

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 commit against either the State or third parties, crimes that third parties 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 Statutes § 13-1202 criminalizes threatening or intimidating by word or conduct. Subsection (A)(2) of that statute prohibits causing or in reckless disregard 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 using a telephone to terrify, intimidate, threaten, harass, annoy, or offend by (1) threatening physical harm to persons or property; (2) using obscene, lewd, or profane language; (3) suggesting lewd or lascivious acts; or (4) making repeated anonymous calls. 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).

Arizona Revised Statutes § 13-2921 prohibits harassing any citizen. This includes making a false report to a law enforcement, credit, or social service agency. Subsection B makes it a crime to harass a public officer or employee by wrongfully filing a lien against the officer's or employee's property. See also 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. Criminal damage includes drawing or inscribing a message, slogan, sign, or symbol on a public building. A.R.S. § 13-1602(A)(5). Another statute prohibits criminal littering or polluting. A.R.S. § 13-1603. This statute expressly includes littering or polluting "public property." A.R.S. § 13-1603(A)(1).

14.3.3 Theft. Theft may be committed in several ways, but it is basically the controlling of another person's property or services without authority. A.R.S. § 13-1802. Because "person" includes "a government" or "a governmental authority," the unauthorized controlling of the property of the State or a state agency is a criminal offense. A.R.S. § 13-105(20), (30).

Theft is not limited to taking someone else's property, but also encompasses "controlling" property under various circumstances. A.R.S. § 13-1802(A). Thus, a person can commit theft by using in an unauthorized manner services or property entrusted to him; obtaining property through a material misrepresentation; failing to return lost, mislaid, or misdelivered property when circumstances allow the true owner to be located; and possessing property while knowing or having reason to know that the property is stolen. *Id.* A person can also commit theft by controlling an incapacitated or vulnerable adult's assets through intimidation or deception while acting in a position of trust and confidence.

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 embezzlement is one way of committing theft). In addition to the general crime of theft, there are more specific laws relating to taking public property. For example, A.R.S. § 35-301 prohibits misappropriation of public money by public officers or employees. See Section 2.15(16). 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," no matter how small the value of what is taken. A.R.S. § 13-1802(G). The value determines only the class of

felony or misdemeanor, which in turn determines the possible range of penalties. *Id.* Theft of a firearm, no matter its value, is always a felony. *Id.*

Other statutes criminalize other forms of 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); see also A.R.S. §§ 13-1806 (failure to return rented or leased property); -2008 (theft of identity). 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. 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: making, completing, or altering a written instrument; knowingly possessing a forged instrument; or offering a forged instrument or one that contains false information. A.R.S. § 13-2002. A related crime is criminal impersonation with intent to defraud. A.R.S. § 13-2006 (also discussed in Section 14.3.5).

The most expansive statute regarding fraud makes it a felony for any person to obtain any benefit from any person, including the State, through fraud. A.R.S. § 13-2310 (fraudulent schemes and artifices). To be guilty of this crime, a person must “make false representations to obtain a benefit with knowledge of the [existence of a] 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 benefits or money from the State by an intentional misrepresentation (including a 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); -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 hinder or obstruct the performance of a state officer’s or employee’s duties through either the threat or the actual use of force. A.R.S. § 13-2402; Section 2.15(1).

It is also a crime for anyone to pretend to be a public employee if that person intends to induce another to rely on his or her pretended official authority. A.R.S. § 13-2406; Section 2.15(2). Thus, it is a crime to pose as a state employee or other government official with the intent to induce another to submit to one’s pretended authority. See also Section 14.3.8(6).

It is a class 6 felony to destroy public records or to alter or falsify public records with an intent to defraud someone. A.R.S. § 13-2407; Section 2.15(3). If the officer who has custody of the records destroys or tampers with them, the crime is a class 4 felony. 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, tax, 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). “Benefit” means anything of value or advantage in the present or in the future. A.R.S. § 13-105(3).

It is unlawful to purchase or sell the right to obtain employment in a public office. A.R.S. § 13-2603; *see also* Section 2.15(5).

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 an 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 particularly concern state government. The following are some examples:

1. It is a crime for a state officer or employee to fail to perform a required duty. A.R.S. § 38-443. This is also known as nonfeasance in office. *Id.*; *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 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), -510.
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 to individuals 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. §§ 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 *also* 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 having its employees who work with the public—*e.g.*, inspectors, auditors, investigators, examiners, and employees who receive calls from the public—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. 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 emphasize 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 infliction of physical harm, injury caused by criminally negligent acts or omissions, unlawful imprisonment, and sexual abuse or sexual assault. A.R.S. § 13-3623(F). The severity of the crime depends on the circumstances. 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).