



## ARKANSAS SENTENCING COMMISSION

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### Impact Assessment for SB300 Sponsored by Senator Gilmore

**Subtitle** TO CREATE THE CRIMINAL OFFENSE OF ORGANIZED RETAIL THEFT

**Impact Summary**<sup>1</sup> Cannot be determined. The proposed bill creates a new felony criminal offense for which the likely number of occurrences is unknown.

**Change from Current Law**<sup>2</sup> Amends Title 5 of Arkansas Code Annotated (A.C.A.) by adding an additional section, A.C.A. § 5-36-127, Organized retail theft. Under the proposed bill, a violation of A.C.A. § 5-36-127 is a Class B, C, or D felony, depending on the value of the property or the aggregate value of the property within a one hundred twenty (120) day period.

**Impact Information** The proposed bill creates a new felony offense, the likely number of occurrences of which cannot be determined. The proposed criminal offense contains the same elements as A.C.A. § 5-36-103(a), Theft of Property. [See attached for complete reproduction] However, the current criminal offense does not address the additional elements required for organized retail theft. The following data is for informational purposes only.

The Administrative Office of the Courts (AOC) reports that for the three (3) year period beginning January 1, 2022 and ending December 31, 2024, there were six thousand, nine hundred and thirty-one (6,931) convictions for a violation of A.C.A. § 5-36-103(b)(1), (b)(2) and (b)(3), Theft of Property, Class B, C, and D felonies.

The Division of Correction (ADC) reports that there are currently two hundred and five (205) offenders serving a sentence for A.C.A. § 5-36-103, Theft of Property, as the most serious offense. One hundred and eighty-one (181) of those offenders are serving a sentence for A.C.A. § 5-36-103(b)(1), (b)(2) and (b)(3), Theft of Property, Class B, C, and D felonies. ADC data does not differentiate between the multiple courses of unlawful conduct in Theft of Property for the remaining twenty-four (24) offenders due to the sentencing dates.

The likely number of occurrences with the creation of the proposed new felony offense is unknown. While there is an existing unlawful course of conduct that shares many elements with the proposed bill, the proposed bill adds additional elements. For this reason, the potential impact on correctional resources cannot be determined.

<sup>1</sup> This impact assessment was prepared 3/4/2025 2:48 PM by the staff of the Arkansas Sentencing Commission pursuant to A. C. A. § 16-90-802(d)(6) with data supplied by the 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 costs; and “major” = would require budgetary increases for ADC costs and construction costs for additional beds.

<sup>2</sup> 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

## Document: A.C.A. § 5-36-103

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### A.C.A. § 5-36-103

**Copy Citation**

Current through all legislation of the 2024 Fiscal Session and the Second Extraordinary Session (2024)

[Arkansas Code Annotated PAW - ET Table of Contents](#)   [Title 5 Criminal Offenses](#)   [Subtitle 4. Offenses Against Property](#)   [Chapter 36 Theft](#)   [Subchapter 1 – General Provisions](#)

#### **5-36-103. Theft of property.**

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**(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;

**(H)** The property is oil and gas equipment and the value of the oil and gas equipment 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;

**(I)** 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; or

**(J)** The value of the property is one thousand dollars (\$1,000) or less and the person has been previously convicted of a theft offense of any classification within ten (10) years of the current offense; 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

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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; 2021, No. 340, § 2; 2023, No. 659, § 37.

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