amended by P.A. 100-0003, § 35, eff. 1/1/2018.

Amended by P.A. 099-0069, § 10, eff. 1/1/2016.

Added by P.A. 095-1052, § 5, eff. 7/1/2009.

Ind. Code § 35-50-2-8

 Download

Current through P.L. 293-2019

(a) The state may seek to have a person sentenced as a habitual offender for a felony by alleging, on one (1) or more pages separate from the rest of the charging instrument, that the person has accumulated the required number of prior unrelated felony convictions in accordance with this section.

(b) A person convicted of murder or of a Level 1 through Level 4 felony is a habitual offender if the state proves beyond a reasonable doubt that:

(1) the person has been convicted of two (2) prior unrelated felonies; and

(2) at least one (1) of the prior unrelated felonies is not a Level 6 felony or a Class D felony.

(c) A person convicted of a Level 5 felony is a habitual offender if the state proves beyond a reasonable doubt that:

(1) the person has been convicted of two (2) prior unrelated felonies;

(2) at least one (1) of the prior unrelated felonies is not a Level 6 felony or a Class D felony; and

(3) if the person is alleged to have committed a prior unrelated:

(A) Level 5 felony;

(B) Level 6 felony;

(C) Class C felony; or

(D) Class D felony;

not more than ten (10) years have elapsed between the time the person was released from imprisonment, probation, or parole (whichever is latest) for at least one (1) of the two (2) prior unrelated felonies and the time the person committed the current offense.

(d) A person convicted of a felony offense is a habitual offender if the state proves beyond a reasonable doubt that:

(1) the person has been convicted of three (3) prior unrelated felonies; and

(2) if the person is alleged to have committed a prior unrelated:

(A) Level 5 felony;

(B) Level 6 felony;

(C) Class C felony; or

(D) Class D felony;

not more than ten (10) years have elapsed between the time the person was released from imprisonment, probation, or parole (whichever is latest) for at least one (1) of the three (3) prior unrelated felonies and the time the person committed the current offense.

(e) The state may not seek to have a person sentenced as a habitual offender for a felony offense under this section if the current offense is a misdemeanor that is enhanced to a felony in the same proceeding as the habitual offender proceeding solely because the person had a prior unrelated conviction. However, a prior unrelated felony conviction may be used to support a habitual offender determination even if the sentence for the prior unrelated offense was enhanced for any reason, including an enhancement because the person had been convicted of another offense.

(f) A person has accumulated two (2) or three (3) prior unrelated felony convictions for purposes of this section only if:

(1) the second prior unrelated felony conviction was committed after commission of and sentencing for the first prior unrelated felony conviction;

(2) the offense for which the state seeks to have the person sentenced as a habitual offender was committed after commission of and sentencing for the second prior unrelated felony conviction; and

(3) for a conviction requiring proof of three (3) prior unrelated felonies, the third prior unrelated felony conviction was committed after commission of and sentencing for the second prior unrelated felony conviction.

(g) A conviction does not count for purposes of this section as a prior unrelated felony conviction if:

(1) the conviction has been set aside; or

(2) the conviction is one for which the person has been pardoned.

(h) If the person was convicted of the felony in a jury trial, the jury shall reconvene for the sentencing hearing. If the trial was to the court or the judgment was entered on a guilty plea, the court alone shall conduct the sentencing hearing under IC 35-38-1-3. The role of the jury is to determine whether the defendant has been convicted of the unrelated felonies. The state or defendant may not conduct any additional interrogation or questioning of the jury during the habitual offender part of the trial.

(i) The court shall sentence a person found to be a habitual offender to an additional fixed term that is between:

(1) six (6) years and twenty (20) years, for a person convicted of murder or a Level 1 through Level 4 felony; or

(2) two (2) years and six (6) years, for a person convicted of a Level 5 or Level 6 felony.

An additional term imposed under this subsection is nonsuspendible.

(j) Habitual offender is a status that results in an enhanced sentence. It is not a separate crime and does not result in a consecutive sentence. The court shall attach the habitual offender enhancement to the felony conviction with the highest sentence imposed and specify which felony count is being enhanced. If the felony

enhanced by the habitual offender determination is set aside or vacated, the court shall resentence the person and apply the habitual offender enhancement to the felony conviction with the next highest sentence in the underlying cause, if any.

(k) A prior unrelated felony conviction may not be collaterally attacked during a habitual offender proceeding unless the conviction is constitutionally invalid.

(l) The procedural safeguards that apply to other criminal charges, including:

(1) the requirement that the charge be filed by information or indictment; and

(2) the right to an initial hearing; also apply to a habitual offender allegation.

IC 35-50-2-8

Amended by P.L. 12-2017, SEC. 1, eff. 7/1/2017.

Amended by P.L. 238-2015, SEC. 17, eff. 7/1/2015.

Amended by P.L. 168-2014, SEC. 118, eff. 7/1/2014.

As added by Acts 1976, P.L. 148, SEC. 8. Amended by Acts 1977, P.L. 340, SEC. 121; Acts 1980, P.L. 210, SEC. 1; P.L. 335-1983, SEC. 1; P.L. 328-1985, SEC. 2; P.L. 1-1990, SEC. 353; P.L. 164-1993, SEC. 13; P.L. 140-1994, SEC. 14; P.L. 305-1995, SEC. 1; P.L. 166-2001, SEC. 3; P.L. 291-2001, SEC. 226; P.L. 71-2005, SEC. 11.

Ky. Rev. Stat. § 532.080

 Download

Current through 2019 Ky. Acts ch. 202, and 2019EX1 ch. 1

(1) When a defendant is found to be a persistent felony offender, the jury, in lieu of the sentence of imprisonment assessed under KRS 532.060 for the crime of which such person presently stands convicted, shall fix a sentence of imprisonment as authorized by subsection (5) or (6) of this section. When a defendant is charged with being a persistent felony offender, the determination of whether or not he is such an offender and the punishment to be imposed pursuant to subsection (5) or (6) of this section shall be determined in a separate proceeding from that proceeding which resulted in his last conviction. Such proceeding shall be conducted before the court sitting with the jury that found the defendant guilty of his most recent offense unless the court for good cause discharges that jury and impanels a new jury for that purpose.

(2) A persistent felony offender in the second degree is a person who is more than twenty-one (21) years of age and who stands convicted of a felony after having been convicted of one (1) previous felony. As used in this provision, a previous felony conviction is a conviction of a felony in this state or conviction of a crime in any other jurisdiction provided:

(a) That a sentence to a term of imprisonment of one (1) year or more or a sentence to death was imposed therefor; and

(b) That the offender was over the age of eighteen (18) years at the time the offense was committed; and

(c) That the offender:

1. Completed service of the sentence imposed on the previous felony conviction within five (5) years prior to the date of commission of the felony for which he

now stands convicted; or

2. Was on probation, parole, postincarceration supervision, conditional discharge, conditional release, furlough, appeal bond, or any other form of legal release from any of the previous felony convictions at the time of commission of the felony for which he now stands convicted; or

3. Was discharged from probation, parole, postincarceration supervision, conditional discharge, conditional release, or any other form of legal release on any of the previous felony convictions within five (5) years prior to the date of commission of the felony for which he now stands convicted; or

4. Was in custody from the previous felony conviction at the time of commission of the felony for which he now stands convicted; or

5. Had escaped from custody while serving any of the previous felony convictions at the time of commission of the felony for which he now stands convicted.

(3) A persistent felony offender in the first degree is a person who is more than twenty-one (21) years of age and who stands convicted of a felony after having been convicted of two (2) or more felonies, or one (1) or more felony sex crimes against a minor as defined in KRS 17.500, and now stands convicted of any one (1) or more felonies. As used in this provision, a previous felony conviction is a conviction of a felony in this state or conviction of a crime in any other jurisdiction provided:

(a) That a sentence to a term of imprisonment of one (1) year or more or a sentence to death was imposed therefor; and

(b) That the offender was over the age of eighteen (18) years at the time the offense was committed; and

(c) That the offender:

1. Completed service of the sentence imposed on any of the previous felony convictions within five (5) years prior to the date of the commission of the felony for which he now stands convicted; or

2. Was on probation, parole, postincarceration supervision, conditional discharge, conditional release, furlough, appeal bond, or any other form of legal release from any of the previous felony convictions at the time of commission of the felony for which he now stands convicted; or
3. Was discharged from probation, parole, postincarceration supervision, conditional discharge, conditional release, or any other form of legal release on any of the previous felony convictions within five (5) years prior to the date of commission of the felony for which he now stands convicted; or
4. Was in custody from the previous felony conviction at the time of commission of the felony for which he now stands convicted; or
5. Had escaped from custody while serving any of the previous felony convictions at the time of commission of the felony for which he now stands convicted.

(4) For the purpose of determining whether a person has two (2) or more previous felony convictions, two (2) or more convictions of crime for which that person served concurrent or uninterrupted consecutive terms of imprisonment shall be deemed to be only one (1) conviction, unless one (1) of the convictions was for an offense committed while that person was imprisoned.

(5) A person who is found to be a persistent felony offender in the second degree shall be sentenced to an indeterminate term of imprisonment pursuant to the sentencing provisions of KRS 532.060(2) for the next highest degree than the offense for which convicted. A person who is found to be a persistent felony offender in the second degree shall not be eligible for probation, shock probation, or conditional discharge, unless all offenses for which the person stands convicted are Class D felony offenses which do not involve a violent act against a person, in which case probation, shock probation, or conditional discharge may be granted. A violent offender who is found to be a persistent felony offender in the second degree shall not be eligible for parole except as provided in KRS 439.3401.

(6) A person who is found to be a persistent felony offender in the first degree shall be sentenced to imprisonment as follows:

(a) If the offense for which he presently stands convicted is a Class A or Class B felony, or if the person was previously convicted of one (1) or more sex crimes committed against a minor as defined in KRS 17.500 and presently stands convicted of a subsequent sex crime, a persistent felony offender in the first degree shall be sentenced to an indeterminate term of imprisonment, the maximum of which shall not be less than twenty (20) years nor more than fifty (50) years, or life imprisonment, or life imprisonment without parole for twenty-five (25) years for a sex crime committed against a minor;

(b) If the offense for which he presently stands convicted is a Class C or Class D felony, a persistent felony offender in the first degree shall be sentenced to an indeterminate term of imprisonment, the maximum of which shall not be less than ten (10) years nor more than twenty (20) years.

(7) A person who is found to be a persistent felony offender in the first degree shall not be eligible for probation, shock probation, or conditional discharge, unless all offenses for which the person stands convicted are Class D felony offenses which do not involve a violent act against a person or a sex crime as that term is defined in KRS 17.500, in which case, probation, shock probation, or conditional discharge may be granted. If the offense the person presently stands convicted of is a Class A, B, or C felony, the person shall not be eligible for parole until the person has served a minimum term of incarceration of not less than ten (10) years, unless another sentencing scheme applies. A violent offender who is found to be a persistent felony offender in the first degree shall not be eligible for parole except as provided in KRS 439.3401.

(8) A conviction, plea of guilty, or Alford plea under KRS 218A.1415 shall not trigger the application of this section, regardless of the number or type of prior felony convictions that may have been entered against the defendant. A conviction, plea of guilty, or Alford plea under KRS 218A.1415 may be used as a prior felony offense allowing this section to be applied if he or she is subsequently convicted of a different felony offense.

(9) The provisions of this section amended by 1994 Ky. Acts ch. 396, sec. 11, shall be retroactive.

(10)

(a) Except as provided in paragraph (b) of this subsection, this section shall not apply to a person convicted of a criminal offense if the penalty for that offense was increased from a misdemeanor to a felony, or from a lower felony classification to a higher felony classification, because the conviction constituted a second or subsequent violation of that offense.

(b) This subsection shall not prohibit the application of this section to a person convicted of:

1. A felony offense arising out of KRS

189A.010, 189A.090, 506.140, 508.032, 508.140, or 510.015; or

2. Any other felony offense if the penalty was not enhanced to a higher level because the Commonwealth elected to prosecute the person as a first-time violator of that offense.

KRS 532.080

Amended by 2012 Ky. Acts ch. 156, § 19, eff. 7/11/2012.

Amended 2011, Ky. Acts ch. 2, sec. 26, effective June 8, 2011. -- Amended 2006, Ky. Acts ch. 182, sec. 45, effective July 12, 2006. -- Amended 1998, Ky. Acts ch. 606, sec. 76, effective July 15, 1998. -- Amended 1996, Ky. Acts ch. 247, sec. 1, effective April 4, 1996. -- Amended 1994 Ky. Acts ch. 396, sec. 11, effective July 15, 1994. -- Amended 1982 Ky. Acts ch. 241, sec. 1, effective July 15, 1982. -- Amended 1978 Ky. Acts ch. 78, sec. 6, effective June 17, 1978. -- Amended 1976 (1st Extra. Sess.) Ky. Acts ch. 14, sec. 474, effective January 2, 1978. -- Amended 1976 Ky. Acts ch. 180, sec. 1, effective June 19, 1976. -- Created 1974 Ky. Acts ch. 406, sec. 280, effective January 1, 1975.

