

Arizona Peace Officer Standards and Training

Basic Curriculum Model Lesson Plan

LESSON TITLE: SUBSTANTIVE CRIMINAL LAW 2.11

SUBJECT:	Substantive Criminal Law
AZ POST DESIGNATION:	2.11 Chapter 18 Theft
HOURS:	2.0
COURSE CONTENT:	An analysis of the most frequently used statutes in this chapter.
PERFORMANCE OBJECTIVES:	Upon completion of this course of instruction, students using notes, handouts and other support materials as references, within the allotted time, will:
2.11.18.1	Identify <u>examples</u> of the following property-related crimes: A. Failure to return rental property (A.R.S. §13-1806).
2.11.18.2	Identify the <u>elements</u> of the following property-related crimes: A. Issuing a bad check (A.R.S. §§13-1807 and 1808).
2.11.18.3	Given a written, verbal or visual description depicting the possible commission of one (1) of the following crimes, identify if a crime occurred and, if so, the common crime name and classification: A. Theft (A.R.S. §§13-1801 through 13-1806, 13-1813 and 13-1814). B. Unlawful use of means of transportation (A.R.S. §13-1803). C. Organized Retail Theft (A.R.S. §13-1819)

DATE FIRST PREPARED: November 2000

PREPARED BY: SME Committee

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REVIEWED – REVISED:	Sgt. George Sloane, TPD.	DATE: August 2002
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INSTRUCTOR REFERENCES: A.R.S. Title 13

CLASS LEVEL: Student

TRAINING AIDS: <http://www.azleg.gov/ArizonaRevisedStatutes.asp>

INSTRUCTIONAL STRATEGY: Interactive lecture.

SUCCESS CRITERIA: 70% or higher on a written, multiple-choice examination.

COMPUTER FILE NAME: 2-11 Ch 18 Theft

DATE RELEASED TO THE SHARE FILE: May 27, 2022

I. INTRODUCTION

- A. Instructor – (self) introduction.
- B. Preview of performance objectives. ***INSTRUCTOR NOTE:** Use if taught as a “stand alone” lesson plan.*

II. 13-1801 – DEFINITIONS

P. O. 2.11.18.3A

- A. Check – means any check, draft or other negotiable instrument of any kind.
- B. Control – means to act so as to exclude others from using their property except on the defendant's own terms.
- C. Deprive – means to withhold the property interest of another either permanently or for so long a time period that a substantial portion of its economic value or usefulness or enjoyment is lost, or to withhold it with the intent to restore it only upon payment of reward or other compensation or to transfer or dispose of it so that it is unlikely to be recovered.
- D. Draw – means making, drawing, uttering, preparing, writing or delivering a check.
- E. Issue – means to deliver, or cause to be delivered, a check to a person who thereby acquires a right against the drawer with respect to the check.
- F. Material misrepresentation – means pretense, promise representation or statement of present, past or future fact which is fraudulent and which, when used or communicated, is instrumental in causing the wrongful control or transfer of property or services.
- G. The pretense may be a verbal or a physical act.
- H. Means of transportation – means any vehicle.
- I. Property - Any thing of value, tangible, or intangible, including trade secrets.
- J. Property of Another - Property in which any person other than the defendant has an interest on which the defendant is not privileged to infringe, including property in which the defendant also has an interest, notwithstanding the fact that the other person might be precluded from civil recovery because the property was used in an unlawful transaction or was subject to forfeiture as contraband. Property in possession of the defendant is not deemed property of another person who has only a security interest in the property, even if legal title is in the creditor pursuant to a security agreement.
- K. Services – includes labor, professional services, transportation, telephone, gas or electric services, accommodations in motels, restaurants, leased premises or elsewhere, admission to exhibitions and use of vehicles or other movable property.

- L. Value – means the fair market value of the property or services at the time of the theft. In determining the classification of the offense, the state may aggregate in the indictment or information amounts taken in thefts committed pursuant to one scheme or course of conduct, whether the amounts were taken from one or several persons.

