

REFERENCE TITLE: **property crimes; classification; sentencing**

State of Arizona
Senate
Fifty-fifth Legislature
Second Regular Session
2022

SB 1472

Introduced by
Senators Quezada: Terán; Representatives Andrade, Hernandez M

AN ACT

AMENDING SECTIONS 13-1802, 13-1805, 13-1814, 13-1819, 13-2002, 13-2307 AND 13-2310, ARIZONA REVISED STATUTES; RELATING TO SENTENCING.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 13-1802, Arizona Revised Statutes, is amended to
3 read:

4 13-1802. Theft; classification; definitions

5 A. A person commits theft if, without lawful authority, the person
6 knowingly:

7 1. Controls property of another with the intent to deprive the
8 other person of such property; or

9 2. Converts for an unauthorized term or use services or property of
10 another entrusted to the defendant or placed in the defendant's possession
11 for a limited, authorized term or use; or

12 3. Obtains services or property of another by means of any material
13 misrepresentation with intent to deprive the other person of such property
14 or services; or

15 4. Comes into control of lost, mislaid or misdelivered property of
16 another under circumstances providing means of inquiry as to the true
17 owner and appropriates such property to the person's own or another's use
18 without reasonable efforts to notify the true owner; or

19 5. Controls property of another knowing or having reason to know
20 that the property was stolen; or

21 6. Obtains services known to the defendant to be available only for
22 compensation without paying or an agreement to pay the compensation or
23 diverts another's services to the person's own or another's benefit
24 without authority to do so; or

25 7. Controls the ferrous metal or nonferrous metal of another with
26 the intent to deprive the other person of the metal; or

27 8. Controls the ferrous metal or nonferrous metal of another
28 knowing or having reason to know that the metal was stolen; or

29 9. Purchases within the scope of the ordinary course of business
30 the ferrous metal or nonferrous metal of another person knowing that the
31 metal was stolen.

32 B. A person commits theft if, without lawful authority, the person
33 knowingly takes control, title, use or management of a vulnerable adult's
34 property while acting in a position of trust and confidence and with the
35 intent to deprive the vulnerable adult of the property. Proof that a
36 person took control, title, use or management of a vulnerable adult's
37 property without adequate consideration to the vulnerable adult may give
38 rise to an inference that the person intended to deprive the vulnerable
39 adult of the property.

40 C. It is an affirmative defense to any prosecution under subsection
41 B of this section that either:

42 1. The property was given as a gift consistent with a pattern of
43 gift giving to the person that existed before the adult became vulnerable.

1 2. The property was given as a gift consistent with a pattern of
2 gift giving to a class of individuals that existed before the adult became
3 vulnerable.

4 3. The superior court approved the transaction before the
5 transaction occurred.

6 D. The inferences set forth in section 13-2305 apply to any
7 prosecution under subsection A, paragraph 5 of this section.

8 E. At the conclusion of any grand jury proceeding, hearing or
9 trial, the court shall preserve any trade secret that is admitted in
10 evidence or any portion of a transcript that contains information relating
11 to the trade secret pursuant to section 44-405.

12 F. Subsection B of this section does not apply to an agent who is
13 acting within the scope of the agent's duties as or on behalf of a health
14 care institution that is licensed pursuant to title 36, chapter 4 and that
15 provides services to the vulnerable adult.

16 G. Theft of property or services with a value of ~~twenty-five~~
17 ~~thousand dollars~~ \$50,000 or more is a class 2 felony. Theft of property
18 or services with a value of ~~four thousand dollars~~ \$20,000 or more but less
19 than ~~twenty-five thousand dollars~~ \$50,000 is a class 3 felony. Theft of
20 property or services with a value of ~~three thousand dollars~~ \$10,000 or
21 more but less than ~~four thousand dollars~~ \$20,000 is a class 4 felony,
22 except that theft of any vehicle engine or transmission is a class 4
23 felony regardless of value. Theft of property or services with a value of
24 ~~two thousand dollars~~ \$5,000 or more but less than ~~three thousand dollars~~
25 \$10,000 is a class 5 felony. Theft of property or services with a value
26 of ~~one thousand dollars~~ \$2,000 or more but less than ~~two thousand dollars~~
27 \$5,000 is a class 6 felony. Theft of any property or services valued at
28 less than ~~one thousand dollars~~ \$2,000 is a class 1 misdemeanor, unless the
29 property is taken from the person of another, is a firearm or is an animal
30 taken for the purpose of animal fighting in violation of section
31 13-2910.01, in which case the theft is a class 6 felony.

