

CHAPTER 14

DETECTION OF CRIMINAL VIOLATIONS

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CHAPTER 14

DETECTION OF CRIMINAL VIOLATIONS

14.1 Scope of this Chapter. This Chapter discusses crimes that state officers and employees might commit against the State or third parties, crimes that third parties might commit against the State or its employees, and the proper reporting of suspected criminal activity.

14.1.1 Introduction. The Arizona Legislature has enacted numerous laws criminalizing certain activities. Some of these laws are very specific and deal only with governmental activities, while others prohibit specified conduct more generally. State officers and employees must be aware of what conduct has been criminalized so that they can detect and report suspicious activities to the proper authorities.

Public officers and employees who violate the laws discussed in this Chapter or any other criminal law risk serious consequences. In addition to potential criminal prosecution, they may face discharge from public employment as well as the damages, civil penalties, costs, and attorney's fees that may be imposed in a civil action that the State files against them.

14.2 Reporting of Crimes. In performing their duties, state officers and employees may obtain information that leads them to suspect that a crime has been or is being committed by a third person against the State, by a state officer or employee against the State, or by a state officer or employee against a third party. In any of these situations, the agency or employee should immediately contact the Attorney General's Office. The rules that govern criminal investigations are complex and constantly changing, and state employees should not attempt to investigate crimes themselves. Even innocent mistakes may prevent successful investigation and prosecution. Early consultation is important to prevent legal problems, to identify and preserve evidence, and to ensure a fair and thorough investigation.

14.3 Criminal Activities Potentially Affecting State Government. The acts described below are criminal offenses that may be encountered in the operation of state government. See *also* Section 2.15; Chapter 8.

14.3.1 Threatening, Intimidating, or Harassing. Public employees may be subject to or may engage in threats or intimidation. Arizona Revised Statute § 13-1202(A)(1) prohibits threatening and intimidating by word or conduct to cause physical injury to another person or serious damage to the property of another. Arizona Revised Statutes § 13-1202 (A)(2) prohibits threatening or intimidating by word or conduct to cause, or in reckless disregard to causing, "serious public inconvenience," which includes "evacuation of a building, place of assembly or transportation facility."

In addition, A.R.S. § 13-2916(A) prohibits terrifying, intimidating, threatening, or harassing a person or persons by (1) directing any obscene, lewd or profane language or suggesting any lewd or lascivious act to a person in an electronic communication; (2) threatening to inflict physical harm to any person or property in any electronic communication; or (3) otherwise disturbing by repeated anonymous, unwanted, or unsolicited electronic communications the peace, quiet, or right of privacy of a person at the place where the communications were received. See *State v. Musser*, 194 Ariz. 31, 977 P.2d 131 (1999) (upholding a prior version of the statute in a case in which a citizen had threatened an Arizona Supreme Court justice over the telephone). For the purposes of this statute, “electronic communication” includes a wire line, cable, wireless or cellular telephone call, a text message, an instant message or electronic mail. A.R.S. § 13-2916(E).

A.R.S. § 13-2921(A) prohibits harassment. A person commits harassment if they have the intent to harass or know that they are harassing another person and they engage in any of the following acts (1) anonymously or otherwise contacts, communicates or causes a communication with another person by verbal, electronic, mechanical, telegraphic or written means in a manner that harasses; (2) Continues to follow another person in or about a public place for no legitimate purpose; (3) Repeatedly omits an act or acts that harass another person; (4) surveils or causes another person to surveil a person for no legitimate purpose; (5) on more than one occasion make a false report to law enforcement, credit or social service agency; or (6) interferes with the delivery of any public or regulated utility to a person. A.R.S. § 13-2921(B) makes it a crime to harass a public officer or employee by filing a nonconsensual lien against the officer or employee with the intent to harass that officer or employee unless the lien is issued by a court of competent jurisdiction or another authorized regulatory agency. See *A.R.S. § 13-2921(B) and A.R.S. § 13-2923* (prohibiting “stalking”).

14.3.2 Criminal Damage to Property. The State is a major owner of property, and persons damaging state property are subject to criminal liability under A.R.S. § 13-1602. Under that statute, the crime of “criminal damage” includes recklessly (1) defacing or damaging the property of another person; (2) tampering with the property of another person so as substantially to impair its function or value; (3) damaging the property of a utility; (4) parking a vehicle in such a manner as to deprive livestock of access to the only reasonably available water; (5) drawing or inscribing a message, slogan, sign or symbol that is made on any public or private building, structure or surface, except the ground and that is made without permission of the owner; or (6) intentionally tampering with utility property.