La. Stat. tit. 15 § 529.1

 Download

Current with changes from the 2019 Legislative Session

A. Any person who, after having been convicted within this state of a felony, or who, after having been convicted under the laws of any other state or of the United States, or any foreign government of a crime which, if committed in this state would be a felony, thereafter commits any subsequent felony within this state, upon conviction of said felony, shall be punished as follows:

(1) If the second felony is such that upon a first conviction the offender would be punishable by imprisonment for any term less than his natural life, then the sentence to imprisonment shall be for a determinate term not less than one-third the longest term and not more than twice the longest term prescribed for a first conviction.

(2)

(a) If the second felony and the prior felony are sex offenses as defined in R.S. 15:541, or the prior felony would be a sex offense as defined in R.S. 15:541, except it occurred prior to June 18, 1992, or the conviction was obtained under the laws of any other state, the United States, or any foreign government, the person shall be sentenced to imprisonment at hard labor for a determinate term not less than two-thirds of the longest possible sentence for the conviction and not more than three times the longest possible sentence prescribed for a first conviction, without benefit of probation, parole, or suspension of sentence.

(b) If the second felony and the prior felony are sex offenses as defined in R.S. 15:541, or the prior felony would be a sex offense as defined in R.S. 15:541, except it occurred prior to June 18, 1992, or the conviction was obtained under the laws of any other state, the United States, or any foreign government, and

the victims of the previous offense and the instant offense were under the age of thirteen years at the time of the commission of the offense or any part thereof, the person shall be imprisoned for the remainder of his natural life, without benefit of parole, probation, or suspension of sentence.

(3) If the third felony is such that upon a first conviction, the offender would be punishable by imprisonment for any term less than his natural life then the following sentences apply:

(a) The person shall be sentenced to imprisonment for a determinate term not less than one-half of the longest possible sentence for the conviction and not more than twice the longest possible sentence prescribed for a first conviction.

(b) If the third felony and the two prior felonies are felonies defined as a crime of violence under R.S. 14:2(B), or a sex offense as defined in R.S. 15:541 when the victim is under the age of eighteen at the time of commission of the offense, or any combination of such crimes, the person shall be imprisoned for the remainder of his natural life, without benefit of parole, probation, or suspension of sentence.

(4) If the fourth or subsequent felony is such that, upon a first conviction the offender would be punishable by imprisonment for any term less than his natural life then the following sentences apply:

(a) The person shall be sentenced to imprisonment for the fourth or subsequent felony for a determinate term not less than the longest prescribed for a first conviction but in no event less than twenty years and not more than his natural life.

(b) If the fourth felony and no prior felony is defined as a crime of violence under R.S. 14:2(B) or as a sex offense under R.S. 15:541, the person shall be imprisoned for not less than twenty years nor more than twice the longest possible sentence prescribed for a first conviction. If twice the possible sentence prescribed for a first conviction is less than twenty years, the person shall be imprisoned for twenty years.

(c) If the fourth felony and two of the prior felonies are felonies defined as a crime of violence under R.S. 14:2(B), or a sex offense as defined in R.S. 15:541 when the victim is under the age of eighteen at the time of commission of the offense, the person shall be imprisoned for the remainder of his natural life, without benefit of parole, probation, or suspension of sentence.

B. It is hereby declared to be the intent of this Section that an offender need not have been adjudged to be a second offender in a previous prosecution in order to be charged as and adjudged to be a third offender, or that an offender has been adjudged in a prior prosecution to be a third offender in order to be convicted as a fourth offender in a prosecution for a subsequent crime. Multiple convictions obtained on the same day prior to October 19, 2004, shall be counted as one conviction for the purpose of this Section.

C.

(1) Except as provided in Paragraphs (2) and (3) of this Subsection, the current offense shall not be counted as, respectively, a second, third, fourth, or higher offense if more than five years have elapsed between the date of the commission of the current offense or offenses and the expiration of the correctional supervision, or term of imprisonment if the offender is not placed on supervision following imprisonment, for the previous conviction or convictions, or between the expiration of the correctional supervision, or term of imprisonment if the offender is not placed on supervision following imprisonment, for each preceding conviction or convictions alleged in the multiple offender bill and the date of the commission of the following offense or offenses. In computing the intervals of time as provided in this Paragraph, any period of parole, probation, or incarceration by a person in a penal institution, within or without the state, shall not be included in the computation of any of the five-year periods between the expiration of the correctional supervision, or term of imprisonment if the offender is not placed on supervision following imprisonment, and the next succeeding offense or offenses.

(2) Except as provided in Paragraph (3) of this Subsection, the current offense shall not be counted as, respectively, a second, third, fourth, or higher offense if

more than ten years have elapsed between the date of the commission of the current offense or offenses and the expiration of correctional supervision, or term of imprisonment if the offender is not placed on supervision following imprisonment, for a crime of violence as defined in R.S. 14:2(B) or a sex offense as defined in R.S. 15:541, or between the expiration of correctional supervision, or term of imprisonment if the offender is not placed on supervision following imprisonment, for each preceding conviction or convictions alleged in the multiple offender bill for a crime of violence as defined in R.S. 14:2(B) or a sex offense as defined in R.S. 15:541 and the date of the commission of the following offense or offenses. In computing the intervals of time as provided in this Paragraph, any period of parole, probation, or incarceration by a person in a penal institution, within or without the state, shall not be included in the computation of any of the ten-year periods between the expiration of correctional supervision, or term of imprisonment if the offender is not placed on supervision following imprisonment, for a crime of violence as defined in R.S. 14:2(B) or a sex offense as defined in R.S. 15:541 and the next succeeding offense or offenses.

(3) Notwithstanding any provision of law to the contrary, a conviction for a felony offense that is not a crime of violence as defined by R.S. 14:2(B) and that has been set aside and dismissed pursuant to Code of Criminal Procedure Article 893(E)(2), (3), or (4), shall not be considered as a prior conviction for purposes of enhancing a felony that is not a crime of violence as defined by R.S.

14:2(B) pursuant to the provisions of Paragraph (A)(1) of this Section and shall not be included in the computation of the five-year time period set forth in Paragraph (1) of this Subsection, or the ten-year time period as set forth in Paragraph (2) of this Subsection, for purposes of enhancing a felony that is not a crime of violence as defined by R.S. 14:2(B) pursuant to the provisions of Paragraph (A)(1) of this Section.

D.

(1)

(a) If, at any time, either after conviction or sentence, it shall appear that a person convicted of a felony has previously been convicted of a felony under the

laws of this state, or has been convicted under the laws of any other state, or of the United States, or of any foreign government or country, of a crime, which, if committed in this state would be a felony, the district attorney of the parish in which subsequent conviction was had may file an information accusing the person of a previous conviction. Whereupon the court in which the subsequent conviction was had shall cause the person, whether confined in prison or otherwise, to be brought before it and shall inform him of the allegation contained in the information and of his right to be tried as to the truth thereof according to law and shall require the offender to say whether the allegations are true. If he denies the allegation of the information or refuses to answer or remains silent, his plea or the fact of his silence shall be entered on the record and he shall be given fifteen days to file particular objections to the information, as provided in Subparagraph (b) of this Paragraph. The judge shall fix a day to inquire whether the offender has been convicted of a prior felony or felonies as set forth in the information.

(b) Except as otherwise provided in this Subsection, the district attorney shall have the burden of proof beyond a reasonable doubt on any issue of fact. The presumption of regularity of judgment shall be sufficient to meet the original burden of proof. If the person claims that any conviction alleged is invalid, he shall file a written response to the information. A copy of the response shall be served upon the prosecutor. A person claiming that a conviction alleged in the information was obtained in violation of the constitutions of Louisiana or of the United States shall set forth his claim, and the factual basis therefor, with particularity in his response to the information. The person shall have the burden of proof, by a preponderance of the evidence, on any issue of fact raised by the response. Any challenge to a previous conviction which is not made before sentence is imposed may not thereafter be raised to attack the sentence.

(2) Following a contradictory hearing, the court shall find that the defendant is:

(a) A second offender upon proof of a prior felony conviction.

(b) A third offender, upon proof of two prior felony convictions.

(c) A fourth offender, upon proof of three or more prior felony convictions.

(3) When the judge finds that he has been convicted of a prior felony or felonies, or if he acknowledges or confesses in open court, after being duly cautioned as to his rights, that he has been so convicted, the court shall sentence him to the punishment prescribed in this Section, and shall vacate the previous sentence if already imposed, deducting from the new sentence the time actually served under the sentence so vacated. The court shall provide written reasons for its determination. Either party may seek review of an adverse ruling.

E. Whenever it shall become known to any superintendent or prison, probation, parole, police, or other peace officer, that any person charged with or convicted of a felony has been previously convicted, he shall immediately report the fact to the district attorney of the parish in which the charge lies, or the conviction has been had.

F. The certificates of the warden or other chief officer of any state prison, or of the superintendent or other chief officer of any penitentiary of this state or any other state of the United States, or of any foreign country, or of any chief officer of any parish or county jail in this state or any other state of the United States, or of the clerk of court of the place of conviction in the state of Louisiana, under the seal of his office, if he has a seal, containing the name of the person imprisoned, the photograph, and the fingerprints of the person as they appear in the records of his office, a statement of the court in which a conviction was had, the date and time of sentence, length of time imprisoned, and date of discharge from prison or penitentiary, shall be prima facie evidence of the imprisonment and of the discharge of the person, either by a pardon or expiration of his sentence as the case may be under the conviction stated and set forth in the certificate.

G. Any sentence imposed under the provisions of this Section shall be at hard labor without benefit of probation or suspension of sentence.

H. A person shall not be qualified to be a candidate for elected public office or take elected office if that person has been convicted of a felony, whether convicted within this state or convicted under the laws of any other state or of the United

States of a crime which, if committed in this state would be a felony, and has not received a pardon therefor.

I. If the court finds that a sentence imposed under the provisions of this Section would be constitutionally excessive pursuant to the criteria set forth in *State v. Dorthey*, 623 So.2d 1276 (La. 1993), then the court shall state for the record the reasons for such finding and shall impose the most severe sentence that is not constitutionally excessive.

J. For purposes of this Section, "correctional supervision" means any period of parole, probation, or incarceration of a person in a penal institution, either within the state of Louisiana or outside of the state.

K.

(1) Except as provided in Paragraph (2) of this Subsection, notwithstanding any provision of law to the contrary, the court shall apply the provisions of this Section that were in effect on the date that the defendant's instant offense was committed.

(2) The provisions of Subsection C of this Section as amended by Act Nos. 257 and 282 of the 2017 Regular Session of the Legislature, which provides for the amount of time that must elapse between the current and prior offense for the provisions of this Section to apply, shall apply to any bill of information filed pursuant to the provisions of this Section on or after November 1, 2017, accusing the person of a previous conviction.

La. R.S. § 15:529.1

Amended by Acts 2019, No. 386, s. 1, eff. 8/1/2019.

Amended by Acts 2018, No. 542, s. 1, eff. 8/1/2018.

Amended by Acts 2017, No. 282, s. 1, eff. 11/1/2017.

Amended by Acts 2017, No. 257, s. 1, eff. 11/1/2017.

Acts 1956, No. 312, §§1 to 4; Amended by Acts 1958, No. 469, §1; Acts 1978, No. 424, §1; Acts 1979, No. 199, §1; Acts 1982, No. 688, §1; Acts 1987, No. 774, §1; Acts 1989, No. 482, §1; Acts 1991, No. 405, §1; Acts 1993, No. 853, §1; Acts 1993, No. 896, §1; Acts 1994, 3rd Ex. Sess., No. 23, §1; Acts 1994, 3rd Ex. Sess., No. 85, §1; Acts 1994, 3rd Ex. Sess., No. 144, §1; Acts 1995, No. 839, §1; Acts 1995, No. 1245, §1; Acts 2001, No. 403, §2, eff. June 15, 2001; Acts 2003, No. 1231, §1; Acts 2005, No. 218, §1; Acts 2010, No. 69, §1; Acts 2010, No. 911, §1; Acts 2010, No. 973, §1, eff. July 6, 2010.

Mass. Gen. Laws ch. 279 § 25

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Current through Chapter 94 of the 2019 Legislative Session

(a) Whoever is convicted of a felony and has been previously twice convicted and sentenced to state prison or state correctional facility or a federal corrections facility for a term not less than 3 years by the commonwealth, another state or the United States, and who does not show that the person has been pardoned for either crime on the ground that the person was innocent, shall be considered a habitual criminal and shall be punished by imprisonment in state prison or state correctional facility for such felony for the maximum term provided by law.

(b) Whoever: (i) has been convicted 2 times previously of 1 or more of the following offenses: section 1, section 13, section 13½, clause (i) of subsection (b) of section 13A, section 13B, subsection (a) of section 13B 1/2, section 13B 3/4, section 13F, committing an assault and battery upon a child and by such assault and battery causing bodily injury or substantial bodily injury under subsection (b) of section 13J, section 14, section 15, clause (i) of subsection (c) of section 15A, section 16, sections 17 and 18 if armed with a firearm, shotgun, rifle, machine gun, or assault weapon, section 18A, section 18B, section 18C, section 21, section 22, section 22A, section 22B, section 22C, section 23A, section 23B, section 24, section 24B, section 26, section 26B, section 26C, section 28, and subsection (b) of section 39 of chapter 265, section 14 or section 102C of chapter 266, section 4A, section 17, subsection (b) of section 29A, subsection (b) of section 29B, section 29C, section 35A and subsection (b) of section 53A of chapter 272, or has been convicted 2 times previously of a like violation of the laws of another state, the United States or a military, territorial or Indian tribal authority, arising out of charges separately brought and tried, and arising out of separate and distinct incidents that occurred at different times, where the second offense occurred subsequent to the first conviction; (ii) has been sentenced to incarceration at a state prison or state

correctional facility or federal correction facility for at least 3 years to be served for each of the prior 2 convictions; and (iii) does not show that he has been pardoned for either prior offense on the ground that he was innocent shall, upon conviction of 1 of the enumerated offenses in clause (i), where the offense occurred subsequent to the second conviction, shall be considered a habitual offender and shall be imprisoned in the state prison or state correctional facility for the maximum term provided by law for the offense enumerated in clause (i). No sentence imposed under this subsection shall be reduced or suspended nor shall such person so sentenced be eligible for probation, parole, work release or furlough or receive any deduction from such person's sentence for good conduct. A sentence imposed on a habitual offender under this subsection, if such habitual offender is incarcerated at a state prison or state correctional facility, shall commence upon the conclusion of the sentence such habitual offender is serving at the time of sentencing.

