

PRELIMINARY DRAFT NO. 2

Article 14.

Larceny

Section 1. Definitions. As used in _____, except as the context may require otherwise:

(1) "Appropriate property of another to oneself or a third person" or "appropriate" means to:

(a) Exercise control over property of another, or to aid a third person to exercise control over property of another, permanently or for so extended a period or under such circumstances as to acquire the major portion of the economic value or benefit of such property; or

(b) Dispose of the property of another for the benefit of oneself or a third person.

(2) "Deprive another of property" or "deprive" means to:

(a) Withhold property of another or cause property of another to be withheld from him permanently or for so extended a period or under such circumstances that the major portion of its economic value or benefit is lost to him; or

(b) Dispose of the property in such manner or under such circumstances as to render it unlikely that an owner will recover such property.

(3) "Obtain" includes, but is not limited to, the bringing about of a transfer or purported transfer of property or of a legal interest therein, whether to the obtainer or another.

(4) "Owner of property taken, obtained or withheld" or "owner" means any person who has a right to possession thereof superior to that of the taker, obtainer or withholder.

Section 2. Larceny. (1) A person commits larceny when, with intent to deprive another of property or to appropriate property to himself or to a third person, he wrongfully takes, obtains or withholds such property from an owner thereof.

(2) Larceny includes a wrongful taking, obtaining or withholding of another's property, with the intent described in subsection (1) of this section, committed in any of the following ways:

(a) By conduct known prior to the effective date of this Act as common law larceny by trespassory taking, common law larceny by trick, embezzlement or obtaining property by false pretenses.

(b) By acquiring property lost, mislaid or delivered by mistake as provided in section 3 of this Act.

(c) By issuing a bad check as provided in section 5 of this Act.

(d) By extortion as provided in section 6 of this Act.

(e) By false promise as provided in section 7 of this Act.

(f) By receiving stolen property as provided in section 8 of this Act.

(g) By obtaining services as provided in section 9 of this Act.

Section 3. Larceny of lost, mislaid property. A person who comes into control of property of another that he knows to have been lost, mislaid or delivered under a mistake as to the nature or amount of the property or the identity of the recipient commits larceny if, with intent to deprive the owner thereof, he fails to take reasonable measures to restore the property to the owner.

Section 4. Definitions for larceny by bad check. As used in describing larceny by issuing a bad check:

(1) "Check" means any check, draft or similar sight order for the payment of money which is not post-dated with respect to the time of utterance.

(2) "Credit" means an arrangement or understanding with such bank or depository for the payment of such check, draft or order in full on presentation.

(3) "Drawer" of a check means a person whose name appears thereon as the primary obligor, whether the actual signature be that of himself or of a person purportedly authorized to draw the check in his behalf.

(4) "Funds" means money or credit.

(5) "Insufficient funds" means that the drawer of a check has no funds or account whatever with a drawee to cover the check or has funds in an amount less than that of the check. A check dishonored for "no account" shall also be deemed to have been dishonored for "insufficient funds."

(6) "Pass" means that a person, being a payee, holder or bearer of a check which previously has been or purports to have been drawn and uttered by another, delivers the check, for a purpose other than collection, to a third person who thereby acquires a right with respect thereto.

(7) "Representative drawer" means a person who signs a check as drawer in a representative capacity or as agent of the person whose name appears thereon as the principal drawer or obligor.

(8) "Utter" means that a drawer or representative drawer thereof delivers a check or causes a check to be delivered to a person who thereby acquires a right against the drawer with respect to such check. One who draws a check with intent that it be so delivered is presumed to have uttered it if the following

Section 5. Larceny by bad check. A person issues a bad check when:

(1) As a drawer or representative drawer, he utters a check knowing that he or his principal does not then have sufficient funds with the drawee to cover it; and

(a) He intends or believes at the time of utterance that payment will be refused by the drawee upon presentation; and

(b) Payment is refused by the drawee upon presentation; or

(2) He passes a check knowing that the drawer thereof does not then have sufficient funds with the drawee to cover it; and

(a) He intends or believes at the time the check is passed that payment will be refused by the drawee upon presentation; and

(b) Payment is refused by the drawee upon presentation.

