



*Arkansas  
Sentencing  
Commission*

**Impact Assessment for SB516  
Sponsored by Senator Sanders**

**Subtitle CONCERNING THE CRIMINAL OFFENSES INVOLVING MISDEMEANOR THEFT**

**Impact Summary**<sup>1</sup> Medium impact requiring budgetary increases for cost of care.

**Change from current law**<sup>2</sup> Amends A.C.A. § 5-36-103(b)(3)(A) to say that theft of property is a Class D felony if the value of the property is more than five hundred dollars (\$500) but less than five thousand dollars (\$5000). Under current law, theft of property is a Class D felony if the value of the property is more than one thousand dollars (\$1000) but less than five thousand dollars (\$5000).

Amends A.C.A § 5-36-103(b)(4)(A) to say that theft of property is a misdemeanor if the value of the property is five hundred dollars (\$500) or less. Under current law theft of property is a misdemeanor if the value of the property is one thousand dollars (\$1000) or less.

Amends A.C.A. § 5-36-104(c)(3) to say that theft of services is a Class D felony if the value of the service is more than five hundred dollars (\$500) but less than five thousand dollars (\$5000). Under current law, theft of services is a D felony if the value of the service is more than one thousand dollars (\$1000) but less than five thousand dollars (\$5000).

Amends A.C.A § 5-36-105(b) to say that theft of property that is lost, mislaid, or delivered by mistake is a Class D felony if the value of the property is more than five hundred dollars (\$500). Under current law, theft of property that is lost, mislaid, or delivered by mistake is a Class D felony if the value of the property is more than one thousand dollars (\$1000).

Amends A.C.A. § 5-36-106 to say that theft by receiving is a Class D felony if the value of the property is more than five hundred dollars (\$500) but less than five thousand dollars (\$5000). Under current law, theft by receiving is a Class D felony if the value of the property is more than one thousand dollars (\$1000) but less than five thousand dollars (\$5000).

See attached for current version of each of these statutes (with emphasis added on relevant subsections).

<sup>1</sup> This impact assessment was prepared (3/3/2015 at 2:44 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

## Impact Information

The following projection was prepared with the help of JFA Associates, Denver, CO, using the Wizard Micro-simulation Projection Model. This impact assessment is based on data from the current prison population projection using Arkansas Department of Correction (ADC) data from the calendar year ending December 31, 2013.

The projected impact on the resources of ADC is shown in the following table. The impact represents the increase in the current baseline ADC population over the next ten-year period. Additional budgetary requirements are calculated using \$23,105.72 as the average annual cost of care per inmate. This impact assumes the same level of admissions through the ten-year period.

<b>Year</b>	<b>Annual Increase in Population</b>	<b>Annual Increase in Cost of Care</b>
2015	0	\$0.00
2016	17	\$392,797.24
2017	18	\$415,902.96
2018	20	\$462,114.40
2019	18	\$415,902.96
2020	18	\$415,902.96
2021	17	\$392,797.24
2022	17	\$392,797.24
2023	18	\$415,902.96
2024	21	\$485,220.12
2025	17	\$392,797.24
<b>Total</b>		<b>\$4,182,135.32</b>

**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. § 5-36-104. Theft of services.**

(a) A person commits theft of services if, with purpose to defraud:

(1) The person purposely obtains a service that he or she knows to be available only for compensation, by deception, threat, or other means to avoid payment for the service; or

(2) Having control over the disposition of a service to which he or she is not entitled, the person purposely diverts the service to his or her own benefit or to the benefit of another person not entitled to the service.

(b) In a circumstance in which payment is ordinarily made immediately upon the rendering of a service, absconding without payment or offer to pay gives rise to a presumption that the actor obtained the service with the purpose of avoiding payment.

(c) Theft of services is a:

(1) Class B felony if:

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

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

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

(D) The theft of services involves a theft of a utility service that results in:

(i) Any contamination of a line, pipe, waterline, meter, or other utility property; or

(ii) A spill, dumping, or release of any hazardous material into the environment;

(2) Class C felony if:

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

(B) The service is obtained by threat;

(3) *Class D felony if the value of the service is five thousand dollars (\$ 5,000) or less but more than one thousand dollars (\$ 1,000); or*

(4) Class A misdemeanor if the theft of services:

(A) Involves a theft of a utility service that results in the destruction or damage to a line, pipe, waterline, meter, or any other property of the utility; or

(B) Is otherwise committed.