(c) No person shall be considered a habitual offender under subsection (b) based upon any offense for which such person was adjudicated a youthful offender, a delinquent child, or a like violation of the laws of another state, the United States or a military, territorial or Indian tribal authority for which a person was treated as a juvenile.

(d) Upon sentencing a defendant to a qualifying term of incarceration, or prior to accepting a guilty plea for any qualifying offense listed in subsection (b), the court shall inform the defendant that a conviction or plea of guilty for such an offense implicates the habitual offender statute and that upon conviction or plea of guilty for the third or subsequent of said offenses: (1) the defendant may be imprisoned in the state prison for the maximum term provided by law for such third or subsequent offense; (2) no sentence may be reduced or suspended; and (3) the defendant may be ineligible for probation, parole, work release or furlough, or to receive any deduction in sentence for good conduct. No otherwise valid plea or conviction shall be vacated based upon the failure to give such warnings.

Mass. Gen. Laws ch. 279, § 25

Amended by Acts 2012, c. 192, § 47, eff. 8/2/2012.

Minn. Stat. § 609.1095

 Download

Current through 2019 c. 65 and 2019 SP1 c. 13

Subdivision 1. Definitions.

(a) As used in this section, the following terms have the meanings given.

(b) "Conviction" means any of the following accepted and recorded by the court: a plea of guilty, a verdict of guilty by a jury, or a finding of guilty by the court. The term includes a conviction by any court in Minnesota or another jurisdiction.

(c) "Prior conviction" means a conviction that occurred before the offender committed the next felony resulting in a conviction and before the offense for which the offender is being sentenced under this section.

(d) "Violent crime" means a violation of or an attempt or conspiracy to violate any of the following laws of this state or any similar laws of the United States or any other state: sections 152.137; 609.165; 609.185; 609.19; 609.195; 609.20; 609.205; 609.2112; 609.2113; 609.2114; 609.221; 609.222; 609.223; 609.228; 609.235; 609.24; 609.245; 609.25; 609.255; 609.2661; 609.2662; 609.2663; 609.2664; 609.2665; 609.267; 609.2671; 609.268; 609.342; 609.343; 609.344; 609.345; 609.498, subdivision 1; 609.561; 609.562; 609.582, subdivision 1; 609.66, subdivision 1e; 609.687; and 609.855, subdivision 5; any provision of sections 609.229; 609.377; 609.378; 609.749; and 624.713 that is punishable by a felony penalty; or any provision of chapter 152 that is punishable by a maximum sentence of 15 years or more; or Minnesota Statutes 2012, section 609.21.

Subd. 2. Increased sentences for dangerous offender who commits third violent crime.

Whenever a person is convicted of a violent crime that is a felony, and the judge is imposing an executed sentence based on a Sentencing Guidelines presumptive imprisonment sentence, the judge may impose an aggravated durational departure from the presumptive imprisonment sentence up to the statutory maximum sentence if the offender was at least 18 years old at the time the felony was committed, and:

- (1) the court determines on the record at the time of sentencing that the offender has two or more prior convictions for violent crimes; and
- (2) the fact finder determines that the offender is a danger to public safety. The fact finder may base its determination that the offender is a danger to public safety on the following factors:
 - (i) the offender's past criminal behavior, such as the offender's high frequency rate of criminal activity or juvenile adjudications, or long involvement in criminal activity including juvenile adjudications; or
 - (ii) the fact that the present offense of conviction involved an aggravating factor that would justify a durational departure under the Sentencing Guidelines.

Subd. 3. Mandatory sentence for dangerous offender who commits third violent felony.

(a) Unless a longer mandatory minimum sentence is otherwise required by law or the court imposes a longer aggravated durational departure under subdivision 2, a person who is convicted of a violent crime that is a felony must be committed to the commissioner of corrections for a mandatory sentence of at least the length of the presumptive sentence under the Sentencing Guidelines if the court determines on the record at the time of sentencing that the person has two or more prior felony convictions for violent crimes. The court shall impose and execute the prison sentence regardless of whether the guidelines presume an executed prison sentence.

Any person convicted and sentenced as required by this subdivision is not eligible for probation, parole, discharge, or work release, until that person has served the full term of imprisonment imposed by the court, notwithstanding sections 241.26, 242.19, 243.05, 244.04, 609.12, and 609.135.

(b) For purposes of this subdivision, "violent crime" does not include a violation of section 152.023 or 152.024.

Subd. 4. Increased sentence for offender who commits sixth felony.

Whenever a person is convicted of a felony, and the judge is imposing an executed sentence based on a Sentencing Guidelines presumptive imprisonment sentence, the judge may impose an aggravated durational departure from the presumptive sentence up to the statutory maximum sentence if the factfinder determines that the offender has five or more prior felony convictions and that the present offense is a felony that was committed as part of a pattern of criminal conduct.

Minn. Stat. § 609.1095

1998 c 367 art 6 s 7; 2005 c 136 art 7 s 16; art 16 s 11,12; 2014 c 180 s 9

Miss. Code § 99-19-81

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Current through the 2019 Legislative Session

Every person convicted in this state of a felony who shall have been convicted twice previously of any felony or federal crime upon charges separately brought and arising out of separate incidents at different times and who shall have been sentenced to separate terms of one (1) year or more in any state and/or federal penal institution, whether in this state or elsewhere, shall be sentenced to the maximum term of imprisonment prescribed for such felony unless the court provides an explanation in its sentencing order setting forth the cause for deviating from the maximum sentence, and such sentence shall not be reduced or suspended nor shall such person be eligible for parole or probation.

Miss. Code § 99-19-81

Laws, 1976, ch. 470, § 1, eff. 1/1/1977.

Amended by Laws, 2018, ch. 416, HB 387, § 12, eff. 7/1/2018.

Brought forward by Laws, 2014, ch. 457, HB 585, 79, eff. 7/1/2014.

Miss. Code § 99-19-83

 Download

Current through the 2019 Legislative Session

Every person convicted in this state of a felony who shall have been convicted twice previously of any felony or federal crime upon charges separately brought and arising out of separate incidents at different times and who shall have been sentenced to and served separate terms of one (1) year or more, whether served concurrently or not, in any state and/or federal penal institution, whether in this state or elsewhere, and where any one (1) of such felonies shall have been a crime of violence, as defined by Section 97-3-2, shall be sentenced to life imprisonment, and such sentence shall not be reduced or suspended nor shall such person be eligible for parole, probation or any other form of early release from actual physical custody within the Department of Corrections.

Miss. Code § 99-19-83

Laws, 1976, ch. 470, § 2, eff. 1/1/1977.

Amended by Laws, 2014, ch. 457, HB 585, 78, eff. 7/1/2014.

N.C. Gen. Stat. § 14-7.6

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Current through S.L. 2019-238

When an habitual felon as defined in this Article commits any felony under the laws of the State of North Carolina, the felon must, upon conviction or plea of guilty under indictment as provided in this Article (except where the felon has been sentenced as a Class A, B1, or B2 felon) be sentenced at a felony class level that is four classes higher than the principal felony for which the person was convicted; but under no circumstances shall an habitual felon be sentenced at a level higher than a Class C felony. In determining the prior record level, convictions used to establish a person's status as an habitual felon shall not be used. Sentences imposed under this Article shall run consecutively with and shall commence at the expiration of any sentence being served by the person sentenced under this section.

N.C. Gen. Stat. § 14-7.6

Amended by 2011 N.C. Sess. Laws 192, s. 3-d, eff. 12/1/2011.

1967, c. 1241, s. 6; 1981, c. 179, s. 13; 1993, c. 538, s. 9; 1994, Ex. Sess., c. 22, ss. 15, 16, c. 24, s. 14(b); 1993 (Reg. Sess., 1994), c. 767, s. 16.

N.D. Cent. Code § 12.1-32-09

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Current through 2019 Legislative Session

- 1.** A court may sentence a convicted offender to an extended sentence as a dangerous special offender or a habitual offender in accordance with this section upon a finding of any one or more of the following:
 - a.** The convicted offender is a dangerous, mentally abnormal person whose conduct has been characterized by persistent aggressive behavior and the behavior makes the offender a serious danger to other persons.
 - b.** The convicted offender is a professional criminal who has substantial income or resources derived from criminal activity.
 - c.** The convicted offender is a habitual offender. The court may not make such a finding unless the offender is an adult and has previously been convicted in any state or states or by the United States of two felonies of class C or above committed at different times when the offender was an adult. For the purposes of this subdivision, a felony conviction in another state or under the laws of the United States is considered a felony of class C or above if it is punishable by a maximum term of imprisonment of five years or more.
 - d.** The offender was convicted of an offense that seriously endangered the life of another person and the offender had previously been convicted of a similar offense.
 - e.** The offender is especially dangerous because the offender used a firearm, dangerous weapon, or destructive device in the commission of the offense or during the flight therefrom.

A conviction shown on direct or collateral review or at the hearing to be invalid or for which the offender has been pardoned on the ground of innocence must be disregarded for purposes of subdivision c. In support of findings under subdivision b, it may be shown that the offender has had control of income or property not explained as derived from a source other than criminal activity. For purposes of subdivision b, a substantial source of income means a source of income which for any period of one year or more exceeds the minimum wage, determined on the basis of a forty-hour week and a fifty-week year, without reference to exceptions, under section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended, for an employee engaged in commerce or in the production of goods for commerce, and which for the same period exceeds fifty percent of the offender's declared adjusted gross income under chapter 57-38.

2. The extended sentence may be imposed in the following manner:

- a.** If the offense for which the offender is convicted is a class A felony, the court may impose a sentence up to a maximum of life imprisonment.
- b.** If the offense for which the offender is convicted is a class B felony, the court may impose a sentence up to a maximum of imprisonment for twenty years.
- c.** If the offense for which the offender is convicted is a class C felony, the court may impose a sentence up to a maximum of imprisonment for ten years.

3. Whenever an attorney charged with the prosecution of a defendant in a court of this state for an alleged felony committed when the defendant was over the age of eighteen years has reason to believe that the defendant is a dangerous special offender or a habitual offender, the attorney, at a reasonable time before trial or acceptance by the court of a plea of guilty, may sign and file with the court, and may amend, a notice specifying that the defendant is a dangerous special offender or a habitual offender who upon conviction for the felony is subject to the imposition of a sentence under subsection 2, and setting out with particularity the reasons why the attorney believes the defendant to be a dangerous special offender or a habitual offender. In no case may the fact that the prosecuting attorney is seeking sentencing of the defendant as a dangerous special offender or a habitual offender be disclosed

to the jury before a verdict. If the court finds that the filing of the notice as a public record may prejudice fair consideration of a pending criminal matter, the court may order the notice sealed and the notice is not subject to subpoena or public inspection during the pendency of the criminal matter, except on order of the court, but is subject to inspection by the defendant alleged to be a dangerous special offender or a habitual offender and the offender's counsel.

4. Upon any plea of guilty, or verdict or finding of guilt of the defendant of such felony, a hearing must be held, before sentence is imposed, in accordance with this subsection as follows:

a. By a jury, or the court if a jury is waived by the defendant, if the notice alleges that the defendant is a dangerous special offender under subdivision a, b, d, or e of subsection 1. The jury, or the court if a jury is waived, must find that the defendant is a dangerous special offender under one or more of these subdivisions by proof beyond a reasonable doubt. However, in the case of a notice alleging only subdivision e of subsection 1, the trial jury, or the trial court if a jury is waived, may make a special finding of proof of this subdivision without an additional hearing subsequent to a verdict or finding of guilt.

b. By the court if the notice alleges that the defendant is a habitual offender under subdivision c of subsection 1. The court must find that the defendant is a habitual offender by a preponderance of the evidence.

5. Except in the most extraordinary cases, the court shall obtain a presentence report and may receive a diagnostic testing report under subsection 5 of section 12.1-32-02 before holding a hearing under this subsection. The court shall fix a time for the hearing and notice thereof must be given to the defendant and the prosecution at least five days prior thereto. The court shall permit the prosecution and counsel for the defendant, or the defendant if the defendant is not represented by counsel, to inspect the presentence report sufficiently before the hearing as to afford a reasonable opportunity for verification. In extraordinary cases, the court may withhold material not relevant to a proper sentence, diagnostic opinion that might seriously disrupt a program of rehabilitation, any source of information obtained on a promise of confidentiality, and material previously disclosed in open court. A

court withholding all or part of a presentence report shall inform the parties of its action and place in the record the reasons therefor. The court may require parties inspecting all or part of a presentence report to give notice of any part thereof intended to be controverted. In connection with the hearing, the defendant is entitled to compulsory process and cross-examination of such witnesses as appear at the hearing. A duly authenticated copy of a former judgment or commitment is prima facie evidence of such former judgment or commitment. If the jury or the court finds, after hearing, one or more of the grounds set forth in subsection 1, that the defendant is a dangerous special offender or a habitual offender, the court shall sentence the defendant to imprisonment for an appropriate term within the limits specified in subsection 2.