A.R.S. 13-1603 prohibits littering or polluting. A person commits criminal littering or polluting if the person without lawful authority (1) throws, places, drops or permits to be dropped on public property or property of another that is not a lawful dump any litter, destructive or injurious material that the person does not immediately remove; (2) discharges or permits to be discharged any sewage, oil products or other harmful

substances into any waters or onto any shorelines within this state; or (3) dumps any earth, soil, stone, ores or minerals on any land.

14.3.3 Theft. Theft may be committed in several ways, including controlling or converting another person's property or services without authorization and with intent to permanently deprive the other person of such property. A.R.S. § 13-1802. Because "person" includes "a government" or "a governmental authority," the unauthorized control or conversion of State or state agency property is a crime. A.R.S. § 13-105(20), (30).

Theft is not limited to taking another's property, but also encompasses "controlling" property under various circumstances. A.R.S. § 13-1802(A). A person also commits theft by (1) converting for an unauthorized term or use services or property entrusted to the person for a limited, authorized term or use; (2) obtaining services or property of another through a material misrepresentation with intent to deprive the other person of such property or services; (3) failing to return lost, mislaid, or misdelivered property when circumstances allow the true owner to be located; (4) possessing property while knowing or having reason to know that the property is stolen; or (5) obtaining services that a person knows to be available only for compensation without paying or an agreement to pay compensation or diverting another's services to the person's own or another's benefit without authority to do so. A.R.S. § 13-1802(A). A person also commits theft by controlling an incapacitated or vulnerable adult's assets while acting in a position of trust and confidence and with the intent to deprive the incapacitated or vulnerable adult of the assets. A.R.S. § 13-1802(B).

One potential area of theft in state government is embezzlement of funds. See *State v. Tramble*, 144 Ariz. 48, 695 P.2d 737 (1985) (noting that in adopting A.R.S. 13-1802 the legislature has created a single crime of "theft" by combining or merging the common law crimes of larceny, theft, embezzlement, obtaining money by false pretenses, and other, similar offenses.) In addition to the general crime of theft, there are more specific laws relating to embezzlement of public money or property. A.R.S. § 35-301 prohibits misappropriation of public money by public officers or employees. See Section 2.15(16). Also, a public officer's or employee's acceptance, retention, or diversion of a subordinate's salary or fees violates A.R.S. § 38-609.

Under Arizona law, taking state property or services is "theft" regardless of the value of what is taken. A.R.S. § 13-1802(G). The value of what is taken determines only the class of felony or misdemeanor. *Id.* Theft of a firearm, no matter its value, is a felony. *Id.*

The use of threats to obtain property or services may also be considered theft. See, e.g., A.R.S. § 13-1804 (theft by extortion). For example, it is unlawful to obtain property or services by threatening to "take or withhold action as a public servant or [to] cause a public servant to take or withhold action." A.R.S. § 13-1804(A)(7). State employees should be aware that certain types of theft by extortion have affirmative defenses that absolve criminal liability and mean no crime has occurred. A.R.S. § 13-1804(B). These affirmative defenses apply when the property obtained is lawfully claimed as either (1) restitution or

indemnification for harm done under circumstances to which the accusation, exposure, lawsuit or other official action relates; or (2) compensation for property that was lawfully obtained or for lawful services. *Id.*

Other statutes criminalize other forms of theft. See also A.R.S. § 13-1806 (failure to return rented or leased property); A.R.S. § 13-2008 (taking identify of another person or entity). It is also a crime to place an insignia that has been approved for designating a state motor vehicle upon a vehicle that is not a state vehicle. A.R.S. § 38-538.01(C). The unauthorized manufacture, duplication, use, or possession of a key to a public building is also a crime. A.R.S. § 13-3715.

14.3.4 Forgery and Fraud. A person commits the crime of forgery by doing any of the following with the intent to defraud (1) falsely making, completing, or altering a written instrument; (2) knowingly possessing a forged instrument; or (3) offering or presenting, whether accepted or not, a forged instrument or one that contains false information. A.R.S. § 13-2002(A).