III. 13-1802 – THEFT

P. O. 2.11.18.3A

- A. A person commits theft if, without lawful authority, such person knowingly:
 - 1. Controls the property of another with the intent to deprive him/her of such property.
 - a. This is the regular theft paragraph which would cover routine, everyday thefts.
 - b. The elements of this, the most general form of theft, are:
 - i. An unauthorized exercise of control over.
 - ii. Property in which another has claim to with.
 - iii. The intent to deprive the rightful possessor of possession.
 - c. Note that theft, pursuant to this paragraph, does not require a specific intent to appropriate the stolen property to one's own use.
 - 2. Converts for an unauthorized term or uses services or the property of another entrusted to the defendant or placed in the defendant's possession for a limited, authorized term or use.
 - a. This is the "embezzlement" paragraph.
 - b. The essence of this paragraph is the diversion of property or services to uses or terms not intended by the trustee.
 - 3. Obtains property or services of another by means of any material misrepresentation with the intent to deprive him/her of such property or services.
 - a. This is the "fraud" paragraph.
 - b. The essence of this paragraph is the exercise of control over another's property by means of deceit.
 - i. The deceit must be "material" to constitute the offense, in the sense that it must be a significant factor in the transaction.
 - ii. It must involve falsehood.

- iii. Mere boasting, ordinary advertising or sales puffing that would not deceive the ordinary customer does not constitute "material" misrepresentation.
- 4. Comes into control of lost, mislaid or mis-delivered property of another under circumstances providing means of inquiry as to the true owner and appropriates such property to his/her own or another's use without reasonable efforts to notify the true owner.
 - a. The essence of this paragraph is failure to notify the rightful owner or appropriate law enforcement agency that valuable property has been found.
 - b. Note that this also covers misplaced or mis-delivered property.
- 5. Controls property of another knowing, or having reason to know, that the property was stolen.
 - a. This penalizes receiving stolen property and requires the defendant to have knowledge or constructive knowledge of the stolen character of the property when he/she acquired it or while he/she had possession of it.
 - b. A lot of officers forget that possession of stolen property is hidden in the theft chapter . . . make a note of it!
- 6. Obtains services known to the defendant to be available only for compensation without paying or an agreement to pay such compensation or diverts another's services to his/her own or another's benefit without authority to do so.
 - a. This subsection penalizes two (2) separate acts that constitute theft.
 - b. The essence of the crime in the first part of the statute is an awareness that services received require compensation and avoiding the compensation – (meal skips (dine and dash), taxi skips, gas skips, motel skips, etc.).
 - c. The second part criminalizes unauthorized diversion of services.
 - i. Tapping your neighbor's electric line, etc.
 - ii. Your electricity is turned off at the meter for non-payment and you break the seal and restore the service without authority.
- 7. Controls the ferrous metal or nonferrous metal of another with the intent to deprive the other person of the metal; or **INSTRUCTOR NOTE:** *Subsections 7-9 specifically deal with scrap metal theft; e.g., stealing copper wire and plumbing, etc.*
- 8. Controls the ferrous metal or nonferrous metal of another knowing or having reason to

know that the metal was stolen; or

9. Purchases within the scope of the ordinary course of business the ferrous metal or nonferrous metal of another person knowing that the metal was stolen.
- B. A person commits theft if without lawful authority the person knowingly takes control, title, use or management of a vulnerable adult's property while acting in a position of trust and confidence and with the intent to deprive the vulnerable adult of the asset.
- C. Theft of property or services valued at \$1000 or more is a felony offense.
- D. If the property or service is valued at less than \$1000, the theft is a misdemeanor.
 1. Theft of a firearm is always a felony.
 2. Theft from the person of another is a felony – (pocket picking).
 3. Animal taken for purposes of animal fighting in violation of 13-2910.01 is a felony.

IV. 13-1803 – UNLAWFUL USE OF MEANS OF TRANSPORTATION

- A. A person commits unlawful use of means of transportation if, without intent permanently to deprive such person either:
 1. Knowingly takes unauthorized control over another person's means of transportation. **P. O. 2.11.18.3A & B**
 2. Knowingly is transported or physically located in a vehicle that the person knows, or has reason to know, is in the unlawful possession of another person pursuant to paragraph 1 or A.R.S. §13-1814.
- B. This is the "joyriding" statute and is considered a felony for either section.
- C. The driver would be guilty of a Class 5 felony while a knowing passenger would be guilty of a Class 6 felony.

V. 13-1804 – THEFT BY EXTORTION

P. O. 2.11.18.3A

- A. A person commits theft by extortion by knowingly obtaining, or seeking to obtain, property or services by means of a threat to do in the future any of the following:
 1. Cause physical injury to anyone by means of a deadly weapon or dangerous instrument or cause death or serious physical injury to anyone.
 2. Cause physical injury to anyone by any other means.
 3. Cause damage to property.