N.D.C.C. § 12.1-32-09

Neb. Rev. Stat. § 29-2221

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Current with changes through 2019

(1) Whoever has been twice convicted of a crime, sentenced, and committed to prison, in this or any other state or by the United States or once in this state and once at least in any other state or by the United States, for terms of not less than one year each shall, upon conviction of a felony committed in this state, be deemed to be a habitual criminal and shall be punished by imprisonment in a Department of Correctional Services adult correctional facility for a mandatory minimum term of ten years and a maximum term of not more than sixty years, except that:

(a) If the felony committed is in violation of section 28-303, 28-304, 28-308, 28-313, 28-319, 28-319.01, 28-502, 28-929, or 28-1222, and at least one of the habitual criminal's prior felony convictions was for a violation of one of the sections listed in this subdivision or of a similar statute in another state or of the United States, the mandatory minimum term shall be twenty-five years and the maximum term not more than sixty years;

(b) If the felony committed is in violation of subsection (3) of section 28-306 and at least one of the prior convictions is in violation of subsection (3) of section 28-306 and the other is in violation of one of the sections set forth in subdivision (a) of this subsection or if the felony committed is in violation of one of the sections set forth in subdivision (a) of this subsection and both of the prior convictions are in violation of subsection (3) of section 28-306, the mandatory minimum term shall be twenty-five years and the maximum term not more than sixty years; and

(c) If a greater punishment is otherwise provided by statute, the law creating the greater punishment shall govern.

(2) When punishment of an accused as a habitual criminal is sought, the facts with reference thereto shall be charged in the indictment or information which contains the charge of the felony upon which the accused is prosecuted, but the fact that the accused is charged with being a habitual criminal shall not be an issue upon the trial of the felony charge and shall not in any manner be disclosed to the jury. If the accused is convicted of a felony, before sentence is imposed a hearing shall be had before the court alone as to whether such person has been previously convicted of prior felonies. The court shall fix a time for the hearing and notice thereof shall be given to the accused at least three days prior thereto. At the hearing, if the court finds from the evidence submitted that the accused has been convicted two or more times of felonies and sentences imposed therefor by the courts of this or any other state or by the United States, the court shall sentence such person so convicted as a habitual criminal.

(3) If the person so convicted shows to the satisfaction of the court before which the conviction was had that he or she was released from imprisonment upon either of such sentences upon a pardon granted for the reason that he or she was innocent, such conviction and sentence shall not be considered as such under this section and section 29-2222.

Neb. Rev. Stat. § 29-2221

Laws 1921, c. 131, § 1, p. 543; C.S.1922, § 10177; C.S.1929, § 29-2217; Laws 1937, c. 68, § 1, p. 252; C.S.Supp.,1941, § 29-2217; R.S.1943, § 29-2221; Laws 1947, c. 105, § 1, p. 294; Laws 1967, c. 179, § 1, p. 497; Laws 1993, LB 31, § 10; Laws 1995, LB 371, § 13; Laws 2006, LB 1199, § 14.

N.M. Stat. § 31-18-17

 Download

Current through 2019, c. 281

A. A person convicted of a noncapital felony in this state whether within the Criminal Code [30-1-1 NMSA 1978] or the Controlled Substances Act [30-31-1 NMSA 1978] or not who has incurred one prior felony conviction that was part of a separate transaction or occurrence or conditional discharge under Section 31-20-13 NMSA 1978 is a habitual offender and his basic sentence shall be increased by one year. The sentence imposed pursuant to this subsection shall not be suspended or deferred, unless the court makes a specific finding that the prior felony conviction and the instant felony conviction are both for nonviolent felony offenses and that justice will not be served by imposing a mandatory sentence of imprisonment and that there are substantial and compelling reasons, stated on the record, for departing from the sentence imposed pursuant to this subsection.

B. A person convicted of a noncapital felony in this state whether within the Criminal Code or the Controlled Substances Act or not who has incurred two prior felony convictions that were parts of separate transactions or occurrences or conditional discharge under Section 31-20-13 NMSA 1978 is a habitual offender and his basic sentence shall be increased by four years. The sentence imposed by this subsection shall not be suspended or deferred.

C. A person convicted of a noncapital felony in this state whether within the Criminal Code or the Controlled Substances Act or not who has incurred three or more prior felony convictions that were parts of separate transactions or occurrences or conditional discharge under Section 31-20-13 NMSA 1978 is a habitual offender and his basic sentence shall be increased by eight years. The sentence imposed by this subsection shall not be suspended or deferred.

D. As used in this section, "prior felony conviction" means:

(1) a conviction, when less than ten years have passed prior to the instant felony conviction since the person completed serving his sentence or period of probation or parole for the prior felony, whichever is later, for a prior felony committed within New Mexico whether within the Criminal Code or not, but not including a conviction for a felony pursuant to the provisions of Section 66-8-102 NMSA 1978; or

(2) a prior felony, when less than ten years have passed prior to the instant felony conviction since the person completed serving his sentence or period of probation or parole for the prior felony, whichever is later, for which the person was convicted other than an offense triable by court martial if:

(a) the conviction was rendered by a court of another state, the United States, a territory of the United States or the commonwealth of Puerto Rico;

(b) the offense was punishable, at the time of conviction, by death or a maximum term of imprisonment of more than one year; or

(c) the offense would have been classified as a felony in this state at the time of conviction.

E. As used in this section, "nonviolent felony offense" means application of force, threatened use of force or a deadly weapon was not used by the offender in the commission of the offense.

NMS § 31-18-17

1953 Comp., § 40A-29-30, enacted by Laws 1977, ch. 216, § 6; 1979, ch. 158, § 1; 1983, ch. 127, § 1; 1993, ch. 77, § 9; 1993, ch. 283, § 1; 2002, ch. 7, § 1; 2003, ch. 90, § 1.

HABITUAL CRIMINALS, HABITUAL FELONS AND HABITUALLY FRAUDULENT FELONS**NRS 207.010 Habitual criminals: Definition; punishment.**

1. Unless the person is prosecuted pursuant to [NRS 207.012](#) or [207.014](#), a person convicted in this State of:

(a) Any felony, who has previously been two times convicted, whether in this State or elsewhere, of any crime which under the laws of the situs of the crime or of this State would amount to a felony is a habitual criminal and shall be punished for a category B felony by imprisonment in the state prison for a minimum term of not less than 5 years and a maximum term of not more than 20 years.

(b) Any felony, who has previously been three times convicted, whether in this State or elsewhere, of any crime which under the laws of the situs of the crime or of this State would amount to a felony is a habitual criminal and shall be punished for a category A felony by imprisonment in the state prison:

(1) For life without the possibility of parole;

(2) For life with the possibility of parole, with eligibility for parole beginning when a minimum of 10 years has been served;

or

(3) For a definite term of 25 years, with eligibility for parole beginning when a minimum of 10 years has been served.

2. It is within the discretion of the prosecuting attorney whether to include a count under this section in any information or file a notice of habitual criminality if an indictment is found. The trial judge may, at his or her discretion, dismiss a count under this section which is included in any indictment or information.

[1911 C&P § 27; RL § 6292; NCL § 9976] — (NRS A [1961, 446](#); [1965, 250](#); [1967, 217, 516](#); [1971, 173](#); [1977, 360](#); [1981, 1647](#); [1985, 1026, 1643](#); [1995, 856, 1238, 1358, 2392](#); [1997, 1184](#); [2009, 567](#))

NRS 207.012 Habitual felons: Definition; punishment.

1. A person who:

(a) Has been convicted in this State of a felony listed in subsection 2; and

(b) Before the commission of that felony, was twice convicted of any crime which under the laws of the situs of the crime or of this State would be a felony listed in subsection 2, whether the prior convictions occurred in this State or elsewhere,

is a habitual felon and shall be punished for a category A felony by imprisonment in the state prison:

(1) For life without the possibility of parole;

(2) For life with the possibility of parole, with eligibility for parole beginning when a minimum of 10 years has been served;

or

(3) For a definite term of 25 years, with eligibility for parole beginning when a minimum of 10 years has been served.

2. The district attorney shall include a count under this section in any information or shall file a notice of habitual felon if an indictment is found, if each prior conviction and the alleged offense committed by the accused constitutes a violation of subparagraph

(1) of paragraph (a) of subsection 1 of [NRS 193.330](#), [NRS 199.160](#), [199.500](#), [200.030](#), [200.310](#), [200.340](#), [200.366](#), [200.380](#), [200.390](#), subsection 3 or 4 of [NRS 200.400](#), [NRS 200.410](#), subsection 3 of [NRS 200.450](#), subsection 5 of [NRS 200.460](#), [NRS 200.463](#), [200.4631](#), [200.464](#), [200.465](#), [200.467](#), [200.468](#), subsection 1, paragraph (a) of subsection 2 or subparagraph (2) of paragraph (b) of subsection 2 of [NRS 200.508](#), [NRS 200.710](#), [200.720](#), [201.230](#), [201.450](#), [202.170](#), subsection 2 of [NRS 202.780](#), paragraph (b) of subsection 2 of [NRS 202.820](#), paragraph (b) of subsection 1 or subsection 2 of [NRS 202.830](#), [NRS 205.010](#), subsection 4 of [NRS 205.060](#), subsection 4 of [NRS 205.067](#), [NRS 205.075](#), [207.400](#), paragraph (a) of subsection 1 of [NRS 212.090](#), [NRS 453.3325](#), [453.333](#), [484C.130](#), [484C.430](#) or [484E.010](#).

3. The trial judge may not dismiss a count under this section that is included in an indictment or information.

(Added to NRS by [1995, 1237](#); A [1997, 1185](#); [2001, 1140](#); [2003, 388](#); [2005, 88, 165, 1059](#); [2007, 1268](#); [2009, 22](#); [2013, 1855](#))

NRS 207.014 Habitually fraudulent felons: Definition; punishment.

1. A person who:

(a) Has been convicted in this State of any felony committed on or after July 1, 1995, of which fraud or intent to defraud is an element; and

(b) Has previously been two times convicted, whether in this State or elsewhere, of any felony of which fraud or intent to defraud is an element before the commission of the felony under paragraph (a),

is a habitually fraudulent felon and shall be punished for a category B felony by imprisonment in the state prison for a minimum term of not less than 5 years and a maximum term of not more than 20 years, if the victim of each offense was an older person, a person with a mental disability or a vulnerable person.

2. The prosecuting attorney shall include a count under this section in any information or shall file a notice of habitually fraudulent felon if an indictment is found, if the prior convictions and the alleged offense committed by the accused are felonies of which fraud or intent to defraud is an element and the victim of each offense was:

(a) An older person;

(b) A person with a mental disability; or

(c) A vulnerable person.

3. The trial judge may not dismiss a count under this section that is included in an indictment or information.

4. As used in this section:

(a) "Older person" means a person who is:

(1) Sixty-five years of age or older if the crime was committed before October 1, 2003.

(2) Sixty years of age or older if the crime was committed on or after October 1, 2003.

(b) "Person with a mental disability" means a person who has a mental impairment which is medically documented and substantially limits one or more of the person's major life activities. The term includes, but is not limited to, a person who:

(1) Suffers from an intellectual disability;

(2) Suffers from a severe mental or emotional illness;

(3) Has a severe learning disability; or

(4) Is experiencing a serious emotional crisis in his or her life as a result of the fact that the person or a member of his or her immediate family has a catastrophic illness.

(c) "Vulnerable person" has the meaning ascribed to it in [NRS 200.5092](#).

(Added to NRS by [1995, 855](#); A [1995, 1338](#); [1997, 1185](#); [2003, 2568](#); [2005, 1114](#); [2013, 690](#); [2015, 813](#))

NRS 207.016 Procedure; trial of primary offense; prior convictions.

1. A conviction pursuant to [NRS 207.010](#), [207.012](#) or [207.014](#) operates only to increase, not to reduce, the sentence otherwise provided by law for the principal crime.

2. If a count pursuant to [NRS 207.010](#), [207.012](#) or [207.014](#) is included in an information charging the primary offense, each previous conviction must be alleged in the accusatory pleading, but no such conviction may be alluded to on trial of the primary offense, nor may any allegation of the conviction be read in the presence of a jury trying the offense or a grand jury considering an indictment for the offense. A count pursuant to [NRS 207.010](#), [207.012](#) or [207.014](#) may be filed separately from the indictment or information charging the primary offense, but if it is so filed, the count pursuant to [NRS 207.010](#), [207.012](#) or [207.014](#) must be filed not less than 2 days before the start of the trial on the primary offense, unless an agreement of the parties provides otherwise or the court for good cause shown makes an order extending the time. For good cause shown, the prosecution may supplement or amend a count pursuant to [NRS 207.010](#), [207.012](#) or [207.014](#) at any time before the sentence is imposed, but if such a supplement or amendment is filed, the sentence must not be imposed, or the hearing required by subsection 3 held, until 15 days after the separate filing.