The most expansive statute regarding fraud makes it a felony to obtain any benefit from any person, including the State, through fraud. A.R.S. § 13-2310 states that a person commits the crime of fraudulent schemes and artifices when, pursuant to a scheme or artifice to defraud, that person knowingly obtains any benefit by means of false or fraudulent pretenses, representations, promises or material omissions. “The statute is violated by one who makes false representations to obtain a benefit with knowledge of the fraudulent scheme and in furtherance of it.” *State v. Bridgeforth*, 156 Ariz. 60, 64, 750 P.2d 3, 7 (1988). Thus, any person who obtains a benefit, including money, from the State by an intentional misrepresentation or material omission has committed criminal fraud. See also A.R.S. § 13-2316 (computer tampering).

There are more specific statutes that deal with fraud in state employment. These might cover, for example, filing a false timesheet, leave report, travel expense report, per diem voucher, or other claim against the State, as well as filing a false report relating to the performance of official duties. See A.R.S. §§ 13-2407 (making, presenting, or filing a false public record); 13-2311 (engaging in fraudulent schemes or practices in any matter related to the business that any state department, agency, or political subdivision conducts).

14.3.5 Obstructing Government Operations, Impersonating a Public Servant, and Tampering with or Falsifying Public Records. It is a crime for a person to use or threaten to use violence or physical force to knowingly obstruct, impair or hinder the performance of government functions by a state officer or employee who is acting under color of official authority. A.R.S. § 13-2402; Section 2.15(1).

It is also a crime for a person to pretend to be a public employee and engage in any conduct with the intent to induce another to submit to the person’s pretended official authority or to rely on the person’s pretended official acts. A.R.S. § 13-2406; Section 2.15(2). Similarly, it is a crime to intrude oneself into a public office to which he or

she has not been elected or appointed. A.R.S. 38-234, *See also* Section 14.3.8(6); Section 2.15(18)

It is a crime for a person, with the intent to defraud or deceive, to knowingly (1) falsely make or complete a written instrument which purports to be a public record or true copy thereof or alter or make a false entry in a written instrument which is a public record or a true copy of a public record; (2) present or use a written instrument which purports to be a public record or a copy of a public record, knowing that it has been falsely made, completed or altered or that a false entry has been made, with the intent that it be taken as genuine; (3) record, register or file or offer for recordation, registration or filing in a government office a written statement that has been falsely made, completed or altered or in which a false entry has been made or which contains a false statement or false information; (4) destroy, mutilate, conceal, remove or otherwise impair the availability of any public record; or (5) refuse to deliver a public record in such a person's possession upon proper request of a public servant entitled to receive such record for examination or other purposes. A.R.S. § 13-2407; Section 2.15(3).

It is a crime for an officer who has custody of a public record to steal or knowingly and without lawful authority destroy, mutilate, deface, alter, falsify, remove or secret in whole or in part thereof, even without the intent to defraud or deceive someone. A.R.S. § 38-421(A); Section 2.15(22). It is also a crime to knowingly make a false statement or to falsify or permit to be falsified any record with intent to defraud the Arizona State Retirement System, A.R.S. § 38-793, or the Public Safety Retirement System, A.R.S. § 38-849(B).

A person who obstructs or hinders a public officer from collecting revenue, taxes, or other money in which the State has an interest is guilty of a crime. A.R.S. § 13-2410.

14.3.6 Bribery and Trading in Public Office. A person commits the crime of "bribery of a public servant or party officer" by, with corrupt intent, either (1) offering, conferring, or agreeing to confer any benefit upon a public servant or a party officer with the intent to influence the public servant or party officer with regard to any action in his official capacity; or (2) while being a public servant or a party officer, soliciting, accepting, or agreeing to accept any benefit upon an agreement or understanding that any action in one's official capacity may be influenced. A.R.S. § 13-2602(A); Section 2.15(4). Thus, both private citizens and public servants may be guilty of bribery. *See State v. Walker*, 185 Ariz. 228, 914 P.2d 1320 (App. 1995) (Arizona state senator and lobbyist both convicted of bribery) (superseded by statute on other grounds). "Benefit" in this context means anything of value or advantage in the present or future. A.R.S. § 13-105(3).

It is unlawful if a person, acting with corrupt intent, offers confers or agrees to confer any benefit upon a public servant or party officer upon an agreement or understanding that he will or may be appointed to a public office or designated or nominated as a candidate for public office. A.R.S. § 13-2603; *see also* Section 2.15(5). It is also a crime for a public servant or party officer to solicit, accept or agree to accept such an offer. *Id.*

It is also a crime to obtain a benefit by making a claim or representation that one can or will improperly influence a public officer's or employee's actions. A.R.S. § 13-2606.