4. Engage in other conduct constituting an offense.
 5. Accuse anyone of a crime or bring criminal charges against anyone.
 6. Expose a secret or an asserted fact, whether true or false, tending to subject anyone to hatred, contempt or ridicule or to impair his/her credit or business. **INSTRUCTOR NOTE:** *Exposing secrets or asserted facts, is overboard and unconstitutional; State v. Weinstein, 182 Ariz. 564 (CA1 1995).*
 7. Take or withhold action as a public servant or cause a public servant to take or withhold action.
 8. Cause anyone can part with any property.
- B. Theft by extortion is always a felony.
- C. Note that the working phrase that separates theft by extortion from robbery is "in the future." Robbery requires an immediate threat while theft by extortion carries a future threat.

VI. 13-1805 – SHOPLIFTING

P. O. 2.11.18.3A

- A. A person commits shoplifting if, while in an establishment in which merchandise is displayed for sale, such person knowingly obtains such goods of another with the intent to deprive him/her of such goods by:
1. Removing any of the goods from the immediate display or from any other place within the establishment without paying the purchase price; or
 2. Charging the purchase price of the goods to a fictitious person or any person without his/her authority; or
 3. Paying less than the purchase price of the goods by some trick or artifice such as altering, removing, substituting or otherwise disfiguring any label, price tag or marking; or
 4. Transferring the goods from one (1) container to another; or
 5. Concealment.
- B. A person is presumed to have the necessary culpable mental state pursuant to subsection "a" of this section if the person does either of the following:
1. Knowingly conceals on himself or another person unpurchased merchandise of any mercantile establishment while within the mercantile establishment.

2. Uses an artifice, instrument, container, device or other article to facilitate the shoplifting.
- C. Subsections C, D, E, and F are a protection for the store and its employees.
- D. Instead of probable cause, the merchant or employee must have reasonable cause to detain a person suspected of shoplifting in a reasonable manner for a reasonable time.
- E. Shoplifting property with a value of two thousand dollars or more, shoplifting property during any continuing criminal episode regardless of the value of the goods or shoplifting property if done to promote, further or assist any criminal street gang or criminal syndicate is a felony. Shoplifting property with a value of one thousand dollars or more but less than two thousand dollars is a felony. Shoplifting property valued at less than one thousand dollars is a misdemeanor, unless the property is a firearm in which case the shoplifting is a felony. For the purposes of this subsection, "continuing criminal episode" means theft of property with a value of one thousand five hundred dollars or more if committed during at least three separate incidents within a period of ninety consecutive days. **INSTRUCTOR NOTE:** *Shoplifting a firearm is a felony. Shoplifting property with a value of over \$1,000 is a felony.*
- F. A person who in the course of shoplifting uses an artifice, instrument, container, device or other article with the intent to facilitate shoplifting or who commits shoplifting and who has previously committed or been convicted within the past five (5) years of two (2) or more offenses involving burglary, shoplifting, robbery, organized retail theft or theft is guilty of a felony.

VII. 13-1806 – UNLAWFUL FAILURE TO RETURN RENTED PROPERTY

P. O. 2.11.18.1A

P. O. 2.11.18.3A

- A. A person commits unlawful failure to return rented property if, without notice to and permission of the lessor of property, such person knowingly fails without good cause to return such property within 72 hours after the time provided for such return in the rental agreement.
- B. Paragraph B provides that if the property in question is not leased on a periodic tenancy basis, the lessor shall include within the rental agreement clear written notice to the lessee of the date and time on which property is required to be returned and of the maximum penalties to which the lessee shall be subject upon failure to return the property within 72 hours of that date and time.
- C. If the property is leased on a periodic tenancy basis without a fixed expiration or return date, the lessor shall include within the rental agreement, in bold print, clear written notice that the lessee is required to return the property within 72 hours from the date and time of the failure to pay any periodic lease payment required by the rental agreement.
- D. It shall be a defense to prosecution under this section that the defendant was physically incapacitated and unable to request or obtain permission of the lessor to retain the property or that the property itself was in such condition, through no fault of the defendant, that it could

not be returned to the lessor within such time.