3. If a defendant charged pursuant to [NRS 207.010](#), [207.012](#) or [207.014](#) pleads guilty or guilty but mentally ill to, or is found guilty or guilty but mentally ill of, the primary offense but denies any previous conviction charged, the court shall determine the issue of the previous conviction after hearing all relevant evidence presented on the issue by the prosecution and the defendant. At such a hearing, the defendant may not challenge the validity of a previous conviction. The court shall impose sentence:

(a) Pursuant to [NRS 207.010](#) upon finding that the defendant has suffered previous convictions sufficient to support an adjudication of habitual criminality;

(b) Pursuant to [NRS 207.012](#) upon finding that the defendant has suffered previous convictions sufficient to support an adjudication of habitual felon; or

(c) Pursuant to [NRS 207.014](#) upon finding that the defendant has suffered previous convictions sufficient to support an adjudication of habitually fraudulent felon.

4. Nothing in the provisions of this section, [NRS 207.010](#), [207.012](#) or [207.014](#) limits the prosecution in introducing evidence of prior convictions for purposes of impeachment.

5. For the purposes of [NRS 207.010](#), [207.012](#) and [207.014](#), a certified copy of a felony conviction is prima facie evidence of conviction of a prior felony.

6. Nothing in the provisions of this section, [NRS 207.010](#), [207.012](#) or [207.014](#) prohibits a court from imposing an adjudication of habitual criminality, adjudication of habitual felon or adjudication of habitually fraudulent felon based upon an agreement of the parties.

(Added to NRS by [1995, 1238](#); A [1997, 519, 524, 1186](#); [2003, 1483](#); [2007, 1441](#); [2013, 1373](#))

N.Y. Penal Law § 70.04

 Download

Current through 2019 NY Law Chapters 1-49, 55-105, 107-489

1. Definition of second violent felony offender.

(a) A second violent felony offender is a person who stands convicted of a violent felony offense as defined in subdivision one of section 70.02 after having previously been subjected to a predicate violent felony conviction as defined in paragraph **(b)** of this subdivision.

(b) For the purpose of determining whether a prior conviction is a predicate violent felony conviction the following criteria shall apply:

(i) The conviction must have been in this state of a class A felony (other than one defined in article two hundred twenty) or of a violent felony offense as defined in subdivision one of section 70.02, or of an offense defined by the penal law in effect prior to September first, nineteen hundred sixty-seven, which includes all of the essential elements of any such felony, or in any other jurisdiction of an offense which includes all of the essential elements of any such felony for which a sentence to a term of imprisonment in excess of one year or a sentence of death was authorized and is authorized in this state irrespective of whether such sentence was imposed;

(ii) Sentence upon such prior conviction must have been imposed before commission of the present felony;

(iii) Suspended sentence, suspended execution of sentence, a sentence of probation, a sentence of conditional discharge or of unconditional discharge, and a sentence of certification to the care and custody of the division of substance abuse services, shall be deemed to be a sentence;

(iv) Except as provided in subparagraph (v) of this paragraph, sentence must have been imposed not more than ten years before commission of the felony of which the defendant presently stands convicted;

(v) In calculating the ten year period under subparagraph (iv), any period of time during which the person was incarcerated for any reason between the time of commission of the previous felony and the time of commission of the present felony shall be excluded and such ten year period shall be extended by a period or periods equal to the time served under such incarceration;

(vi) An offense for which the defendant has been pardoned on the ground of innocence shall not be deemed a predicate violent felony conviction.

2. [Effective until 9/1/2020] Authorized sentence. When the court has found, pursuant to the provisions of the criminal procedure law, that a person is a second violent felony offender the court must impose a determinate sentence of imprisonment which shall be in whole or half years. Except where sentence is imposed in accordance with the provisions of section 70.10, the term of such sentence must be in accordance with the provisions of subdivision three of this section.

2. [Effective 9/1/2020] Authorized sentence. When the court has found, pursuant to the provisions of the criminal procedure law, that a person is a second violent felony offender the court must impose an indeterminate sentence of imprisonment. Except where sentence is imposed in accordance with the provisions of section 70.10, the maximum term of such sentence must be in accordance with the provisions of subdivision three of this section and the minimum period of imprisonment under such sentence must be in accordance with subdivision four of this section.

3. [Effective until 9/1/2020] Term of sentence. The term of a determinate sentence for a second violent felony offender must be fixed by the court as follows:

(a) For a class B felony, the term must be at least ten years and must not exceed twenty-five years;

(b) For a class C felony, the term must be at least seven years and must not exceed fifteen years; and

(c) For a class D felony, the term must be at least five years and must not exceed seven years.

(d) For a class E felony, the term must be at least three years and must not exceed four years.

3. [Effective 9/1/2020] Maximum term of sentence. The maximum term of an indeterminate sentence for a second violent felony offender must be fixed by the court as follows:

(a) For a class B felony, the term must be at least twelve years and must not exceed twenty-five years;

(b) For a class C felony, the term must be at least eight years and must not exceed fifteen years; and

(c) For a class D felony, the term must be at least five years and must not exceed seven years.

(d) For a class E felony, the term must be at least four years.

4. [Effective 9/1/2020] Minimum period of imprisonment. The minimum period of imprisonment under an indeterminate sentence for a second violent felony offender must be fixed by the court at one-half of the maximum term imposed and must be specified in the sentence.

N.Y. Penal Law § 70.04

Amended by New York Laws 2019, ch. 55, Sec. O-19, eff. 4/12/2019.

Amended by New York Laws 2017, ch. 55, Sec. A-19, eff. 4/20/2017.

Amended by New York Laws 2015, ch. 55, Sec. B-19, eff. 4/13/2015.

N.Y. Penal Law § 70.06

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Current through 2019 NY Law Chapters 1-49, 55-105, 107-489

1. Definition of second felony offender.

(a) A second felony offender is a person, other than a second violent felony offender as defined in section 70.04, who stands convicted of a felony defined in this chapter, other than a class A-I felony, after having previously been subjected to one or more predicate felony convictions as defined in paragraph (b) of this subdivision.

(b) For the purpose of determining whether a prior conviction is a predicate felony conviction the following criteria shall apply:

(i) The conviction must have been in this state of a felony, or in any other jurisdiction of an offense for which a sentence to a term of imprisonment in excess of one year or a sentence of death was authorized and is authorized in this state irrespective of whether such sentence was imposed;

(ii) Sentence upon such prior conviction must have been imposed before commission of the present felony;

(iii) Suspended sentence, suspended execution of sentence, a sentence of probation, a sentence of conditional discharge or of unconditional discharge, and a sentence of certification to the care and custody of the division of substance abuse services, shall be deemed to be a sentence;

(iv) Except as provided in subparagraph (v) of this paragraph, sentence must have been imposed not more than ten years before commission of the felony of which the defendant presently stands convicted;

(v) In calculating the ten year period under subparagraph (iv), any period of time during which the person was incarcerated for any reason between the time of commission of the previous felony and the time of commission of the present felony shall be excluded and such ten year period shall be extended by a period or periods equal to the time served under such incarceration;

(vi) An offense for which the defendant has been pardoned on the ground of innocence shall not be deemed a predicate felony conviction.

2. [Effective until 9/1/2020] Authorized sentence. Except as provided in subdivision five or six of this section, or as provided in subdivision five of section 70.80 of this article, when the court has found, pursuant to the provisions of the criminal procedure law, that a person is a second felony offender the court must impose an indeterminate sentence of imprisonment. The maximum term of such sentence must be in accordance with the provisions of subdivision three of this section and the minimum period of imprisonment under such sentence must be in accordance with subdivision four of this section.

2. [Effective 9/1/2020] Authorized sentence. Except as provided in subdivision five of this section, or as provided in subdivision five of section 70.80 of this article, when the court has found, pursuant to the provisions of the criminal procedure law, that a person is a second felony offender the court must impose an indeterminate sentence of imprisonment. The maximum term of such sentence must be in accordance with the provisions of subdivision three of this section and the minimum period of imprisonment under such sentence must be in accordance with subdivision four of this section.

3. [Effective until 9/1/2020] Maximum term of sentence. Except as provided in subdivision five or six of this section, or as provided in subdivision five of section 70.80 of this article, the maximum term of an indeterminate sentence for a second felony offender must be fixed by the court as follows:

(a) For a class A-II felony, the term must be life imprisonment;

(b) For a class B felony, the term must be at least nine years and must not exceed twenty-five years;

- (c) For a class C felony, the term must be at least six years and must not exceed fifteen years;
- (d) For a class D felony, the term must be at least four years and must not exceed seven years; and
- (e) For a class E felony, the term must be at least three years and must not exceed four years; provided, however, that where the sentence is for the class E felony offense specified in section 240.32 of this chapter, the maximum term must be at least three years and must not exceed five years.

3. [Effective 9/1/2020] Maximum term of sentence. Except as provided in subdivision five of this section, or as provided in subdivision five of section 70.80 of this article, the maximum term of an indeterminate sentence for a second felony offender must be fixed by the court as follows:

- (a) For a class A-II felony, the term must be life imprisonment;
- (b) For a class B felony, the term must be at least nine years and must not exceed twenty-five years;
- (c) For a class C felony, the term must be at least six years and must not exceed fifteen years;
- (d) For a class D felony, the term must be at least four years and must not exceed seven years; and
- (e) For a class E felony, the term must be at least three years and must not exceed four years.

4. Minimum period of imprisonment.

- (a) The minimum period of imprisonment for a second felony offender convicted of a class A-II felony must be fixed by the court at no less than six years and not to exceed twelve and one-half years and must be specified in the sentence, except that for the class A-II felony of predatory sexual assault as defined in section 130.95 of this chapter or the class A-II felony of predatory sexual assault against a

child as defined in section 130.96 of this chapter, such minimum period shall be not less than ten years nor more than twenty-five years.

(b) Except as provided in paragraph (a), the minimum period of imprisonment under an indeterminate sentence for a second felony offender must be fixed by the court at one-half of the maximum term imposed and must be specified in the sentence.

6. [Repealed 9/1/2020] Determinate sentence. When the court has found, pursuant to the provisions of the criminal procedure law, that a person is a second felony offender and the sentence to be imposed on such person is for a violent felony offense, as defined in subdivision one of section 70.02, the court must impose a determinate sentence of imprisonment the term of which must be fixed by the court as follows:

(a) For a class B violent felony offense, the term must be at least eight years and must not exceed twenty-five years;

(b) For a class C violent felony offense, the term must be at least five years and must not exceed fifteen years;

(c) For a class D violent felony offense, the term must be at least three years and must not exceed seven years; and

(d) For a class E violent felony offense, the term must be at least two years and must not exceed four years.

7. [Repealed 9/1/2020] Notwithstanding any other provision of law, in the case of a person sentenced for a specified offense or offenses as defined in subdivision five of section 410.91 of the criminal procedure law, who stands convicted of no other felony offense, who has not previously been convicted of either a violent felony offense as defined in section 70.02 of this article, a class A felony offense or a class B felony offense, and is not under the jurisdiction of or awaiting delivery to the department of corrections and community supervision, the court may direct that such sentence be executed as a parole supervision sentence as defined in and

pursuant to the procedures prescribed in section 410.91 of the criminal procedure law.

N.Y. Penal Law § 70.06

Amended by New York Laws 2019, ch. 55, Sec. O-19, eff. 4/12/2019.

Amended by New York Laws 2017, ch. 55, Sec. A-19, eff. 4/20/2017.

Amended by New York Laws 2015, ch. 55, Sec. B-19, eff. 4/13/2015.

N.Y. Penal Law § 70.07

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Current through 2019 NY Law Chapters 1-49, 55-105, 107-489

1. A person who stands convicted of a felony offense for a sexual assault against a child, having been subjected to a predicate felony conviction for a sexual assault against a child, must be sentenced in accordance with the provisions of subdivision four or five of this section.
2. A "sexual assault against a child" means a felony offense, other than persistent sexual abuse as defined in section 130.53 of this chapter, (a) the essential elements of which include the commission or attempted commission of sexual conduct, as defined in subdivision ten of section 130.00 of this chapter, (b) committed or attempted to be committed against a child less than fifteen years old.
3. For purposes of determining whether a person has been subjected to a predicate felony conviction under this section, the criteria set forth in paragraph (b) of subdivision one of section 70.06 shall apply provided however that for purposes of this subdivision, the terms "ten year" or "ten years", as provided in subparagraphs (iv) and (v) of paragraph (b) of subdivision one of such section 70.06, shall be "fifteen year" or "fifteen years". The provisions of section 400.19 of the criminal procedure law shall govern the procedures that must be followed to determine whether a person who stands convicted of a sexual assault against a child has been previously subjected to a predicate felony conviction for such a sexual assault and whether such offender was eighteen years of age or older at the time of the commission of the predicate felony.
4. Where the court has found pursuant to subdivision three of this section that a person who stands convicted of a felony offense defined in article one hundred thirty of this chapter for the commission or attempted commission of a sexual assault against a child has been subjected to a predicate felony conviction for a sexual assault against a child, the court shall sentence the defendant as follows:

(a) where the defendant stands convicted of such sexual assault against a child and such conviction is for a class A-II or class B felony offense, and the predicate conviction for such sexual assault against a child is for a class A-II, class B or class C felony offense, the court shall impose an indeterminate sentence of imprisonment, the maximum term of which shall be life and the minimum period of which shall be at least fifteen years and no more than twenty-five years;

(b) where the defendant stands convicted of such sexual assault against a child and the conviction is for a class C felony offense, and the predicate conviction for such sexual assault against a child is for a class A-II, class B or class C felony offense, the court shall impose a determinate sentence of imprisonment, the term of which must be at least twelve years and must not exceed thirty years; provided however, that if the court determines that a longer sentence is warranted, the court shall set forth on the record the reasons for such determination and, in lieu of imposing such sentence of imprisonment, may impose an indeterminate sentence of imprisonment, the maximum term of which shall be life and the minimum period of which shall be at least fifteen years and no more than twenty-five years;

(c) where the defendant stands convicted of such sexual assault against a child and the conviction is for a class B felony offense, and the predicate conviction for such sexual assault against a child is for a class D or class E felony offense, the court shall impose a determinate sentence of imprisonment, the term of which must be at least twelve years and must not exceed thirty years;

(d) where the defendant stands convicted of such sexual assault against a child and the conviction is for a class C felony offense, and the predicate conviction for such sexual assault against a child is for a class D or class E felony offense, the court shall impose a determinate sentence of imprisonment, the term of which must be at least ten years and must not exceed twenty-five years;

(e) where the defendant stands convicted of such sexual assault against a child and the conviction is for a class D felony offense, and the predicate conviction for such sexual assault against a child is for a felony offense, the court shall impose a

determinate sentence of imprisonment, the term of which must be at least five years and must not exceed fifteen years; and

(f) where the defendant stands convicted of such sexual assault against a child and the conviction is for a class E felony offense, and the predicate conviction for such sexual assault against a child is for a felony offense, the court shall impose a determinate sentence of imprisonment, the term of which must be at least four years and must not exceed twelve years.