14.3.7 Perjury and False Swearing. State officers and employees should be particularly vigilant because perjury, false swearing, or unsworn falsifications can occur in connection with the activities of any state department or agency.

A person can commit the crime of perjury by (1) making a false sworn statement with regard to a material issue, believing it to be false; or (2) making a false unsworn declaration, certificate, verification, or statement in regard to a material issue and declaring it, under penalty of perjury, to be true, while believing it to be false. A.R.S. § 13-2702. Unlike forgery, perjury does not require intent to defraud. *Id.*

A related crime is false swearing, which is making a false sworn statement, believing it to be false. A.R.S. § 13-2703; see *also* Section 2.15(6), (7). It is also a crime to make a false material statement in an application for any benefit, privilege, or license or to make a false material statement to a public official in connection with any official proceeding. A.R.S. § 13-2704; see *also* Section 2.15(8).

14.3.8 Miscellaneous Arizona Crimes. Various other state statutes involve crimes that concern state government. The following are examples:

1. A state officer or employee commits the crime of nonfeasance in office by failing to perform a required duty. A.R.S. § 38-443; see *also* Section 2.15(25).
2. It is unlawful to charge fees for public services that are higher than those allowed by law. A.R.S. § 38-413; see *also* Section 2.15(20).
3. It is unlawful for a state officer or employee to fail to file required reports of monies collected. A.R.S. § 38-414; see *also* Section 2.15(21).
4. It is a crime for an officer charged with collecting, receiving, or disbursing any tax revenue of the State or of any political subdivision to refuse to allow the Attorney General or the county attorney to inspect the financial records of his or her office. A.R.S. § 38-422.
5. It is a crime for a public employee to make an unauthorized use or disclosure of confidential information or to disclose or use such information for personal profit. A.R.S. § 38-504(B).
6. It is unlawful for a person to act as a public officer if that person has not been elected or appointed to the public office or if the person's term of office has expired, A.R.S. § 38-234, or if the person has failed to take the oath of office

or to post a required bond, A.R.S. § 38-442. See also Sections 2.15(2), (24); 14.3.7.

14.3.9 Federal Crimes. State employees must also be aware of acts that are crimes under federal law and of the related Arizona crimes.

- a. **Antitrust Crimes.** Violations of the Sherman Antitrust Act, 15 U.S.C. §§ 1-7, which prohibits conspiracies in restraint of trade, are felonies that are punishable by fines of up to \$350,000 and imprisonment for up to three years. See also Section 5.9.3.1. Violations of the state bid-rigging statutes are also crimes. A.R.S. § 34-252; see also A.R.S. § 44-1416; Sections 5.9.4.2, 5.9.5.2. State employees may be immune from prosecution under certain specified doctrines, see, e.g., Section 5.9.6.1, but may be liable for conspiracies with private individuals and firms, see Section 5.9.5. An example of a governmental antitrust crime is a procurement officer accepting a kickback for awarding a public contract.
- b. **Copyright laws.** Copyrighted works, such as maps, books, or computer software, are protected against copying by federal law. See 17 U.S.C. §§ 106, 107, 117, 506(a); 18 U.S.C. § 2318(b)(3). Criminal remedies protect the copyright owner. See 17 U.S.C. § 506(a); 18 U.S.C. § 2318(b)(3). Software publishers, in particular, have taken aggressive action to protect their works. Unauthorized copying by state employees can subject the State to substantial liability, and the employee may also face criminal prosecution. See A.R.S. § 44-1451 (establishing civil remedies for infringement).

14.4 Crimes Against People. Arizona's criminal statutes obviously include many crimes that involve victims other than the state government or state employees. Too often, crimes against such victims come to the attention of law enforcement authorities well after a person has been victimized. Two areas of crimes against people should be of special concern to Arizona state employees: fraud and child abuse.

14.4.1 Fraud. The crime of fraud has been discussed above. Vigilance by state employees will facilitate earlier fraud detection and increase the chances of recovering victims' money and property. A state agency can provide this public service by instructing its employees who work with the public—e.g., inspectors, auditors, investigators, examiners, and employees who receive calls from the public—to be alert to the warning signs of an ongoing fraud.

