

2012 PCAO Proposed Legislation

Topic: Unintended consequences of the scrap metal theft statutes has created a valuation problem

Proposed Text:

13-1801. Definitions

A. In this chapter, unless the context otherwise requires:

15. "Value" means the fair market value of the property or services at the time of the theft. The value of ferrous metal or nonferrous metal, as defined in section 44-1641, is the ~~average~~ fair market value of the metal ~~as scrap metal~~ in the local area together with the repair or replacement value of any property from which the scrap metal was removed at the time of the theft. Written instruments that do not have a readily ascertained market value have as their value either the face amount of indebtedness less the portion satisfied or the amount of economic loss involved in deprivation of the instrument, whichever is greater. When property has an undeterminable value the trier of fact shall determine its value and, in reaching its decision, may consider all relevant evidence, including evidence of the property's value to its owner.

13-1802. Theft; classification; definitions

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

1. Controls property of another with the intent to deprive the other person of such property; or
2. Converts for an unauthorized term or use services or property of another entrusted to the defendant or placed in the defendant's possession for a limited, authorized term or use; or
3. Obtains services or property of another by means of any material misrepresentation with intent to deprive the other person of such property or services; or
4. Comes into control of lost, mislaid or misdelivered property of another under circumstances providing means of inquiry as to the true owner and appropriates such property to the person's own or another's use without reasonable efforts to notify the true owner; or
5. Controls property of another knowing or having reason to know that the property was stolen; or
6. Obtains services known to the defendant to be available only for compensation without paying or an agreement to pay the compensation or diverts another's services to the person's own or another's benefit without authority to do so.

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 property. Proof that a person took control, title, use or management of a vulnerable adult's property without adequate consideration to the vulnerable adult may give rise to an inference that the person intended to deprive the vulnerable adult of the property.

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

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

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

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

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

G. Theft of property or services with a value of twenty-five thousand dollars or more is a class 2 felony. Theft of property or services with a value of four thousand dollars or more but less than twenty-five thousand dollars is a class 3 felony. Theft of property or services with a value of three thousand dollars or more but less than four thousand dollars is a class 4 felony, except that theft of any vehicle engine or transmission is a class 4 felony regardless of value. Theft of property or services with a value of two thousand dollars or more but less than three thousand dollars is a class 5 felony. Theft of property or services with a value of one thousand dollars or more but less than two thousand dollars is a class 6 felony. Theft of any property or services valued at less than one thousand dollars is a class 1 misdemeanor, unless the property is taken from the person of another, is a firearm or is an animal taken for the purpose of animal fighting in violation of section 13-2910.01, in which case the theft is a class 6 felony.

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

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

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

1. Unless satisfactorily explained or acquired in the ordinary course of business by an automotive recycler as defined and licensed pursuant to title 28, chapter 10 or by a scrap metal dealer as defined in section 44-1641, proof of possession of scrap metal that was recently stolen may give rise to an inference that the person in possession of the scrap metal was aware of the risk that it had been stolen or in some way participated in its theft.

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

K. For the purposes of this section:

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

2. "Ferrous metal" and "nonferrous metal" have the same meanings prescribed in section 44-1641.

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

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

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

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

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