5. Notwithstanding subdivision four of this section, where the court has found pursuant to subdivision three of this section that a person: (a) stands convicted of a felony offense defined in article one hundred thirty of this chapter for the commission or attempted commission of a sexual assault against a child; and (b) has been subjected to a predicate felony conviction for sexual assault against a child as defined in subdivision two of this section; and (c) who was under the age of eighteen years at the time of the commission of such predicate felony offense, then the court may, in lieu of the sentence authorized by subdivision four of this section, sentence the defendant to a term of imprisonment in accordance with the sentence authorized for the instant felony offense pursuant to subdivision three of section 70.04 of this article. The court shall set forth on the record the reasons for such determination.

N.Y. Penal Law § 70.07

N.Y. Penal Law § 70.08

Current through 2019 NY Law Chapters 1-49, 55-105, 107-489

1. Definition of persistent violent felony offender.

(a) A persistent violent felony offender is a person who stands convicted of a violent felony offense as defined in subdivision one of section 70.02 or the offense of predatory sexual assault as defined in section 130.95 of this chapter or the offense of predatory sexual assault against a child as defined in section 130.96 of this chapter, after having previously been subjected to two or more predicate violent felony convictions as defined in paragraph (b) of subdivision one of section 70.04 of this article.

(b) For the purpose of determining whether a person has two or more predicate violent felony convictions, the criteria set forth in paragraph (b) of subdivision one of section 70.04 shall apply.

2. Authorized sentence. When the court has found, pursuant to the provisions of the criminal procedure law, that a person is a persistent violent felony offender the court must impose an indeterminate sentence of imprisonment, the maximum term of which shall be life imprisonment. The minimum period of imprisonment under such sentence must be in accordance with subdivision three of this section.

3. [Effective until 9/1/2020] Minimum period of imprisonment. The minimum period of imprisonment under an indeterminate life sentence for a persistent violent felony offender must be fixed by the court as follows:

(a) For the class A-II felony of predatory sexual assault as defined in section 130.95 of this chapter or the class A-II felony of predatory sexual assault against a child as defined in section 130.96 of this cha period must be twenty-five years;



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- (a-1)** For a class B felony, the minimum period must be at least twenty years and must not exceed twenty-five years;
- (b)** For a class C felony, the minimum period must be at least sixteen years and must not exceed twenty-five years;
- (c)** For a class D felony, the minimum period must be at least twelve years and must not exceed twenty-five years.

3. [Effective 9/1/2020] Minimum period of imprisonment. The minimum period of imprisonment under an indeterminate life sentence for a persistent violent felony offender must be fixed by the court as follows:

- (a)** For the class A-II felony of predatory sexual assault as defined in section 130.95 of this chapter or the class A-II felony of predatory sexual assault against a child as defined in section 130.96 of this chapter, the minimum period must be twenty-five years;
- (a-1)** For a class B felony, the minimum period must be at least ten years and must not exceed twenty-five years;
- (b)** For a class C felony, the minimum period must be at least eight years and must not exceed twenty-five years;
- (c)** For a class D felony, the minimum period must be at least six years and must not exceed twenty-five years.

N.Y. Penal Law § 70.08

Amended by New York Laws 2019, ch. 55, Sec. O-19, eff. 4/12/2019.

Amended by New York Laws 2017, ch. 55, Sec. A-19, eff. 4/20/2017.

Amended by New York Laws 2015, ch. 55, Sec. B-19, eff. 4/13/2015.



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N.Y. Penal Law § 70.10

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Current through 2019 NY Law Chapters 1-49, 55-105, 107-489

1. Definition of persistent felony offender.

(a) A persistent felony offender is a person, other than a persistent violent felony offender as defined in section 70.08, who stands convicted of a felony after having previously been convicted of two or more felonies, as provided in paragraphs (b) and (c) of this subdivision.

(b) A previous felony conviction within the meaning of paragraph (a) of this subdivision is a conviction of a felony in this state, or of a crime in any other jurisdiction, provided:

(i) that a sentence to a term of imprisonment in excess of one year, or a sentence to death, was imposed therefor; and

(ii) that the defendant was imprisoned under sentence for such conviction prior to the commission of the present felony; and

(iii) that the defendant was not pardoned on the ground of innocence; and

(iv) that such conviction was for a felony offense other than persistent sexual abuse, as defined in section 130.53 of this chapter.

(c) For the purpose of determining whether a person has two or more previous felony convictions, two or more convictions of crimes that were committed prior to the time the defendant was imprisoned under sentence for any of such convictions shall be deemed to be only one conviction.

2. Authorized sentence. When the court has found, pursuant to the provisions of the criminal procedure law, that a person is a persistent felony offender, and when it is

of the opinion that the history and character of the defendant and the nature and circumstances of his criminal conduct indicate that extended incarceration and life-time supervision will best serve the public interest, the court, in lieu of imposing the sentence of imprisonment authorized by section 70.00, 70.02, 70.04, 70.06 or subdivision five of section 70.80 for the crime of which such person presently stands convicted, may impose the sentence of imprisonment authorized by that section for a class A-I felony. In such event the reasons for the court's opinion shall be set forth in the record.

N.Y. Penal Law § 70.10

R.I. Gen. Laws § 12-19-21

 Download

Current through Public Law 310

(a) If any person who has been previously convicted in this or any other state of two (2) or more felony offenses arising from separate and distinct incidents and sentenced on two (2) or more occasions to serve a term in prison is, after the convictions and sentences, convicted in this state of any offense punished by imprisonment for more than one year, that person shall be deemed a "habitual criminal." Upon conviction, the person deemed a habitual criminal shall be punished by imprisonment in the adult correctional institutions for a term not exceeding twenty-five (25) years, in addition to any sentence imposed for the offense of which he or she was last convicted. No conviction and sentence for which the person has subsequently received a pardon granted on the ground that he or she was innocent shall be considered a conviction and sentence for the purpose of determining whether the person is a habitual criminal.

(b) Whenever it appears a person shall be deemed a "habitual criminal," the attorney general, within forty-five (45) days of the arraignment, but in no case later than the date of the pretrial conference, may file with the court a notice specifying that the defendant, upon conviction, is subject to the imposition of an additional sentence in accordance with this section; provided, that in no case shall the fact that the defendant is alleged to be a habitual offender be an issue upon the trial of the defendant, nor shall it be disclosed to the jury. Upon any plea of guilty or nolo contendere or verdict or finding of guilty of the defendant, a hearing shall be held by the court sitting without a jury to determine whether the person so convicted is a habitual criminal. Notice shall be given to the defendant and the attorney general at least ten (10) days prior to the hearing. Duly authenticated copies of former judgments and commitments which comprise the two (2) or more prior convictions and imprisonments required under this section shall be prima facie evidence of the

defendant's former convictions and imprisonments. If it appears by a preponderance of the evidence presented that the defendant is a habitual criminal under this section, he or she shall be sentenced by the court to an additional consecutive term of imprisonment not exceeding twenty-five (25) years; and provided further, that the court shall order the defendant to serve a minimum number of years of the sentence before he or she becomes eligible for parole.

R.I. Gen. Laws § 12-19-21

G.L. 1896, ch. 285, § 68; P.L. 1896, ch. 336, § 1; G.L. 1909, ch. 354, § 68; G.L. 1909, ch. 354, § 71; P.L. 1915, ch. 1261, § 1; G.L. 1923, ch. 407, § 71; G.L. 1938, ch. 625, § 64; impl. am. P.L. 1956, ch. 3721, § 1; G.L. 1956, §12-19-21; P.L. 1982, ch. 226, §§ 1, 2; P.L. 1988, ch. 402, § 1.

S.D. Codified Laws § 22-7-7

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Current with changes from the 2019 Legislative Session, except for transfers by the Code Commission and Code Counsel pursuant to Chapter 22

If a defendant has been convicted of one or two prior felonies under the laws of this state or any other state or the United States, in addition to the principal felony, the sentence for the principal felony shall be enhanced by changing the class of the principal felony to the next class which is more severe, but in no circumstance may the enhancement exceed the sentence for a Class C felony. The determination of whether a prior offense is a felony for purposes of this chapter shall be determined by whether the prior offense was a felony under the laws of this state or under the laws of the United States at the time of conviction of such prior offense. For the purpose of this section, if the principal felony is not classified it shall be enhanced to the class which has an equal maximum imprisonment. For the purposes of this section, if the maximum imprisonment for the principal felony falls between two classifications, the principal felony shall be enhanced to the class which has the less severe maximum authorized imprisonment.

SDCL 22-7-7

SDC 1939, § 13.0611; SDCL, § 22-7-1; SL 1976, ch 158, § 7-2; SL 1977, ch 189, § 18; SL 2005, ch 120, §383.

S.D. Codified Laws § 22-7-8

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Current with changes from the 2019 Legislative Session, except for transfers by the Code Commission and Code Counsel pursuant to Chapter 22

If a defendant has been convicted of three or more felonies in addition to the principal felony and one or more of the prior felony convictions was for a crime of violence as defined in subdivision 22-1-2(9), the sentence for the principal felony shall be enhanced to the sentence for a Class C felony.

SDCL 22-7-8

SDC 1939, § 13.0611; SDCL, § 22-7-1; SL 1976, ch 158, § 7-3; SL 1977, ch 189, § 19; SL 1981, ch 13, § 4; SL 1984, ch 166, § 1; SL 2005, ch 120, §384.

Tex. Pen. Code § 12.42

 Download

Current with legislation from the 2019 Regular Session effective as of September 1, 2019

(a) Except as provided by Subsection (c)(2), if it is shown on the trial of a felony of the third degree that the defendant has previously been finally convicted of a felony other than a state jail felony punishable under Section 12.35(a), on conviction the defendant shall be punished for a felony of the second degree.

(b) Except as provided by Subsection (c)(2) or (c)(4), if it is shown on the trial of a felony of the second degree that the defendant has previously been finally convicted of a felony other than a state jail felony punishable under Section 12.35(a), on conviction the defendant shall be punished for a felony of the first degree.

(c)

(1) If it is shown on the trial of a felony of the first degree that the defendant has previously been finally convicted of a felony other than a state jail felony punishable under Section 12.35(a), on conviction the defendant shall be punished by imprisonment in the Texas Department of Criminal Justice for life, or for any term of not more than 99 years or less than 15 years. In addition to imprisonment, an individual may be punished by a fine not to exceed \$10,000.

(2) Notwithstanding Subdivision (1), a defendant shall be punished by imprisonment in the Texas Department of Criminal Justice for life if:

(A) the defendant is convicted of an offense:

(i) under Section 20A.02(a)(7) or (8), 21.11(a)(1), 22.021, or 22.011, Penal Code;

(ii) under Section 20.04(a)(4), Penal Code, if the defendant committed the offense with the intent to violate or abuse the victim sexually; or

(iii) under Section 30.02, Penal Code, punishable under Subsection (d) of that section, if the defendant committed the offense with the intent to commit a felony described by Subparagraph (i) or (ii) or a felony under Section 21.11, Penal Code; and

(B) the defendant has been previously convicted of an offense:

(i) under Section 43.25 or 43.26, Penal Code, or an offense under Section 43.23, Penal Code, punishable under Subsection (h) of that section;

(ii) under Section 20A.02(a)(7) or (8), 21.02, 21.11, 22.011, 22.021, or 25.02, Penal Code;

(iii) under Section 20.04(a)(4), Penal Code, if the defendant committed the offense with the intent to violate or abuse the victim sexually;

(iv) under Section 30.02, Penal Code, punishable under Subsection (d) of that section, if the defendant committed the offense with the intent to commit a felony described by Subparagraph (ii) or (iii); or

(v) under the laws of another state containing elements that are substantially similar to the elements of an offense listed in Subparagraph (i), (ii), (iii), or (iv).

