



*Arkansas
Sentencing
Commission*

**Impact Assessment for HB1389
Sponsored by Representative Fite**

Subtitle TO AMEND STATUTES CONCERNING THEFT OF PROPERTY; AND TO CLARIFY THAT A BACKUP DEEP CYCLE BATTERY IS UTILITY PROPERTY.

Impact Summary¹ Minimal, affecting fewer than ten offenders per year.

Change from current law² Amends Arkansas Code Annotated § 5-36-103 (b)(1)(E)(ii)(b), Theft of Utility Property, to clarify the definition of “utility property” to include a backup deep cycle battery or other power supply. Under current law, a backup deep cycle battery or other power supply is not expressly included in the definition of “utility property.”

Amends A.C.A. § 5-38-206 (a)(2), Damaging wires and other fixtures of telephone, cable and electric power companies, to clarify the description of “fixture” to include a backup deep cycle battery or other power supply. Under current law, a backup deep cycle battery or other power supply is not expressly included in the description of a fixture.

Impact Information

The proposed bill amends the definition of “utility property” in A.C.A. § 5-36-103(b)(1)(E), Theft of Utility Property, Class B felony, and the description of “fixture” in A.C.A. § 5-38-206, Damaging Wires and Other Fixture of Telephone, Cable and Electric Power Companies, Class D felony, thereby clarifying the circumstances in which these offenses are committed. Based on the number of convictions for these offenses as currently written, the impact of this proposed bill is minimal. See attached for a reprint of these code sections as currently written.

The Arkansas Department of Correction (ADC) reports that there are eleven (11) inmates serving a sentence for A.C.A. § 5-36-103(b)(1)(E), Theft of Utility Property, Class B felony, as currently written. Three (3) of these offenders are serving a sentence for which A.C.A. § 5-36-103(b)(1)(E), Theft of Utility Property, Class B felony, is the most serious offense. The ADC also reports that there are four (4) inmates serving a sentence for A.C.A. § 5-38-206, Damaging wires and other fixtures of telephone, cable and electric power companies, Class D felony. None of these offenders are serving a sentence for which A.C.A. § 5-38-206, Damaging wires and other fixtures of telephone, cable and electric power companies, Class D felony, is the most serious offense.

¹ This impact assessment was prepared (2/11/2019, 12:41 p.m.) by the staff of the Arkansas Sentencing Commission pursuant to A. C. A. § 16-90-802(d)(6) with data supplied by the Arkansas Department of Correction and the Administrative Office of the Courts. A micro-simulation model may be used for bills which have the potential for significant impact on correctional resources. The following designations will be used: “minimal” = less than 10 offenders per year will be affected; “medium” = would require budgetary increases for ADC inmate costs; and “major” = would require budgetary increases for ADC inmate costs and construction costs for additional beds.

² Standard punishment ranges:

Class Y	10-40 years or life	Class C	3-10 years; up to \$10,000	Class A	Up to 1 year; up to \$2,500
Class A	6-30 years; up to \$15,000	Class D	0-6 years; up to \$10,000	Class B	Up to 90 days; up to \$1,000
Class B	5-20 years; up to \$15,000	Unclassified	As specified in statute	Class C	Up to 30 days; up to \$500

The Administrative Office of the Courts reports that for the three year period beginning January 1, 2015 and ending December 31, 2017, there were ten (10) convictions for a violation of A.C.A. § 5-36-103(b)(1)(E), Theft of Utility Property, Class B felony, and sixteen (16) convictions for a violation of A.C.A. § 5-38-206, Damaging Wires and Other Fixture of Telephone, Cable and Electric Power Companies, Class D felony.

A.C.A. § 5-36-103. Theft of property.

(a) A person commits theft of property if he or she knowingly:

(1) Takes or exercises unauthorized control over or makes an unauthorized transfer of an interest in the property of another person with the purpose of depriving the owner of the property; or

(2) Obtains the property of another person by deception or by threat with the purpose of depriving the owner of the property.

(b) Theft of property is a:

(1) Class B felony if:

(A) The value of the property is twenty-five thousand dollars (\$25,000) or more;

(B) The property is obtained by the threat of serious physical injury to any person or destruction of the occupiable structure of another person;

(C) The property is obtained by threat and the actor stands in a confidential or fiduciary relationship to the person threatened;

(D) The property is:

(i) Anhydrous ammonia in any form; or

(ii) A product containing any percentage of anhydrous ammonia in any form; or

(E)

(i) The property is utility property and the value of the property is five hundred dollars (\$500) or more.

(ii) As used in subdivision (b)(1)(E)(i) of this section:

(a) "Utility" means any person or entity providing to the public gas, electricity, water, sewer, telephone, telegraph, radio, radio common carrier, railway, railroad, cable and broadcast television, video, or Internet services; and

(b) "Utility property" means any component that is reasonably necessary to provide utility services, including without limitation any wire, pole, facility, machinery, tool, equipment, cable, insulator, switch, signal, duct, fiber optic cable, conduit, plant, work, system, substation, transmission or distribution structure, line, street lighting fixture, generating plant, equipment, pipe, main, transformer, underground line, gas compressor, meter, or any other building or structure or part of a building or structure that a utility uses in the production or use of its services;

(2) Class C felony if:

(A) The value of the property is less than twenty-five thousand dollars (\$25,000) but more than five thousand dollars (\$5,000);

(B) The property is obtained by threat;

(C) The property is a firearm valued at two thousand five hundred dollars (\$2,500) or more;

(D)

(i) The property is building material obtained from a permitted construction site and the value of the building material is five hundred dollars (\$500) or more.

