



*Arkansas  
Sentencing  
Commission*

**Impact Assessment for SB492  
Sponsored by Senator A. Clark**

**Subtitle** TO ESTABLISH THE OFFICE OF THE INSPECTOR GENERAL FOR THE DEPARTMENT OF HUMAN SERVICES; TO INCREASE CRIMINAL PENALTIES FOR THEFT OF PUBLIC BENEFITS; AND TO CREATE THE OFFENSE OF MISUSE OF STATE PROPERTY.

**Impact Summary**<sup>1</sup> Cannot be determined.

**Change from current law**<sup>2</sup> Amends Arkansas Code § 5-36-202, Theft of public services, to increase the minimum terms of imprisonment for second, third, and fourth or subsequent violations of A.C.A. § 5-36-202, Theft of public services. The minimum period of incarceration for subsequent violations of A.C.A. § 5-36-202 as currently written is as follows:

- For a second offense occurring within five (5) years of a prior offense, no less than seven (7) days.
- For a third offense occurring within five (5) years of a prior offense, no less than ninety (90) days.
- For a fourth or subsequent offense within five (5) years of a prior offense, no less than one (1) year.

Under the proposed bill, the minimum period of incarceration for subsequent violations of A.C.A. § 5-36-202 is as follows:

- For a second offense occurring within five (5) years of a prior offense, no less than thirty (30) days.
- For a third offense occurring within five (5) years of a prior offense, no less than one hundred eighty (180) days.
- For a fourth or subsequent offense within five (5) years of a prior offense, no less than two (2) years.

The proposed bill also increases the minimum fines for subsequent violations of A.C.A. § 5-36-202.

Amends Arkansas Title 5, Chapter 52, Subchapter 1 to add an additional section, A.C.A. § 5-52-109, Misuse of state property. Under the proposed bill, a person commits the offense of misuse of state property if he or she is an elected or appointed state official, a state employee, or an independent contractor who contracts with the state to provide anything of value; and he or she uses state property, through any means, for a

<sup>1</sup> This impact assessment was prepared (3/6/2017, 3:59 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.

<sup>2</sup> 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

private purpose to obtain a pecuniary benefit of five hundred dollars (\$500) or more for himself, herself, or another person. Under the proposed bill, misuse of state property is a Class B felony.

Amends Arkansas Code Title 5, Chapter 10, to add an additional subchapter creating the Office of the Inspector General for the Department of Human Services.

### **Impact Information**

The impact of this proposed bill comes from (1) the increased minimum penalty for subsequent violations of A.C.A. § 5-36-202, Theft of public services, and (2) sentences for violations of the newly created Class B felony, A.C.A. § 5-52-109, Misuse of state property. Data does not distinguish whether a sentence for A.C.A. § 5-36-202 is for a first or subsequent offense. Further, data does not exist to determine the frequency of occurrence of the conduct covered under the proposed A.C.A. § 5-52-109, Misuse of state property. Therefore, the impact of the proposed bill cannot be determined. The following data is for informational purposes only.

The Administrative Office of the Courts (AOC) reports that for the three year period beginning January 1, 2013, and ending December 31, 2015, there were 79 convictions for a violation of A.C.A. § 5-36-202, Theft of public services, Class B felony, as currently written, 34 convictions for a violation of A.C.A. § 5-36-202, Theft of public services, Class C felony, as currently written, and 23 convictions for a violation of A.C.A. § 5-36-202, Theft of public services, Class A misdemeanor, as currently written.

The Arkansas Department of Correction reports that as of March 1, 2017, there are ten (10) inmates serving a sentence for A.C.A. § 5-36-202, Theft of public services, Class B felony, as currently written, and fourteen (14) inmates serving a sentence for A.C.A. § 5-36-202, Theft of public services, Class C felony, as currently written.

**A.C.A. § 5-36-202. Theft of public benefits.**

(a) A person commits theft of public benefits if the person:

(1) Obtains or retains a public benefit from the Department of Human Services or any other state agency administering the distribution of a public benefit:

(A) By means of any false statement, misrepresentation, or impersonation; or

(B) Through failure to disclose a material fact used in making a determination as to the person's qualification to receive a public benefit; or

(2) Receives, retains, or disposes of a public benefit knowing or having reason to know that the public benefit was obtained in violation of this subchapter.

(b) Presentation of false or fictitious information or failure to disclose a material fact in the process of obtaining or retaining public benefits is prima facie evidence of purpose to commit theft of public benefits.

(c) Theft of public benefits is a:

(1) Class B felony if the value of the public benefit is two thousand five hundred dollars (\$2,500) or more;

(2) Class C felony if the value of the public benefit is less than two thousand five hundred dollars (\$2,500) but more than five hundred dollars (\$500); or

(3) Class A misdemeanor if the value of the public benefit is five hundred dollars (\$500) or less.

(d) In addition to an extended term of imprisonment provided by § 5-4-501 for a habitual offender, any person who pleads guilty or nolo contendere to or is found guilty of violating this section shall be imprisoned:

(1) For no less than seven (7) days for a second offense occurring within five (5) years of a prior offense;

(2) For no less than ninety (90) days for a third offense occurring within five (5) years of a prior offense; and

(3) For at least one (1) year for a fourth or subsequent offense occurring within five (5) years of a prior offense.

(e) In addition to restitution, any person who pleads guilty or nolo contendere to or is found guilty of violating this section shall be fined no less than:

(1) One hundred fifty dollars (\$150) for the first offense;

(2) Four hundred dollars (\$400) for a second offense occurring within five (5) years of a prior offense; and

(3) Nine hundred dollars (\$900) for a third or subsequent offense occurring within five (5) years of a prior offense.

HISTORY: Acts 1993, No. 320, §§ 2, 3; 2015, No. 1263, § 7.