(3) Notwithstanding Subdivision (1) or (2), a defendant shall be punished for a capital felony if it is shown on the trial of an offense under Section 22.021 otherwise punishable under Subsection (f) of that section that the defendant has previously been finally convicted of:

(A) an offense under Section 22.021 that was committed against a victim described by Section 22.021(f)(1) or was committed against a victim described by Section 22.021(f)(2) and in a manner described by Section 22.021(a)(2)(A); or

(B) an offense that was committed under the laws of another state that:

(i) contains elements that are substantially similar to the elements of an offense under Section 22.021; and

(ii) was committed against a victim described by Section 22.021(f)(1) or was committed against a victim described by Section 22.021(f)(2) and in a manner substantially similar to a manner described by Section 22.021(a)(2)(A).

(4) Notwithstanding Subdivision (1) or (2), and except as provided by Subdivision (3) for the trial of an offense under Section 22.021 as described by that subdivision, a defendant shall be punished by imprisonment in the Texas Department of Criminal Justice for life without parole if it is shown on the trial of an offense under Section 20A.03 or of a sexually violent offense, committed by the defendant on or after the defendant's 18th birthday, that the defendant has previously been finally convicted of:

(A) an offense under Section 20A.03 or of a sexually violent offense ; or

(B) an offense that was committed under the laws of another state and that contains elements that are substantially similar to the elements of an offense under Section 20A.03 or of a sexually violent offense .

(5) A previous conviction for a state jail felony punishable under Section 12.35(a) may not be used for enhancement purposes under Subdivision (2).

(d) Except as provided by Subsection (c)(2) or (c)(4), if it is shown on the trial of a felony offense other than a state jail felony punishable under Section 12.35(a) that the defendant has previously been finally convicted of two felony offenses, and the second previous felony conviction is for an offense that occurred subsequent to the first previous conviction having become final, on conviction the defendant shall be punished by imprisonment in the Texas Department of Criminal Justice for life, or for any term of not more than 99 years or less than 25 years. A previous conviction for a state jail felony punishable under Section 12.35(a) may not be used for enhancement purposes under this subsection.

(e) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 834, Sec. 6, eff. September 1, 2011.

(f) For the purposes of Subsections (a), (b), and (c)(1), an adjudication by a juvenile court under Section 54.03, Family Code, that a child engaged in delinquent conduct on or after January 1, 1996, constituting a felony offense for which the child is

committed to the Texas Juvenile Justice Department under Section 54.04(d)(2), (d)(3), or (m), Family Code, or Section 54.05(f), Family Code, or to a post-adjudication secure correctional facility under Section 54.04011, Family Code, is a final felony conviction.

(g) For the purposes of Subsection (c)(2):

(1) a defendant has been previously convicted of an offense listed under Subsection (c)(2)(B) if the defendant was adjudged guilty of the offense or entered a plea of guilty or nolo contendere in return for a grant of deferred adjudication, regardless of whether the sentence for the offense was ever imposed or whether the sentence was probated and the defendant was subsequently discharged from community supervision; and

(2) a conviction under the laws of another state for an offense containing elements that are substantially similar to the elements of an offense listed under Subsection (c)(2)(B) is a conviction of an offense listed under Subsection (c)(2)(B).

(h) In this section, "sexually violent offense" means an offense:

(1) described by Article 62.001(6), Code of Criminal Procedure; and

(2) for which an affirmative finding has been entered under Article 42.015(b) or 42A.105(a), Code of Criminal Procedure, for an offense other than an offense under Section 21.02 or 22.021.

Tex. Pen. Code § 12.42

Amended by Acts 2015, Texas Acts of the 84th Leg. - Regular Session, ch. 770, Sec. 2.82, eff. 1/1/2017.

Amended by Acts 2013, 83rd Leg. - Regular Session, ch. 1323, Sec. 11, eff. 12/1/2013.

Amended by Acts 2013, 83rd Leg. - Regular Session, ch. 663, Sec. 9, eff. 9/1/2013.

Amended by Acts 2013, 83rd Leg. - Regular Session, ch. 663, Sec. 8, eff. 9/1/2013.

Amended by Acts 2013, 83rd Leg. - Regular Session, ch. 663, Sec. 7, eff. 9/1/2013.

Amended by Acts 2013, 83rd Leg. - Regular Session, ch. 161, Sec. 16.003, eff. 9/1/2013.

Amended by Acts 2013, 83rd Leg. - Regular Session, ch. 161, Sec. 16.002, eff. 9/1/2013.

Amended by Acts 2013, 83rd Leg. - Regular Session, ch. 161, Sec. 16.001, eff. 9/1/2013.

Amended By Acts 2011, 82nd Leg., R.S., Ch. 1, Sec. 6.02, eff. September 1, 2011.

Amended By Acts 2011, 82nd Leg., R.S., Ch. 122, Sec. 14, eff. September 1, 2011.

Amended By Acts 2011, 82nd Leg., R.S., Ch. 834, Sec. 1, eff. September 1, 2011.

Amended By Acts 2011, 82nd Leg., R.S., Ch. 834, Sec. 2, eff. September 1, 2011.

Amended By Acts 2011, 82nd Leg., R.S., Ch. 834, Sec. 3, eff. September 1, 2011.

Amended By Acts 2011, 82nd Leg., R.S., Ch. 834, Sec. 4, eff. September 1, 2011.

Amended By Acts 2011, 82nd Leg., R.S., Ch. 834, Sec. 6, eff. September 1, 2011.

Amended By Acts 2011, 82nd Leg., R.S., Ch. 1119, Sec. 3, eff. September 1, 2011.

Amended By Acts 2011, 82nd Leg., R.S., Ch. 1119, Sec. 4, eff. September 1, 2011.

Amended By Acts 2009, 81st Leg., R.S., Ch. 87, Sec. 25.150, eff. September 1, 2009.

Amended By Acts 2007, 80th Leg., R.S., Ch. 340, Sec. 1, eff. September 1, 2007.

Amended By Acts 2007, 80th Leg., R.S., Ch. 340, Sec. 2, eff. September 1, 2007.

Amended By Acts 2007, 80th Leg., R.S., Ch. 340, Sec. 3, eff. September 1, 2007.

Amended By Acts 2007, 80th Leg., R.S., Ch. 340, Sec. 4, eff. September 1, 2007.

Amended By Acts 2007, 80th Leg., R.S., Ch. 593, Sec. 1.14, eff. September 1, 2007.

Amended By Acts 2007, 80th Leg., R.S., Ch. 593, Sec. 1.15, eff. September 1, 2007.

Amended By Acts 2003, 78th Leg., ch. 283, Sec. 53, eff. Sept. 1, 2003

Amended By Acts 2003, 78th Leg., ch. 1005, Sec. 2, eff. Sept. 1, 2003.

Amended By Acts 1999, 76th Leg., ch. 62, Sec. 15.01, eff. Sept. 1, 1999

Amended By Acts 1997, 75th Leg., ch. 665, Sec. 1, 2, eff. Sept. 1, 1997

Amended By Acts 1997, 75th Leg., ch. 667, Sec. 4, eff. Sept. 1, 1997

Amended By Acts 1995, 74th Leg., ch. 262, Sec. 78, eff. Jan. 1, 1996

Amended By Acts 1995, 74th Leg., ch. 318, Sec. 1, eff. Jan. 1, 1996

Amended By Acts 1995, 74th Leg., ch. 250, Sec. 1, eff. Sept. 1, 1995

Amended By Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994

Amended By Acts 1985, 69th Leg., ch. 582, Sec. 1, eff. Sept. 1, 1985

Amended by Acts 1983, 68th Leg., p. 1750, ch. 339, Sec. 1, eff. Sept. 1, 1983

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974.

Tex. Pen. Code § 12.425

 Download

Current with legislation from the 2019 Regular Session effective as of September 1, 2019

(a) If it is shown on the trial of a state jail felony punishable under Section 12.35(a) that the defendant has previously been finally convicted of two state jail felonies punishable under Section 12.35(a), on conviction the defendant shall be punished for a felony of the third degree.

(b) If it is shown on the trial of a state jail felony punishable under Section 12.35(a) that the defendant has previously been finally convicted of two felonies other than a state jail felony punishable under Section 12.35(a), and the second previous felony conviction is for an offense that occurred subsequent to the first previous conviction having become final, on conviction the defendant shall be punished for a felony of the second degree.

(c) If it is shown on the trial of a state jail felony for which punishment may be enhanced under Section 12.35(c) that the defendant has previously been finally convicted of a felony other than a state jail felony punishable under Section 12.35(a), on conviction the defendant shall be punished for a felony of the second degree.

Tex. Pen. Code § 12.425

Added by Acts 2011, 82nd Leg., R.S., Ch. 834, Sec. 5, eff. September 1, 2011.

Tex. Pen. Code § 12.43

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Current with legislation from the 2019 Regular Session effective as of September 1, 2019

(a) If it is shown on the trial of a Class A misdemeanor that the defendant has been before convicted of a Class A misdemeanor or any degree of felony, on conviction he shall be punished by:

(1) a fine not to exceed \$4,000;

(2) confinement in jail for any term of not more than one year or less than 90 days; or

(3) both such fine and confinement.

(b) If it is shown on the trial of a Class B misdemeanor that the defendant has been before convicted of a Class A or Class B misdemeanor or any degree of felony, on conviction he shall be punished by:

(1) a fine not to exceed \$2,000;

(2) confinement in jail for any term of not more than 180 days or less than 30 days; or

(3) both such fine and confinement.

(c) If it is shown on the trial of an offense punishable as a Class C misdemeanor under Section 42.01 or 49.02 that the defendant has been before convicted under either of those sections three times or three times for any combination of those offenses and each prior offense was committed in the 24 months preceding the date of commission of the instant offense, the defendant shall be punished by:

(1) a fine not to exceed \$2,000;

(2) confinement in jail for a term not to exceed 180 days; or

(3) both such fine and confinement.

(d) If the punishment scheme for an offense contains a specific enhancement provision increasing punishment for a defendant who has previously been convicted of the offense, the specific enhancement provision controls over this section.

Tex. Pen. Code § 12.43

Amended By Acts 1999, 76th Leg., ch. 564, Sec. 1, eff. Sept. 1, 1999.

Amended By Acts 1995, 74th Leg., ch. 318, Sec. 2, eff. Sept. 1, 1995

Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974.

Utah Code § 76-3-203.5

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Current through Chapter 5 of the 2019 First Special Session

(1) As used in this section:

(a) "Felony" means any violation of a criminal statute of the state, any other state, the United States, or any district, possession, or territory of the United States for which the maximum punishment the offender may be subjected to exceeds one year in prison.

(b) "Habitual violent offender" means a person convicted within the state of any violent felony and who on at least two previous occasions has been convicted of a violent felony and committed to either prison in Utah or an equivalent correctional institution of another state or of the United States either at initial sentencing or after revocation of probation.

(c) "Violent felony" means:

(i) any of the following offenses, or any attempt, solicitation, or conspiracy to commit any of the following offenses punishable as a felony:

(A) aggravated arson, arson, knowingly causing a catastrophe, and criminal mischief, Title 76, Chapter 6, Part 1, Property Destruction;

(B) assault by prisoner, Section 76-5-102.5;

(C) disarming a police officer, Section 76-5-102.8;

(D) aggravated assault, Section 76-5-103;

(E) aggravated assault by prisoner, Section 76-5-103.5;

(F) mayhem, Section 76-5-105;

- (G)** stalking, Subsection 76-5-106.5(2) or (3);
- (H)** threat of terrorism, Section 76-5-107.3;
- (I)** child abuse, Subsection 76-5-109(2)(a) or (b);
- (J)** commission of domestic violence in the presence of a child, Section 76-5-109.1;
- (K)** abuse or neglect of a child with a disability, Section 76-5-110;
- (L)** abuse, neglect, or exploitation of a vulnerable adult, Section 76-5-111;
- (M)** endangerment of a child or vulnerable adult, Section 76-5-112.5;
- (N)** criminal homicide offenses under Title 76, Chapter 5, Part 2, Criminal Homicide;
- (O)** kidnapping, child kidnapping, and aggravated kidnapping under Title 76, Chapter 5, Part 3, Kidnapping, Trafficking, and Smuggling;
- (P)** rape, Section 76-5-402;
- (Q)** rape of a child, Section 76-5-402.1;
- (R)** object rape, Section 76-5-402.2;
- (S)** object rape of a child, Section 76-5-402.3;
- (T)** forcible sodomy, Section 76-5-403;
- (U)** sodomy on a child, Section 76-5-403.1;
- (V)** forcible sexual abuse, Section 76-5-404;
- (W)** aggravated sexual abuse of a child or sexual abuse of a child, Section 76-5-404.1;

- (X)** aggravated sexual assault, Section 76-5-405;
- (Y)** sexual exploitation of a minor, Section 76-5b-201;
- (Z)** sexual exploitation of a vulnerable adult, Section 76-5b-202;
- (AA)** aggravated burglary and burglary of a dwelling under Title 76, Chapter 6, Part 2, Burglary and Criminal Trespass;
- (BB)** aggravated robbery and robbery under Title 76, Chapter 6, Part 3, Robbery;
- (CC)** theft by extortion under Subsection 76-6-406(2)(a) or (b);
- (DD)** tampering with a witness under Subsection 76-8-508(1);
- (EE)** retaliation against a witness, victim, or informant under Section 76-8-508.3;
- (FF)** tampering with a juror under Subsection 76-8-508.5(2)(c);
- (GG)** extortion to dismiss a criminal proceeding under Section 76-8-509 if by any threat or by use of force theft by extortion has been committed pursuant to Subsections 76-6-406(2)(a), (b), and (i);
- (HH)** possession, use, or removal of explosive, chemical, or incendiary devices under Subsections 76-10-306(3) through (6);
- (II)** unlawful delivery of explosive, chemical, or incendiary devices under Section 76-10-307;
- (JJ)** purchase or possession of a dangerous weapon or handgun by a restricted person under Section 76-10-503;
- (KK)** unlawful discharge of a firearm under Section 76-10-508;

(LL) aggravated exploitation of prostitution under Subsection 76-10-1306(1) (a);

(MM) bus hijacking under Section 76-10-1504; and

(NN) discharging firearms and hurling missiles under Section 76-10-1505; or

(ii) any felony violation of a criminal statute of any other state, the United States, or any district, possession, or territory of the United States which would constitute a violent felony as defined in this Subsection (1) if committed in this state.