(ii) As used in subdivision (b)(2)(D)(i) of this section:

(a) "Building material" means lumber, a construction tool, a window, a door, copper tubing or wire, or any other material or good used in the construction or rebuilding of a building or a structure; and

(b) "Permitted construction site" means the site of construction, alteration, painting, or repair of a building or a structure for which a building permit has been issued by a city of the first class, a city of the second class, an incorporated town, or a county; or

(E) The value of the property is five hundred dollars (\$500) or more and the theft occurred in an area declared to be under a state of emergency pursuant to proclamation by the President of the United States, the Governor, or the executive officer of a city or county;

(3) Class D felony if:

(A) The value of the property is five thousand dollars (\$5,000) or less but more than one thousand dollars (\$1,000);

(B) The property is a firearm valued at less than two thousand five hundred dollars (\$2,500);

(C) The property is a:

(i) Credit card or credit card account number; or

- (ii)** Debit card or debit card account number;
- (D)** The value of the property is at least one hundred dollars (\$100) or more but less than five hundred dollars (\$500) and the theft occurred in an area declared to be under a state of emergency pursuant to proclamation by the President of the United States, the Governor, or the executive officer of a city or county;
- (E)** The property is livestock and the value of the livestock is in excess of two hundred dollars (\$200); or
- (F)** The property is an electric power line, gas line, water line, wire or fiber insulator, electric motor, or other similar apparatus connected to a farm shop, on-farm grain drying and storage complex, heating and cooling system, environmental control system, animal production facility, irrigation system, or dwelling; or
- (4)** Class A misdemeanor if:
 - (A)** The value of the property is one thousand dollars (\$1,000) or less; or
 - (B)** The property has inherent, subjective, or idiosyncratic value to its owner or possessor even if the property has no market value or replacement cost.
- (c) (1)** Upon the proclamation of a state of emergency by the President of the United States or the Governor or upon the declaration of a local emergency by the executive officer of any city or county and for a period of thirty (30) days following that declaration, the penalty for theft of property is enhanced if the property is:
 - (A)** A generator intended for use by:
 - (i)** A public facility;
 - (ii)** A nursing home or hospital;
 - (iii)** An airport;
 - (iv)** A public safety device;
 - (v)** A communication tower or facility;
 - (vi)** A public utility;
 - (vii)** A water system or sewer system;
 - (viii)** A public safety agency; or
 - (ix)** Any other facility or use providing a vital service; or
 - (B)** Any other equipment used in the transmission of electric power or telephone service.
- (2)** As used in this subsection:
 - (A)** "Public safety agency" means an agency of the State of Arkansas or a functional division of a political subdivision that provides:
 - (i)** Firefighting and rescue;
 - (ii)** Natural or human-caused disaster or major emergency response;
 - (iii)** Law enforcement; or
 - (iv)** Ambulance or emergency medical services; and
 - (B)** "Public safety device" includes, but is not limited to, a traffic signaling device or a railroad crossing device.
- (3)** The penalty is enhanced as follows:
 - (A)**
 - (i)** The fine for the offense shall be at least five thousand dollars (\$5,000) and not more than fifty thousand dollars (\$50,000).
 - (ii)** The fine is mandatory; and
 - (B)** The offense is a Class D felony if it would have been a Class A misdemeanor.

HISTORY: Acts 1975, No. 280, § 2203; 1977, No. 360, § 8; 1979, No. 592, § 1; 1983, No. 719, § 1; A.S.A. 1947, § 41-2203; Acts 1987, No. 934, § 3; 1991, No. 712, § 1; 1995, No. 277, § 1; 1997, No. 516, § 1; 2001, No. 157, § 1; 2001, No. 1195, § 1; 2003, No. 838, § 1; 2005, No. 1442, § 1; 2007, No. 693, § 1; 2007, No. 827, § 39; 2009, No. 1295, § 2; 2011, No. 570, § 23; 2011, No. 1120, § 8; 2011, No. 1227, § 1; 2013, No. 1125, § 7.

A.C.A. § 5-38-206. Damaging wires and other fixtures of telephone, cable, and electric power companies.

(a) It is unlawful for a person to knowingly damage, destroy, or pull down:

(1) A telephone, cable communications, or electric power transmission pedestal or pole owned or operated by a telephone, cable, or electric power company;

(2) A telephone, cable communications, or electric power line, wire, fiber insulator, power supply transformer, transmission, or other apparatus, equipment, or fixture used in the transmission of telephone, cable communications, or electric power owned or operated by a telephone, cable, or electric power company; or

(3) Equipment related to wireless communications that are regulated by the Federal Communications Commission.

(b) It is unlawful for a person to knowingly damage, destroy, remove, or alter in a way that could result in physical injury any electric power line, gas line, water line, wire or fiber insulator, electric motor, or other similar apparatus connected to a farm shop, an on-farm grain drying and storage complex, a heating and cooling system, an environmental control system, an animal production facility, an irrigation system, or a dwelling.

(c) A violation of this section is a Class D felony.

HISTORY: Acts 2009, No. 390, § 1; 2011, No. 1120, § 10.