- E. Unlawful failure to return rented or leased property is a felony if the failure to return property is a rented or leased motor vehicle; in all other cases it is a misdemeanor.

VIII. 13-1807 – ISSUING A BAD CHECK

P. O. 2.11.18.2A

- A. A person commits issuing a bad check if he/she issues or passes a check knowing that he/she does not have sufficient funds in, or on deposit with, the bank or other drawee for the payment in full of the check as well as all other checks outstanding at the time of issuance.
- B. The following are defenses for prosecution of A.R.S. §131807:
 - 1. The payee or holder knows, or has been notified, before the drawing of the check or has reason to believe that the drawer did not have on deposit or to his/her credit with the drawee sufficient funds to ensure payment.
 - 2. The check is post dated and sufficient funds are on deposit with the drawee on such a later date for the payment in full of the check.
 - 3. Insufficiency of funds results from an adjustment to the person's account by the credit institution without notice to the person.
- C. Issuing a bad check is a misdemeanor, and other offenses may apply.
- D. Issuing a bad check in an amount of five thousand dollars or more is a felony if the person fails to pay the full amount of the check, including accrued interest at the rate of twelve per cent per year and any other applicable fees pursuant to this chapter, within sixty days after receiving notice pursuant to section 13-1808

IX. 13-1808 – PRESUMPTIONS RELATING TO ISSUING A BAD CHECK

P. O. 2.11.18.2A

- A. For purposes of this chapter, the issuer's knowledge of insufficient funds may be presumed if:
 - 1. The issuer had no account or a closed account with the bank or other drawee at the time the check was issued.
 - 2. Payment was refused by the bank within 30 days after issue and the issuer fails to pay the holder the full amount due on the check, together with reasonable costs, within 12 days after receiving notice of the refusal to pay.
- B. Section E of A.R.S. §131808 sets up a form to be used by the check holder to notify the check issuer of the failure to pay.

X. 13-1813 – UNLAWFUL FAILURE TO RETURN A MOTOR VEHICLE SUBJECT TO A SECURITY INTEREST

P. O. 2.11.18.3A

- A. A person commits this crime if all the following apply:
1. The person fails to make a payment on a lien for more than 90 days.
 2. The secured creditor notifies the owner, in writing, by certified mail return receipt requested, that the owner is 90 days late in making a payment and is in default.
 3. The notice has to include the following:
 - a. A statement stating: "You are now in default on loan agreement # _____. If you fail to return the _____ (year of vehicle, make and model) within 30 days you will be subject to criminal prosecution."
 - b. The business address and hours of operations for return of the vehicle.
 - c. The maximum penalties for unlawful failure to return a motor vehicle subject to a security interest.
 4. The owner fails to cure the default within 30 days.
 5. With the intent to hinder or prevent the enforcement of the secured creditor's security interest, the owner knowingly fails to do either of the following:
 - a. Return the motor vehicle to the secured creditor.
 - b. Allow the secured creditor to take possession of the motor vehicle.
- B. The original contract creating the security interest has to contain the following information:
1. A statement that it is unlawful to fail to return the motor vehicle subject to a security interest within 30 days after receiving notice of default.
 2. A statement that notice of default will be mailed to the address on the loan agreement and that it is the responsibility of the owner to keep the listed address current.
 3. The maximum penalty for unlawful failure to return a motor vehicle subject to a security interest.
- C. Defenses to a prosecution for this crime include:
1. The owner was physically incapacitated and not able to request or obtain permission of the creditor to retain the motor vehicle.
 2. The motor vehicle was in a condition, through no intentional fault of the defendant, that it could not be returned to the creditor within the specified time.

3. The owner has a security interest pursuant to A.R.S. §47-2711, Subsection C. (The owner buys a new car and puts \$2000 down. He/she then discovers that it is a year older. The owner has a “security interest” until the problem is resolved.)
- D. If a law enforcement officer seizes the vehicle, the secured creditor is responsible for towing, storage and related charges or fees.
- E. A vehicle that is not returned pursuant to this section is a stolen vehicle for purposes of A.R.S. §28-4845. Follow your agency’s policies on entering these types of vehicles into NCIC.
- F. This is a felony offense.

