

CHAPTER 702

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702.1 Policy of uniformity.

Wherever a term, word or phrase is defined in the criminal code, such meaning shall be given wherever it appears in the Code, unless it is being specially defined for a special purpose.

[C79, 81, §702.1]

702.1A Computer terminology.

For purposes of section 714.1, subsection 8, and section 716.6B:

1. “*Computer*” means an electronic device which performs logical, arithmetical, and memory functions by manipulation of electronic or magnetic impulses, and includes all input, output, processing, storage, computer software, and communication facilities which are connected or related to the computer in a computer system or computer network.

2. “*Computer access*” means to instruct, communicate with, store data in, or retrieve data from a computer, computer system, or computer network.

3. “*Computer data*” means a representation of information, knowledge, facts, concepts, or instructions that has been prepared or is being prepared in a formalized manner and has been processed, or is intended to be processed in a computer. Computer data may be in any form including, but not limited to, printouts, magnetic storage media, punched cards, and as stored in the memory of a computer.

4. “*Computer network*” means a set of related, remotely connected devices and communication facilities including two or more computers with capability to transmit data among them through communication facilities.

5. “*Computer program*” means an ordered set of instructions or statements that, when executed by a computer, causes the computer to process data.

6. “*Computer services*” means the use of a computer, computer system, or computer network and includes, but is not limited to, computer time, data processing, and storage functions.

7. “*Computer software*” means a set of computer programs, procedures, or associated documentation used in the operation of a computer.

8. “*Computer system*” means related, connected or unconnected, computers or peripheral equipment.

9. “*Loss of property*” means the greatest of the following:

- a. The retail value of the property involved.
- b. The reasonable replacement or repair cost, whichever is less.

10. “*Loss of services*” means the reasonable value of the damage created by the unavailability or lack of utility of the property or services involved until repair or replacement can be effected.

2000 Acts, ch 1201, §6

702.2 Act.

The term “*act*” includes a failure to do any act which the law requires one to perform.
[C79, 81, §702.2]

702.3 Animal.

An “*animal*” is a nonhuman vertebrate.
[C79, 81, §702.3]

702.4 Brothel.

A “*brothel*” is any building, structure, or part thereof, or other place offering shelter or seclusion, which is principally or regularly used for the purpose of prostitution, with the consent or connivance of the owner, tenant, or other person in possession of it.
[C79, 81, §702.4]

702.5 Child.

For purposes of Title XVI,* unless another age is specified, a “*child*” is any person under the age of fourteen years.

[C79, 81, §702.5]

[P] *This provision does not include chapters 709A, 718A, 822, 904, 913, and 914, which were moved into Title XVI by the Code editor. Chapters 709A, 718A, 822, 904, 913, and 914 contain the applicable provisions pertaining to those chapters.

702.6 Controlled substance.

The term “*controlled substance*” means controlled substance as that term is defined and used in chapter 124.
[C79, 81, §702.6]

702.7 Dangerous weapon.

A “*dangerous weapon*” is any instrument or device designed primarily for use in inflicting death or injury upon a human being or animal, and which is capable of inflicting death upon a human being when used in the manner for which it was designed, except a bow and arrow when possessed and used for hunting or any other lawful purpose. Additionally, any instrument or device of any sort whatsoever which is actually used in such a manner as to indicate that the defendant intends to inflict death or serious injury upon the other, and which, when so used, is capable of inflicting death upon a human being, is a dangerous weapon. Dangerous weapons include but are not limited to any offensive weapon, pistol, revolver, or other firearm, dagger, razor, stiletto, switchblade knife, knife having a blade exceeding five inches in length, or any portable device or weapon directing an electric current, impulse, wave, or beam that produces a high-voltage pulse designed to immobilize a person.