(d) (1) In addition to any other fine that may be levied under § 5-4-201, any person found guilty of theft of services under this section is required to make full restitution to the utility from which the service was obtained if the theft of services involves the theft of a utility service such as a gas, electricity, water, telephone, or cable television service.

(2) For a prosecution brought under this subsection to enable the court to properly fix the amount of restitution, after appropriate investigation the prosecuting attorney shall recommend an amount that would make the utility whole with respect to:

(A) The value of the service received;

(B) The cost of repair of any damage to any:

(i) Line;

(ii) Pipe;

(iii) Waterline;

(iv) Meter; or

(v) Other utility property; and

(C) Any other measurable monetary damage directly related to the offense, including the expense of investigation.

(3) If the defendant disagrees with the recommendation of the prosecuting attorney, he or she is entitled to introduce evidence in mitigation of the amount recommended.

(4) The monetary judgment for restitution, as provided in this section, becomes a judgment against the offender and has the same force and effect as any other civil judgment recorded in this state.

HISTORY: Acts 1975, No. 280, § 2204; 1977, No. 360, § 9; 1983, No. 719, § 2; A.S.A. 1947, § 41-2204; Acts 1997, No. 518, § 1; 1999, No. 986, § 1; 2011, No. 570, § 24; 2011, No. 1120, § 15.

**A.C.A. § 5-36-105. Theft of property lost, mislaid, or delivered by mistake.**

(a) A person commits theft of property lost, mislaid, or delivered by mistake if the person:

(1) Comes into control of property of another person;

(2) Retains or disposes of the property when the person knows the property to have been lost, mislaid, or delivered under a mistake as to the identity of the recipient or as to the nature or amount of the property; and

(3) With the purpose of depriving any person having an interest in the property, the person fails to take a reasonable measure to restore the property to a person entitled to it.

(b) Theft of property lost, mislaid, or delivered by mistake is a:

(1) *Class D felony if the value of the property is one thousand dollars (\$ 1,000) or more;*

(2) Class B misdemeanor if:

(A) The value of the property is less than one thousand dollars (\$ 1,000) but more than five hundred dollars (\$ 500); or

(B) The property is a:

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

(ii) Debit card or debit card account number; or

(3) Class C misdemeanor if otherwise committed.

HISTORY: Acts 1975, No. 280, § 2205; A.S.A. 1947, § 41-2205; Acts 1997, No. 516, § 2; 1997, No. 518, § 2; 2003, No. 838, § 2.

**A.C.A. § 5-36-106. Theft by receiving.**

(a) A person commits the offense of theft by receiving if he or she receives, retains, or disposes of stolen property of another person:

- (1) Knowing that the property was stolen; or
- (2) Having good reason to believe the property was stolen.

(b) As used in this section, "receiving" means acquiring possession, control, or title or lending on the security of the property.

(c) The following give rise to a presumption that a person knows or believes that property was stolen:

- (1) The unexplained possession or control by the person of recently stolen property; or
- (2) The acquisition by the person of property for a consideration known to be far below the property's reasonable value.

(d) It is a defense to a prosecution for the offense of theft by receiving that the property is received, retained, or disposed of with the purpose of restoring the property to the owner or another person entitled to the property.

(e) Theft by receiving is a:

- (1) Class B felony if the value of the property is twenty-five thousand dollars (\$ 25,000) or more;
- (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); or
  - (B) The property is a firearm valued at two thousand five hundred dollars (\$ 2,500) or more;
- (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:*
    - (i) *Credit card or credit card account number;*
    - (ii) *Debit card or debit card account number; or*
    - (iii) *Firearm valued at less than two thousand five hundred dollars (\$ 2,500); or*
- (4) Class A misdemeanor if otherwise committed.

(f) A person convicted of a felony offense under this section is subject to an enhanced sentence of an additional term of imprisonment of five (5) years at the discretion of the court if the finder of fact finds that the stolen property was nonferrous metal, as it is defined in § 17-44-101.

HISTORY: Acts 1975, No. 280, § 2206; 1977, No. 360, § 10; 1983, No. 719, § 3; A.S.A. 1947, § 41-2206; Acts 1997, No. 303, § 1; 1997, No. 516, § 3; 2003, No. 838, § 3; 2011, No. 570, § 25; 2013, No. 548, § 1; 2013, No. 1354, § 1.