32 H. A person who is convicted of a violation of subsection A,
33 paragraph 1 or 3 of this section that involved property with a value of
34 ~~one hundred thousand dollars~~ \$100,000 or more is not eligible for
35 suspension of sentence, probation, pardon or release from confinement on
36 any basis except pursuant to section 31-233, subsection A or B until the
37 sentence imposed by the court has been served, the person is eligible for
38 release pursuant to section 41-1604.07 or the sentence is commuted.

39 I. For the purposes of this section, the value of ferrous metal or
40 nonferrous metal includes the amount of any damage to the property of
41 another caused as a result of the theft of the metal.

42 J. In an action for theft of ferrous metal or nonferrous metal:

43 1. Unless satisfactorily explained or acquired in the ordinary
44 course of business by an automotive recycler that is licensed pursuant to
45 title 28, chapter 10 or by a scrap metal dealer as defined in section

1 44-1641, proof of possession of scrap metal that was recently stolen may
2 give rise to an inference that the person in possession of the scrap metal
3 was aware of the risk that it had been stolen or in some way participated
4 in its theft.

5 2. Unless satisfactorily explained or sold in the ordinary course
6 of business by an automotive recycler that is licensed pursuant to title
7 28, chapter 10 or by a scrap metal dealer as defined in section 44-1641,
8 proof of the sale of stolen scrap metal at a price substantially below its
9 fair market value may give rise to an inference that the person selling
10 the scrap metal was aware of the risk that it had been stolen.

11 K. For the purposes of this section:

12 1. "Adequate consideration" means the property was given to the
13 person as payment for bona fide goods or services provided by the person
14 and the payment was at a rate that was customary for similar goods or
15 services in the community that the vulnerable adult resided in at the time
16 of the transaction.

17 2. "Ferrous metal" has the same meaning prescribed in section
18 44-1641.

19 3. "Pattern of gift giving" means two or more gifts that are the
20 same or similar in type and monetary value.

21 4. "Position of trust and confidence" has the same meaning
22 prescribed in section 46-456.

23 5. "Property" includes all forms of real property and personal
24 property.

25 6. "Vulnerable adult" has the same meaning prescribed in section
26 46-451.

27 Sec. 2. Section 13-1805, Arizona Revised Statutes, is amended to
28 read:

29 13-1805. Shoplifting; detaining suspect; defense to wrongful
30 detention; civil action by merchant; public
31 services; classification

32 A. A person commits shoplifting if, while in an establishment in
33 which merchandise is displayed for sale, the person knowingly obtains such
34 goods of another with the intent to deprive that person of such goods by:

35 1. Removing any of the goods from the immediate display or from any
36 other place within the establishment without paying the purchase price; or

37 2. Charging the purchase price of the goods to a fictitious person
38 or any person without that person's authority; or

39 3. Paying less than the purchase price of the goods by some trick
40 or artifice such as altering, removing, substituting or otherwise
41 disfiguring any label, price tag or marking; or

42 4. Transferring the goods from one container to another; or

43 5. Concealment.

1 B. A person is presumed to have the necessary culpable mental state
2 pursuant to subsection A of this section if the person does either of the
3 following:

4 1. Knowingly conceals on himself or another person unpurchased
5 merchandise of any mercantile establishment while within the mercantile
6 establishment.

7 2. Uses an artifice, instrument, container, device or other article
8 to facilitate the shoplifting.

9 C. A merchant, or a merchant's agent or employee, with reasonable
10 cause, may detain on the premises in a reasonable manner and for a
11 reasonable time any person who is suspected of shoplifting as prescribed
12 in subsection A of this section for questioning or summoning a law
13 enforcement officer.