[S13, §4775-1a; C24, 27, 31, §12936; C35, §12935-g1, 12936; C39, §12935.1, 12936; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §695.1, 695.2; C79, 81, §702.7]

88 Acts, ch 1164, §1; 2008 Acts, ch 1151, §1

702.8 Death.

“*Death*” means the condition determined by the following standard: A person will be considered dead if in the announced opinion of a physician licensed pursuant to chapter 148, a physician assistant licensed pursuant to chapter 148C, or a registered nurse or a licensed practical nurse licensed pursuant to chapter 152, based on ordinary standards of medical practice, that person has experienced an irreversible cessation of spontaneous respiratory and circulatory functions. In the event that artificial means of support preclude a determination that these functions have ceased, a person will be considered dead if in the announced opinion of two physicians, based on ordinary standards of medical practice, that person has experienced an irreversible cessation of spontaneous brain functions. Death will have occurred at the time when the relevant functions ceased.

[C79, 81, §702.8]

2001 Acts, ch 113, §5; 2008 Acts, ch 1088, §137

702.9 Deception.

“*Deception*” consists of knowingly doing any of the following:

1. Creating or confirming another’s belief or impression as to the existence or nonexistence of a fact or condition which is false and which the actor does not believe to be true.
2. Failing to correct a false belief or impression as to the existence or nonexistence of a fact or condition which the actor previously has created or confirmed.
3. Preventing another from acquiring information pertinent to the disposition of the property involved in any commercial or noncommercial transaction or transfer.
4. Selling or otherwise transferring or encumbering property and failing to disclose a lien, adverse claim, or other legal impediment to the enjoyment of the property, whether such impediment is or is not valid, or is or is not a matter of official record.
5. Promising payment, the delivery of goods, or other performance which the actor does not intend to perform or knows the actor will not be able to perform. Failure to perform, standing alone, is not evidence that the actor did not intend to perform.
6. Inserting anything other than lawful money or authorized token into the money slot of any machine which dispenses goods or services.

[C79, 81, §702.9]

702.10 Dwelling.

A “*dwelling*” is any building or structure, permanent or temporary, or any land, water or air vehicle, adapted for overnight accommodation of persons, and actually in use by some person or persons as permanent or temporary sleeping quarters, whether such person is present or not.

[C79, 81, §702.10]

702.11 Forcible felony.

1. A “*forcible felony*” is any felonious child endangerment, assault, murder, sexual abuse, kidnapping, robbery, arson in the first degree, or burglary in the first degree.
2. Notwithstanding subsection 1, the following offenses are not forcible felonies:
 - a. Willful injury in violation of section 708.4, subsection 2.
 - b. Sexual abuse in the third degree committed between spouses.
 - c. Sexual abuse in violation of section 709.4, subsection 2, paragraph “c”, subparagraph (4).
 - d. Sexual exploitation by a counselor, therapist, or school employee in violation of section 709.15.
 - e. Child endangerment subject to penalty under section 726.6, subsection 6.
 - f. Assault in violation of section 708.2, subsection 4.

[C79, 81, §702.11]

85 Acts, ch 180, §2; 89 Acts, ch 138, §2; 91 Acts, ch 130, §1; 92 Acts, ch 1163, §117; 94 Acts, ch 1023, §69; 99 Acts, ch 65, §2; 2001 Acts, ch 3, §1; 2001 Acts, ch 176, §79; 2003 Acts, ch 180, §64; 2004 Acts, ch 1151, §2; 2010 Acts, ch 1072, §1

[P] Sentencing options excluded, see §907.3

[T] Subsection 2, NEW paragraph f

702.12 Occupied structure.

An “*occupied structure*” is any building, structure, appurtenances to buildings and structures, land, water or air vehicle, or similar place adapted for overnight accommodation of persons, or occupied by persons for the purpose of carrying on business or other activity therein, or for the storage or safekeeping of anything of value. Such a structure is an “*occupied structure*” whether or not a person is actually present. However, for purposes of chapter 713, a box, chest, safe, changer, or other object or device which is adapted or used for the deposit or storage of anything of value but which is too small or not designed to allow a person to physically enter or occupy it is not an “occupied structure”.

[C79, 81, §702.12]

84 Acts, ch 1247, §1

702.13 Participating in a public offense.

A person is “*participating in a public offense*,” during part or the entire period commencing with the first act done directly toward the commission of the offense and for the purpose of committing that offense, and terminating when the person has been arrested or has withdrawn from the scene of the intended crime and has eluded pursuers, if any there be. A person is “*participating in a public offense*” during this period whether the person is successful or unsuccessful in committing the offense.

