



ARKANSAS SENTENCING COMMISSION

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Impact Assessment for HB1317 Sponsored by Representative L. Johnson

Subtitle CONCERNING THE THEFT OF A POSTAL PACKAGE DELIVERED TO A PERSON'S RESIDENCE AND LEFT WITHIN THE CURTILAGE OF THE RESIDENCE; TO MAKE TECHNICAL CORRECTIONS; AND TO DECLARE AN EMERGENCY.

Impact Summary¹ Cannot be determined. The proposed bill increases the penalty for some occurrences of Theft of property which are currently punishable as a Class A misdemeanor. Because data regarding the likely number of convictions for this conduct does not exist, the impact of this proposed bill cannot be determined.

Change from Current Law² Amends Arkansas Code Annotated § 5-36-103(b)(3), Theft of Property, to create a new course of conduct punishable as a Class D felony. Under current law, Theft of property is a Class A misdemeanor unless the amount or type of stolen property meets certain conditions. Under the proposed bill, Theft of property is a Class D felony if the property is a postal package removed from the curtilage of a residential occupiable structure, or from a delivery vehicle at any point throughout the delivery route, regardless of the value of the contents of the package.

The proposed bill also amends A.C.A. § 5-36-101 to define “curtilage,” “postal package,” and “residential occupiable structure.”

Impact Information The proposed bill increases the penalty for some occurrences of theft of property which are currently punishable as a Class A misdemeanor. Because data regarding the likely number of convictions for this conduct does not exist, the impact of this proposed bill cannot be determined. The following data is provided for informational purposes only.

The Administrative Office of the Courts (AOC) reports that for the three (3) year period beginning on January 1, 2017 and ending on December 31, 2019, there were:

- 3,584 misdemeanor convictions for A.C.A. § 5-36-103, Theft of Property, and
- 3,830 convictions for A.C.A. § 5-36-103(b)(3)(A), Theft of Property, Value ≥ \$1,000 < \$5,000, a Class D felony.

It is important to note that misdemeanors are often disposed of in District Court, and that not all District courts report data to the AOC. For this reason, the number of misdemeanor Theft of property convictions is likely higher than reported.

¹ This impact assessment was prepared 2/2/2021 4:20 PM 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 Corrections 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 A 6-30 years; up to \$15,000
Class B 5-20 years; up to \$15,000

Class C 3-10 years; up to \$10,000
Class D 0-6 years; up to \$10,000
Unclassified As specified in statute

Misdemeanors

Class A Up to 1 year; up to \$2,500
Class B Up to 90 days; up to \$1,000
Class C Up to 30 days; up to \$500

The Arkansas Division of Correction (ADC) reports 324 inmates currently serving a term of incarceration for a violation of A.C.A. § 5-36-103(b)(3)(A), Theft of Property, Value \geq \$1,000 < \$5,000, a Class D felony, as currently written. Twenty-one (21) of those inmates are serving a sentence for which 5-36-103(b)(3)(A), Theft of Property, Value \geq \$1,000 < \$5,000, is the most serious offense.

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; or
 - (D) The property is:
 - (i) Anhydrous ammonia in any form;
 - (ii) A product containing any percentage of anhydrous ammonia in any form;
 - (iii) Utility property and the value of the property is five hundred dollars (\$500) or more; or
 - (iv) Oil and gas equipment, the value of the property is less than twenty-five thousand dollars (\$25,000) but more than five thousand dollars (\$5,000), and the person:
 - (a) Caused more than two hundred fifty dollars (\$250) in incidental damage to the owner of the oil and gas equipment during the commission of the offense; or
 - (b) Transported the oil and gas equipment across state lines to sell or dispose of the oil and gas equipment;
 - (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) 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;
 - (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; or
 - (F) The property is oil and gas equipment, the value of the property is five thousand dollars (\$5,000) or less but more than one thousand dollars (\$1,000), and the person:
 - (i) Caused more than two hundred fifty dollars (\$250) in incidental damage to the owner of the oil and gas equipment during the commission of the offense; or
 - (ii) Transported the oil and gas equipment across state lines to sell or dispose of the oil and gas equipment;
 - (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);

(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;

(G) The property is a decorative or memorial item from a cemetery, graveyard, or a person's grave site and the offense is the actor's second or subsequent offense of theft of a decorative or memorial item from a cemetery, graveyard, or a person's grave site under this section; or

(H) The property is oil and gas equipment, the value of the property is one thousand dollars (\$1,000) or less, and the person:

(i) Caused more than two hundred fifty dollars (\$250) in incidental damage to the owner of the oil and gas equipment during the commission of the offense; or

(ii) Transported the oil and gas equipment across state lines to sell or dispose of the oil and gas equipment; or

(4) Class A misdemeanor if:

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

(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; or

(C) The property is a decorative or memorial item from a cemetery, graveyard, or a person's grave site.

(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](#); [2019, No. 311, § 1](#); [2019, No. 503, § 1](#); [2019, No. 611, § 2](#).