- a. **Warning Signs of Potential Criminal Activity by Regulated Enterprises.** An agency may unearth potential criminal activity during many of its normal functions, such as auditing or inspecting a regulated enterprise's books or premises, reviewing a license or permit application, or conducting an administrative investigation or a formal or an informal administrative

proceeding. Many of the following indicators apply equally to charitable and business organizations. The warning signs include the following:

1. The organization turns assets into untraceable forms or keeps an inordinate percentage of its assets in liquid form, such as cash, traveler's checks, or cashier's checks.
2. The organization reports excessive overhead expenses.
3. The enterprise pays for significant private expenditures, for example, an officer's mortgage payments.
4. The organization pays very high salaries, dividends, or interest payments.
5. Very little of the money coming into the enterprise goes back into the business.
6. The organization shows high profits but little capitalization.
7. The organization is not licensed, employs nonlicensed personnel, or sells unregistered securities. See A.R.S. § 44-1842.
8. The organization is a foreign corporation that is not registered in Arizona.
9. The organization's records are seriously inadequate.
10. The company's records show transfers of money or property to public officials.
11. The company's records show unusual or undocumented payments of money or transfers of property.
12. A license applicant's claimed educational credentials or work history cannot be verified or are supported by suspicious-looking documentation.
13. A pattern of complaints of excessive billing or "double billing" of patients, clients, or insurance companies exists.
14. A healthcare practitioner promotes questionable treatments or cures.
15. An agency employee instinctively feels that something is "not quite right."

Individuals often call a state agency with questions, comments, or complaints about persons under the agency's jurisdiction. If a caller complains of any of the warning signs listed above, the agency should refer the complaint to the Consumer Information and Complaints Office at the Attorney General's Office.

b. Warning Signs of Possible Fraud in Consumer or Investor Transactions. Fraudulent activity, such as an unlawful telemarketing scheme that promises valuable prizes in exchange for payments to the solicitor, is often directed at consumers or investors. Warning signs for this type of fraudulent activity include:

1. The prospective client or investor must make a large investment immediately or lose the opportunity to invest.
2. The individual is "guaranteed" a profit or a market.
3. The company breaks its promise to give an individual an "exclusive territory," a "refund on request," "complete training," "marketing assistance," or "company advertising."
4. There is a long delay in receiving the equipment or products.
5. The equipment or products received are shoddy.
6. The company is uncooperative and does not return the individual's calls.
7. The company's check bounces.
8. The company gives the individual "the run-around."
9. Other investors or customers are complaining.
10. High-pressure sales tactics are used.
11. The offered product or investment is a "once-in-a-lifetime opportunity" based upon a new scientific breakthrough or government activity that is available to the consumer only through this company.
12. The sales staff emphasizes their knowledge in the product area, but cannot answer questions that are not included in their prepared script.
13. The sales staff assures the customer that they are selling the product primarily as a public service, not because they receive commissions.
14. A mail drop or post office box rather than an actual business location is the sole address available to the customers.

15. The local sales organization sells solely to out-of-state customers, while Arizona customers may buy solely from the local company's out-of-state affiliate.
16. The company refuses to provide names of satisfied customers.

The items mentioned in these lists are not exhaustive and are not meant to replace the common sense and expertise of the agency's personnel.

14.4.2 Recognizing and Reporting Child Abuse. It is very important for state agencies and their employees to recognize and report child abuse. Under A.R.S. § 13-3620, specified persons must report nonaccidental injuries, physical neglect, and the denial or deprivation of necessary medical or surgical care or nourishment to minors. Those required to report are various medical personnel, school personnel, social workers, peace officers, parents, counselors, clergymen or priests, or "any other person who has responsibility for the care or treatment of the minor." *Id.*

The crime of child abuse includes the intentional, knowing, reckless or negligent infliction of physical injury, permitting such injury to occur while having care or custody of a child or permitting a child to be placed in a situation where its person or health is endangered. A.R.S. § 13-3623(A). The severity of the crime depends on the intent of the abuser and the extent of harm to the child. A.R.S. § 13-3623(A), (B).

Numerous other statutes are specifically targeted at those who commit crimes against children. See, e.g., A.R.S. §§ 13-1405 (sexual conduct with a minor); -1410 (molestation of a child); -1417 (continuous sexual abuse of a child); -3206 (taking a child for prostitution purposes); -3409 (involving or using minors in drug offenses); -3551 to -3561 (sexual exploitation of children).