14 D. Reasonable cause is a defense to a civil or criminal action
15 against a peace officer, a merchant or an agent or employee of the
16 merchant for false arrest, false or unlawful imprisonment or wrongful
17 detention.

18 E. If a minor engages in conduct that violates subsection A of this
19 section, notwithstanding the fact that the minor may not be held
20 responsible because of the person's minority, any merchant who is injured
21 by the shoplifting of the minor may bring a civil action against the
22 parent or legal guardian of the minor under either section 12-661 or
23 12-692.

24 F. Any merchant who is injured by the shoplifting of an adult or
25 emancipated minor in violation of subsection A of this section may bring a
26 civil action against the adult or emancipated minor pursuant to section
27 12-691.

28 G. In imposing sentence on a person who is convicted of violating
29 this section, the court may require any person to perform public services
30 designated by the court in addition to or in lieu of any fine that the
31 court might impose.

32 H. Shoplifting property with a value of ~~two thousand dollars~~ \$5,000
33 or more, shoplifting property during any continuing criminal episode or
34 shoplifting property if done to promote, further or assist any criminal
35 street gang or criminal syndicate is a class 5 felony. Shoplifting
36 property with a value of ~~one thousand dollars~~ \$2,000 or more but less than
37 ~~two thousand dollars~~ \$5,000 is a class 6 felony. Shoplifting property
38 valued at less than ~~one thousand dollars~~ \$2,000 is a class 1 misdemeanor,
39 unless the property is a firearm in which case the shoplifting is a class
40 6 felony. For the purposes of this subsection, "continuing criminal
41 episode" means theft of property with a value of ~~one thousand five hundred~~
42 ~~dollars~~ \$1,500 or more if committed during at least three separate
43 incidences within a period of ninety consecutive days.

44 I. A person who ~~in the course of shoplifting uses an artifice,~~
45 ~~instrument, container, device or other article with the intent to~~

1 ~~facilitate shoplifting or who~~ commits shoplifting and who has previously
2 committed or been convicted within the past five years of two or more
3 offenses involving burglary, shoplifting, robbery, organized retail theft
4 or theft is guilty of a class ~~4~~ 6 felony.

5 Sec. 3. Section 13-1814, Arizona Revised Statutes, is amended to
6 read:

7 13-1814. Theft of means of transportation; affidavit;
8 classification

9 A. A person commits theft of means of transportation if, without
10 lawful authority, the person knowingly does one of the following:

11 1. Controls another person's means of transportation with the
12 intent to permanently deprive the person of the means of transportation.

13 ~~2. Converts for an unauthorized term or use another person's means~~
14 ~~of transportation that is entrusted to or placed in the defendant's~~
15 ~~possession for a limited, authorized term or use.~~

16 ~~3.~~ 2. Obtains another person's means of transportation by means of
17 any material misrepresentation with intent to permanently deprive the
18 person of the means of transportation.

19 ~~4.~~ 3. Comes into control of another person's means of
20 transportation that is lost or misdelivered under circumstances providing
21 means of inquiry as to the true owner and appropriates the means of
22 transportation to the person's own or another's use without reasonable
23 efforts to notify the true owner.

24 ~~5.~~ 4. Controls another person's means of transportation knowing or
25 having reason to know that the property is stolen.

26 B. The inferences set forth in section 13-2305 apply to any
27 prosecution under subsection A, paragraph ~~5~~ 4 of this section.

28 C. A person who alleges that a theft of means of transportation has
29 occurred shall attest to that fact by signing an affidavit that is
30 provided by the law enforcement officer or agency when the report is taken
31 in person or by signing and notarizing an affidavit that is provided by
32 the law enforcement agency if the report is taken other than in person.
33 If the affidavit is not taken in person by a law enforcement officer or
34 agency, the person who alleges that a theft of means of transportation has
35 occurred shall mail or deliver the signed and notarized affidavit to the
36 appropriate local law enforcement agency within seven days after reporting
37 the theft. If the appropriate law enforcement agency does not receive the
38 signed and notarized affidavit within thirty days after the initial
39 report, the vehicle information shall be removed from the databases of the
40 national crime information center and the Arizona criminal justice
41 information system. The affidavit provided by the law enforcement agency
42 shall indicate that a person who falsely reports a theft of means of
43 transportation may be subject to criminal prosecution.