[C79, 81, §702.13]

702.14 Property.

“*Property*” is anything of value, whether publicly or privately owned, including but not limited to computers and computer data, computer software, and computer programs. The term includes both tangible and intangible property, labor, and services. The term includes all that is included in the terms “*real property*” and “*personal property*”.

[C79, 81, §702.14]

2000 Acts, ch 1201, §7

702.15 Prostitute.

A “*prostitute*” is a person who sells or offers for sale the person’s services as a participant in a sex act.

[C79, 81, §702.15]

702.16 Reckless.

A person is “*reckless*” or acts recklessly when the person willfully or wantonly disregards the safety of persons or property.

[C79, 81, §702.16]

702.17 Sex act.

The term “*sex act*” or “*sexual activity*” means any sexual contact between two or more persons by: penetration of the penis into the vagina or anus; contact between the mouth and genitalia or by contact between the genitalia of one person and the genitalia or anus of another person; contact between the finger or hand of one person and the genitalia or anus of another person, except in the course of examination or treatment by a person licensed pursuant to chapter 148, 148C, 151, or 152; or by use of artificial sexual organs or substitutes therefor in contact with the genitalia or anus.

[C75, 77, §725.1(7); C79, 81, §702.17]

89 Acts, ch 105, §1; 89 Acts, ch 296, §86; 2008 Acts, ch 1088, §138

702.18 Serious injury.

1. “*Serious injury*” means any of the following:

- a. Disabling mental illness.
- b. Bodily injury which does any of the following:
 - (1) Creates a substantial risk of death.
 - (2) Causes serious permanent disfigurement.
 - (3) Causes protracted loss or impairment of the function of any bodily member or organ.
- c. Any injury to a child that requires surgical repair and necessitates the administration of general anesthesia.

2. “*Serious injury*” includes but is not limited to skull fractures, rib fractures, and metaphyseal fractures of the long bones of children under the age of four years.

[C51, §2577; R60, §4200; C73, §3857; C97, §4752; C24, 27, 31, 35, 39, §12928; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §693.1; C79, 81, §702.18]

94 Acts, ch 1172, §41; 99 Acts, ch 11, §1

702.19 Steal.

“*Steal*” means to take by theft.

[C79, 81, §702.19]

702.20 Viability.

“*Viability*” is that stage of fetal development when the life of the unborn child may be continued indefinitely outside the womb by natural or artificial life support systems. The time when viability is achieved may vary with each pregnancy, and the determination of whether a particular fetus is viable is a matter of responsible medical judgment.

[C79, 81, §702.20]

702.20A Video rental property.

“*Video rental property*” means an audiovisual recording, including a videotape, videodisc, or other tangible medium of expression on which an audiovisual work is recorded or otherwise stored, or any equipment or supplies used to view the recording, and which is held out for rental to the public in the ordinary course of business.

2000 Acts, ch 1201, §8

702.21 Incendiary device.

An “*incendiary device*” is a device, contrivance, or material causing or designed to cause destruction of property by fire.

[C71, 73, 75, 77, §697.10(2); C79, 81, §702.21]

702.22 Library materials and equipment.

1. “*Library materials*” include books, plates, pictures, photographs, engravings, paintings, drawings, maps, newspapers, magazines, pamphlets, broadsides, manuscripts, documents, letters, public records, microforms, sound recordings, audiovisual materials in any format, magnetic or other tapes, electronic data processing records, artifacts, and written or printed materials regardless of physical form or characteristics, belonging to, on loan to, or otherwise in the custody of any of the following:

- a. A public library.
- b. A library of an educational, historical, or eleemosynary institution, organization, or society.
- c. A museum.
- d. A repository of public records.

2. “*Library equipment*” includes audio, visual, or audiovisual machines, machinery or equipment belonging to, on loan to or otherwise in the custody of one of the institutions or agencies listed in subsection 1.

[C81, §702.22]

85 Acts, ch 187, §1

702.23 Strip search.

“*Strip search*” means having a person remove or arrange some or all of the person’s clothing so as to permit an inspection of the genitalia, buttocks, anus, female breasts or undergarments of that person or a physical probe of any body cavity.

[C81, §702.23]