XI. 13-1814 – THEFT OF MEANS OF TRANSPORTATION

P. O. 2.11.18.3A

- A. A person commits theft of means of transportation if, without lawful authority, the person knowingly does any of the following:
 1. Controls another person’s means of transportation with the intent to permanently deprive him/her of the means of transportation.
 2. Converts for an unauthorized term or uses another person’s means of transportation that is entrusted to or placed in the defendant's possession for a limited, authorized term or use.
 3. Obtains another person’s means of transportation by means of any material misrepresentation with intent to permanently deprive the person of the means of transportation.
 4. Comes into control of another person’s means of transportation that is lost or mis-delivered under circumstances providing means of inquiry as to the true owner and appropriates the means of transportation to the person’s own or another's use without reasonable efforts to notify the true owner.
 5. Controls another person’s means of transportation by knowing, or having reason to know, that the property was stolen.
- B. A person who alleges that a theft of means of transportation has occurred shall attest to that fact by signing an affidavit that is provided by the law enforcement officer or agency when the report is taken in person or by signing and notarizing an affidavit that is provided by the law enforcement agency if the report is taken other than in person. If the affidavit is not taken in person by a law enforcement officer or agency, the person who alleges that a theft of means of transportation has occurred shall mail or deliver the signed and notarized affidavit to the appropriate local law enforcement agency within seven days after reporting the theft. If the appropriate law enforcement agency does not receive the signed and notarized affidavit within thirty days after the initial report, the vehicle information shall be removed from the databases of the national crime information center and the Arizona criminal justice information system.

The affidavit provided by the law enforcement agency shall indicate that a person who falsely reports a theft of means of transportation may be subject to criminal prosecution.

- C. Theft of means of transportation is a felony.

XII. 13-1816 – UNLAWFUL USE, POSSESSION OR REMOVAL OF THEFT DETECTION SHIELDING DEVICES

- A. A person commits unlawful use of a theft detection shielding device if the person knowingly manufactures, sells, offers for sale or distributes in any way a laminated or coated bag or device unique to, and marketed for, shielding and intended to shield merchandise from detection by an electronic or magnetic theft alarm sensor.
- B. A person commits unlawful possession of a theft detection shielding device if, with the intent to commit theft or shoplifting, the person knowingly possesses any laminated or coated bag or device unique to, and marketed for, shielding and intended to shield merchandise from detection by an electronic or magnetic theft alarm sensor.
- C. A person commits unlawful possession of a theft detection device remover if the person knowingly possesses any tool or device that is designed to allow the removal of any theft detection device from any merchandise and the person intended to use the tool to remove any theft detection device from any merchandise without the permission of the merchant or person who owns or holds the merchandise.
- D. A person commits unlawful removal of a theft detection device if the person intentionally removes the device from merchandise before purchasing that merchandise.
- E. A violation of this section is a felony.
- F. For the purposes of this section, "merchant" means a person who offers for sale or exchange at least six (6) like items of new and unused personal property in this state.

XIII. 13-1817 – UNLAWFUL POSSESSION, USE OR ALTERATION OF A RETAIL SALES RECEIPT OR UNIVERSAL PRODUCT CODE LABEL

- A. It is unlawful for a person to intentionally cheat or defraud a merchant by doing any of the following:
 - 1. Possessing at least 15 fraudulent retail sales receipts or Universal Product Code labels or possessing a device that manufactures fraudulent retail sales receipts or Universal Product Code labels.
 - 2. Possessing, using, uttering, transferring, making, altering, counterfeiting or reproducing a retail sales receipt or a Universal Product Code label.
- B. A violation of Subsection A, paragraph 1, is a felony.

- C. A violation of Subsection A, paragraph 2, is a felony and in addition to any other fine authorized by law, the court may impose a fine of not more than three (3) times the value represented on the retail sales receipt or the retail price represented by the original Universal Product Code label.
- D. For the purposes of this section, "merchant" means a person who offers for sale or exchange at least six (6) like items of new and unused personal property in this state.

XIV. 13-1819 – ORGANIZED RETAIL THEFT

P. O. 2.11.18.3C

- A. It is unlawful, acting alone or in conjunction with another person to:
 - 1. Remove merchandise from a retail establishment without paying the purchase price with the intent to resell or trade the merchandise for money or for other value.
 - 2. Use an artifice, instrument, container, device or other article to facilitate the removal of merchandise from a retail establishment without paying the purchase price.
 - 3. It is a felony.

XV. CONCLUSION

- A. Review of performance objectives.
- B. Final questions and answers.
- C. Instructor closing comment(s).