44 D. Theft of means of transportation is a class 3 felony.

1 Sec. 4. Section 13-1819, Arizona Revised Statutes, is amended to
2 read:

3 13-1819. Organized retail theft; classification

4 A. A person commits organized retail theft if the person, ~~acting~~
5 ~~alone or~~ in conjunction with another person, ~~does any of the following:~~

6 ~~1. removes merchandise from a retail establishment without paying~~
7 ~~the purchase price with the intent to resell or trade the merchandise for~~
8 ~~money or for other value.~~

9 ~~2. Uses an artifice, instrument, container, device or other article~~
10 ~~to facilitate the removal of merchandise from a retail establishment~~
11 ~~without paying the purchase price.~~

12 B. Organized retail theft is a class ~~4~~ 6 felony.

13 Sec. 5. Section 13-2002, Arizona Revised Statutes, is amended to
14 read:

15 13-2002. Forgery; classification

16 A. A person commits forgery if, with intent to defraud, the person:

17 1. Falsely makes, completes or alters a written instrument; or

18 2. Knowingly possesses a forged instrument; or

19 3. Offers or presents, whether accepted or not, a forged instrument
20 or one that contains false information.

21 B. The possession of five or more forged instruments may give rise
22 to an inference that the instruments are possessed with an intent to
23 defraud.

24 C. Forgery is a class ~~4~~ 6 felony, except that if the forged
25 instrument is used in connection with the purchase, lease or renting of a
26 dwelling that is used as a drop house, it is a class 3 felony. For the
27 purposes of this subsection, "drop house" means property that is used to
28 facilitate smuggling pursuant to section 13-2319.

29 Sec. 6. Section 13-2307, Arizona Revised Statutes, is amended to
30 read:

31 13-2307. Trafficking in stolen property; classification

32 A. A person who ~~recklessly~~
33 **KNOWING** that **THE PROPERTY** has been stolen is guilty of trafficking in
34 stolen property in the second degree.

35 B. A person who knowingly initiates, organizes, plans, finances,
36 directs, manages or supervises the theft and trafficking in the property
37 of another **KNOWING** that **THE PROPERTY** has been stolen is guilty of
38 trafficking in stolen property in the first degree.

39 **C. THIS STATE SHALL APPLY THE AGGREGATION PRESCRIBED BY SECTION**
40 **13-1801, SUBSECTION B TO VIOLATIONS OF THIS SECTION IN DETERMINING THE**
41 **APPLICABLE PUNISHMENT.**

42 ~~C.~~ **D. Trafficking in stolen property in the second degree OF**
43 **PROPERTY WITH A VALUE OF \$50,000 OR MORE IS A CLASS 2 FELONY. TRAFFICKING**
44 **IN STOLEN PROPERTY IN THE SECOND DEGREE OF PROPERTY WITH A VALUE OF**
45 **\$20,000 OR MORE BUT LESS THAN \$50,000 is a class 3 felony. TRAFFICKING IN**