(2) If a person is convicted in this state of a violent felony by plea or by verdict and the trier of fact determines beyond a reasonable doubt that the person is a habitual violent offender under this section, the penalty for a:

(a) third degree felony is as if the conviction were for a first degree felony;

(b) second degree felony is as if the conviction were for a first degree felony; or

(c) first degree felony remains the penalty for a first degree penalty except:

(i) the convicted person is not eligible for probation; and

(ii) the Board of Pardons and Parole shall consider that the convicted person is a habitual violent offender as an aggravating factor in determining the length of incarceration.

(3)

(a) The prosecuting attorney, or grand jury if an indictment is returned, shall provide notice in the information or indictment that the defendant is subject to punishment as a habitual violent offender under this section. Notice shall include the case number, court, and date of conviction or commitment of any case relied upon by the prosecution.

(b)

(i) The defendant shall serve notice in writing upon the prosecutor if the defendant intends to deny that:

(A) the defendant is the person who was convicted or committed;

(B) the defendant was represented by counsel or had waived counsel; or

(C) the defendant's plea was understandingly or voluntarily entered.

(ii) The notice of denial shall be served not later than five days prior to trial and shall state in detail the defendant's contention regarding the previous conviction and commitment.

(4)

(a) If the defendant enters a denial under Subsection (3)(b) and if the case is tried to a jury, the jury may not be told, until after it returns its verdict on the underlying felony charge, of the:

(i) defendant's previous convictions for violent felonies, except as otherwise provided in the Utah Rules of Evidence; or

(ii) allegation against the defendant of being a habitual violent offender.

(b) If the jury's verdict is guilty, the defendant shall be tried regarding the allegation of being an habitual violent offender by the same jury, if practicable, unless the defendant waives the jury, in which case the allegation shall be tried immediately to the court.

(c)

(i) Before or at the time of sentencing the trier of fact shall determine if this section applies.

(ii) The trier of fact shall consider any evidence presented at trial and the prosecution and the defendant shall be afforded an opportunity to present any necessary additional evidence.

(iii) Before sentencing under this section, the trier of fact shall determine whether this section is applicable beyond a reasonable doubt.

(d) If any previous conviction and commitment is based upon a plea of guilty or no contest, there is a rebuttable presumption that the conviction and commitment were regular and lawful in all respects if the conviction and commitment occurred after January 1, 1970. If the conviction and commitment occurred prior to January 1, 1970, the burden is on the prosecution to establish by a preponderance of the evidence that the defendant was then represented by counsel or had lawfully waived the right to have counsel present, and that the defendant's plea was understandingly and voluntarily entered.

(e) If the trier of fact finds this section applicable, the court shall enter that specific finding on the record and shall indicate in the order of judgment and commitment that the defendant has been found by the trier of fact to be a habitual violent offender and is sentenced under this section.

(5)

(a) The sentencing enhancement provisions of Section 76-3-407 supersede the provisions of this section.

(b) Notwithstanding Subsection (5)(a), the "violent felony" offense defined in Subsection (1)(c) shall include any felony sexual offense violation of Title 76, Chapter 5, Part 4, Sexual Offenses, to determine if the convicted person is a habitual violent offender.

(6) The sentencing enhancement described in this section does not apply if:

(a) the offense for which the person is being sentenced is:

(i) a grievous sexual offense;

(ii) child kidnapping, Section 76-5-301.1;

(iii) aggravated kidnapping, Section 76-5-302; or

(iv) forcible sexual abuse, Section 76-5-404; and

(b) applying the sentencing enhancement provided for in this section would result in a lower maximum penalty than the penalty provided for under the section that describes the offense for which the person is being sentenced.

Utah Code § 76-3-203.5

Amended by Chapter 278, 2013 General Session ,§ 58, eff. 5/14/2013.

Amended by Chapter 320, 2011 General SessionAmended by Chapter 366, 2011 General Session

Vt. Stat. tit. 13 § 11



Download

Current through 2019 legislation.

A person who, after having been three times convicted within this state of felonies or attempts to commit felonies, or under the law of any other state, government or country, of crimes which, if committed within this state, would be felonious, commits a felony other than murder within this state, may be sentenced upon conviction of such fourth or subsequent offense to imprisonment up to and including life.

13 V.S.A. § 11

Amended 1971, No. 199 (Adj. Sess.), § 15; 1995, No. 50, § 1.

Wis. Stat. § 939.62

 Download

Current through Acts 2019, ch. 21

(1) If the actor is a repeater, as that term is defined in sub. (2), and the present conviction is for any crime for which imprisonment may be imposed, except for an escape under s. 946.42 or a failure to report under s. 946.425, the maximum term of imprisonment prescribed by law for that crime may be increased as follows:

(a) A maximum term of imprisonment of one year or less may be increased to not more than 2 years.

(b) A maximum term of imprisonment of more than one year but not more than 10 years may be increased by not more than 2 years if the prior convictions were for misdemeanors and by not more than 4 years if the prior conviction was for a felony.

(c) A maximum term of imprisonment of more than 10 years may be increased by not more than 2 years if the prior convictions were for misdemeanors and by not more than 6 years if the prior conviction was for a felony.

(2) The actor is a repeater if the actor was convicted of a felony during the 5-year period immediately preceding the commission of the crime for which the actor presently is being sentenced, or if the actor was convicted of a misdemeanor on 3 separate occasions during that same period, which convictions remain of record and unreversed. It is immaterial that sentence was stayed, withheld or suspended, or that the actor was pardoned, unless such pardon was granted on the ground of innocence. In computing the preceding 5-year period, time which the actor spent in actual confinement serving a criminal sentence shall be excluded.

(2m)

(a) In this subsection:

1m. "Serious child sex offense" means any of the following:

a. A violation of s. 948.02, 948.025, 948.05, 948.051, 948.055, 948.06, 948.07, 948.08, 948.081, 948.085, 948.095 or 948.30 or, if the victim was a minor and the convicted person was not the victim's parent, a violation of s. 940.31.

b. A crime at any time under federal law or the law of any other state or, prior to July 16, 1998, under the law of this state that is comparable to a crime specified in subd. 1m. a.

2m. "Serious felony" means any of the following:

a. Any felony under s. 961.41(1), (1m) or (1x) that is a Class A, B, or C felony or, if the felony was committed before February 1, 2003, that is or was punishable by a maximum prison term of 30 years or more.

am. A crime under s. 961.65.

b. Any felony under s. 940.09(1), 1999 stats., s. 943.23(1m) or (1r), 1999 stats., s. 948.35(1) (b) or (c), 1999 stats., or s. 948.36, 1999 stats., or s. 940.01, 940.02, 940.03, 940.05, 940.09(1c), 940.16, 940.19(5), 940.195(5), 940.21, 940.225(1) or (2), 940.305, 940.31, 941.327(2) (b) 4., 943.02, 943.10(2), 943.23(1g), 943.32(2), 946.43(1m), 948.02(1) or (2), 948.025, 948.03(2) (a) or (c) or (5) (a) 1., 2., 3., or 4., 948.05, 948.06, 948.07, 948.075, 948.08, 948.081, 948.085, or 948.30 (2).

c. The solicitation, conspiracy or attempt, under s. 939.30, 939.31 or 939.32, to commit a Class A felony.

d. A crime at any time under federal law or the law of any other state or, prior to April 28, 1994, under the law of this state that is comparable to a crime specified in this subd. 2m. a., am., b., or c.

(b) The actor is a persistent repeater if one of the following applies:

- 1.** The actor has been convicted of a serious felony on 2 or more separate occasions at any time preceding the serious felony for which he or she presently is being sentenced under ch. 973, which convictions remain of record and unreversed and, of the 2 or more previous convictions, at least one conviction occurred before the date of violation of at least one of the other felonies for which the actor was previously convicted.
- 2.** The actor has been convicted of a serious child sex offense on at least one occasion at any time preceding the date of violation of the serious child sex offense for which he or she presently is being sentenced under ch. 973, which conviction remains of record and unreversed.

(bm) For purposes of counting a conviction under par. (b), it is immaterial that the sentence for the previous conviction was stayed, withheld or suspended, or that the actor was pardoned, unless the pardon was granted on the ground of innocence.

(c) If the actor is a persistent repeater, the term of imprisonment for the felony for which the persistent repeater presently is being sentenced under ch. 973 is life imprisonment without the possibility of parole or extended supervision.

(d) If a prior conviction is being considered as being covered under par. (a) 1m. b. or 2m. d. as comparable to a felony specified under par. (a) 1m. a. or 2m. a., am., b., or c., the conviction may be counted as a prior conviction under par. (b) only if the court determines, beyond a reasonable doubt,

that the violation relating to that conviction would constitute a felony specified under par. (a) 1m. a. or 2m. a., am., b., or c. if committed by an adult in this state.

(3) In this section "felony" and "misdemeanor" have the following meanings:

(a) In case of crimes committed in this state, the terms do not include motor vehicle offenses under chs. 341 to 349 and offenses handled through proceedings in the court assigned to exercise jurisdiction under chs. 48 and 938, but otherwise have the meanings designated in s. 939.60.

(b) In case of crimes committed in other jurisdictions, the terms do not include those crimes which are equivalent to motor vehicle offenses under chs. 341 to 349 or to offenses handled through proceedings in the court assigned to exercise jurisdiction under chs. 48 and 938. Otherwise, felony means a crime which under the laws of that jurisdiction carries a prescribed maximum penalty of imprisonment in a prison or penitentiary for one year or more. Misdemeanor means a crime which does not carry a prescribed maximum penalty sufficient to constitute it a felony and includes crimes punishable only by a fine.

Wis. Stat. § 939.62

Amended by Acts 2017 ch, 128,s 11, eff. 12/10/2017.

Amended by Acts 2017 ch, 128,s 10, eff. 12/10/2017.

Amended by Acts 2015 ch, 366,s 13, eff. 4/21/2016.

1977 c. 449; 1989 a. 85; 1993 a. 289, 483, 486; 1995 a. 77, 448; 1997 a. 219, 283, 295, 326; 1999 a. 32, 85, 188; 2001 a. 109; 2005 a. 14, 277; 2007 a. 116.

W. Va. Code § 61-11-18

 Download

Current through 2019 First Special Session legislation

- (a)** Except as provided by subsection (b) of this section, when any person is convicted of an offense and is subject to confinement in the state correctional facility therefor, and it is determined, as provided in section nineteen of this article, that such person had been before convicted in the United States of a crime punishable by confinement in a penitentiary, the court shall, if the sentence to be imposed is for a definite term of years, add five years to the time for which the person is or would be otherwise sentenced. Whenever in such case the court imposes an indeterminate sentence, the minimum term shall be twice the term of years otherwise provided for under such sentence.
- (b)** Notwithstanding the provisions of subsection (a) or (c) of this section or any other provision of this code to the contrary, when any person is convicted of first degree murder or second degree murder or a violation of section three, article eight-b of this chapter and it is determined, as provided in section nineteen of this article, that such person had been before convicted in this state of first degree murder, second degree murder or a violation of section three, article eight-b of said chapter or has been so convicted under any law of the United States or any other state for an offense which has the same elements as any offense described in this subsection, such person shall be punished by confinement in the state correctional facility for life and is not eligible for parole.
- (c)** When it is determined, as provided in section nineteen of this article, that such person shall have been twice before convicted in the United States of a crime punishable by confinement in a penitentiary, the person shall be sentenced to be confined in the state correctional facility for life.

W. Va. Code § 61-11-18

Wyo. Stat. § 6-10-201

 Download

Current with changes from the 2019 Legislative Session

(a) A person is an habitual criminal if:

(i) He is convicted of a violent felony; and

(ii) He has been convicted of a felony on two (2) or more previous charges separately brought and tried which arose out of separate occurrences in this state or elsewhere.

(b) An habitual criminal shall be punished by imprisonment for:

(i) Not less than ten (10) years nor more than fifty (50) years, if he has two (2) previous convictions;

(ii) Life, if he has three (3) or more previous convictions for offenses committed after the person reached the age of eighteen (18) years of age.

W.S. 6-10-201

Amended by Laws 2013, ch. 18, § 1, eff. 7/1/2013.