1 STOLEN PROPERTY IN THE SECOND DEGREE OF PROPERTY WITH A VALUE OF \$10,000
2 OR MORE BUT LESS THAN \$20,000 IS A CLASS 4 FELONY. TRAFFICKING IN STOLEN
3 PROPERTY IN THE SECOND DEGREE OF PROPERTY WITH A VALUE OF \$5,000 OR MORE
4 BUT LESS THAN \$10,000 IS A CLASS 5 FELONY. TRAFFICKING IN STOLEN PROPERTY
5 IN THE SECOND DEGREE OF PROPERTY WITH A VALUE OF \$2,000 OR MORE BUT LESS
6 THAN \$5,000 IS A CLASS 6 FELONY. TRAFFICKING IN STOLEN PROPERTY IN THE
7 SECOND DEGREE OF PROPERTY WITH A VALUE OF LESS THAN \$2,000 IS A CLASS 1
8 MISDEMEANOR. Trafficking in stolen property in the first degree OF
9 PROPERTY WITH A VALUE OF \$20,000 OR MORE is a class 2 felony. TRAFFICKING
10 IN STOLEN PROPERTY IN THE FIRST DEGREE OF PROPERTY WITH A VALUE OF \$10,000
11 OR MORE BUT LESS THAN \$20,000 IS A CLASS 3 FELONY. TRAFFICKING IN STOLEN
12 PROPERTY IN THE FIRST DEGREE OF PROPERTY WITH A VALUE OF \$5,000 OR MORE
13 BUT LESS THAN \$10,000 IS A CLASS 4 FELONY. TRAFFICKING IN STOLEN PROPERTY
14 IN THE FIRST DEGREE OF PROPERTY WITH A VALUE OF \$2,000 OR MORE BUT LESS
15 THAN \$5,000 IS A CLASS 5 FELONY. TRAFFICKING IN STOLEN PROPERTY IN THE
16 FIRST DEGREE OF PROPERTY WITH A VALUE OF LESS THAN \$2,000 IS A CLASS 6
17 FELONY.

18 Sec. 7. Section 13-2310, Arizona Revised Statutes, is amended to
19 read:

20 13-2310. Fraudulent schemes and artifices; classification;
21 definition

22 A. ~~Any~~ A person COMMITS FRAUDULENT SCHEMES AND ARTIFICES who,
23 pursuant to a scheme or artifice to defraud, knowingly obtains any benefit
24 by means of false or fraudulent pretenses, representations, promises or
25 material omissions ~~is guilty of a class 2 felony.~~

26 B. Reliance on the part of any person shall not be a necessary
27 element of the offense described in subsection A of this section.

28 C. A person who is convicted of a violation of this section that
29 involved a benefit with a value of ~~one hundred thousand dollars~~ \$100,000
30 or more or the manufacture, sale or marketing of opioids is not eligible
31 for suspension of sentence, probation, pardon or release from confinement
32 on any basis except pursuant to section 31-233, subsection A or B until
33 the sentence imposed by the court has been served, the person is eligible
34 for release pursuant to section 41-1604.07 or the sentence is commuted.

35 D. This state shall apply the aggregation prescribed by section
36 13-1801, subsection B to violations of this section in determining the
37 applicable punishment.

38 E. FRAUDULENT SCHEMES AND ARTIFICES TO OBTAIN ANY BENEFIT WITH A
39 VALUE OF \$50,000 OR MORE IS A CLASS 2 FELONY. FRAUDULENT SCHEMES AND
40 ARTIFICES TO OBTAIN ANY BENEFIT WITH A VALUE OF \$20,000 OR MORE BUT LESS
41 THAN \$50,000 IS A CLASS 3 FELONY. FRAUDULENT SCHEMES AND ARTIFICES TO
42 OBTAIN ANY BENEFIT WITH A VALUE OF \$10,000 OR MORE BUT LESS THAN \$20,000
43 IS A CLASS 4 FELONY. FRAUDULENT SCHEMES AND ARTIFICES TO OBTAIN ANY
44 BENEFIT WITH A VALUE OF \$5,000 OR MORE BUT LESS THAN \$10,000 IS A CLASS 5
45 FELONY. FRAUDULENT SCHEMES AND ARTIFICES TO OBTAIN ANY BENEFIT WITH A

1 VALUE OF \$2,000 OR MORE BUT LESS THAN \$5,000 IS A CLASS 6 FELONY.
2 FRAUDULENT SCHEMES AND ARTIFICES TO OBTAIN ANY BENEFIT WITH A VALUE OF
3 LESS THAN \$2,000 IS A CLASS 1 MISDEMEANOR.

4 ~~E.~~ F. For the purposes of this section, "scheme or artifice to
5 defraud" includes a scheme or artifice to deprive a person of the
6 intangible right of honest services.