(3) Issuing a bad check is a _____.

(4) For the purposes of this section, as well as for the purposes of prosecution for larceny by issuing a bad check, an issuer is presumed to know that the check or order (other than a post-dated check or order) would not be paid if:

(a) The issuer had no account with the drawee at the time the check or order was issued; or

(b) Payment was refused by the drawee for lack of funds, upon presentation within 30 days after issue and the issuer failed to make good within 10 days after receiving notice of that refusal.

Section 6. Larceny by extortion. A person obtains property by extortion when he compels or induces another person to deliver such property to himself or to a third person by means of instilling in him a fear that, if the property is not so delivered, the actor or another will:

- (1) Cause physical injury to some person in the future; or
- (2) Cause damage to property; or
- (3) Engage in other conduct constituting a crime; or
- (4) Accuse some person of a crime or cause criminal charges to be instituted against him; or
- (5) Expose a secret or publicize an asserted fact, whether true or false, tending to subject some person to hatred, contempt or ridicule; or
- (6) Cause a strike, boycott or other collective labor group action injurious to some person's business; except that such a threat shall not be deemed extortion when the property is demanded or received for the benefit of the group in whose interest the actor purports to act; or
- (7) Testify or provide information or withhold testimony or information with respect to another's legal claim or defense; or
- (8) Use or abuse his position as a public servant by performing some act within or related to his official duties, or by failing or refusing to perform an official duty, in such manner as to affect some person adversely; or
- (9) Performs any other act which would not benefit the actor but which is calculated to harm another person's health, safety, business, calling, career, financial condition, reputation or personal relationships.

Section 7. Larceny by false promise. A person obtains property by false promise when, pursuant to a scheme to defraud, he obtains property of another by means of a representation, express or implied, that he or a third person will in the future engage in particular conduct, and when he does not intend to engage in such conduct or does not believe that the third person intends to engage in such conduct.

Section 8. Receiving stolen property. (1) For purposes of the crime of receiving stolen property "receiving" means acquiring possession, control or title, or lending on the security of the property.

(2) A person commits larceny by receiving stolen property if he receives, retains or disposes of property of another knowing that it has probably been stolen, unless the property is received, retained or disposed of with the purpose to restore it to the owner.

(3) Larceny by receiving stolen property is a _____.

Section 9. Larceny of services. (1) For purposes of the crime of larceny of services, "services" includes labor, professional service, transportation, telephone or other public service, accommodation in hotels, restaurants or elsewhere, admission to exhibitions, use of vehicles or other property.

(2) A person commits larceny if he purposely obtains services which he knows are available only for compensation, by deception or threat, or by false token or other means to avoid payment for the service.

(3) Where compensation for service is ordinarily paid immediately upon the rendering of such service, as in the case of hotels and restaurants, refusal to pay or absconding without payment or offer to pay raises a presumption that the service was obtained by deception as to intention to pay.

(4) A person commits larceny if, having control over the disposition of services to others, to which he is not entitled, he knowingly diverts such services to his own benefits or to the benefit of another not entitled thereto.

(5) Larceny of services is a _____.

Section 10. Right of possession. Right of possession of property is as follows:

(1) A person who has obtained possession of property by theft or other illegal means shall be deemed to have a right of possession superior to that of a person who takes, obtains or withholds the property from him by larcenous means.

(2) A joint or common owner of property shall not be deemed to have a right of possession of the property superior to that of any other joint or common owner of the property.

(3) In the absence of a specific agreement to the contrary, a person in lawful possession of property shall be deemed to have a right of possession superior to that of a person having only a security interest in the property, even if legal title to the property lies with the holder of the security interest pursuant to a conditional sale contract or other security agreement.

Section 11. Value of stolen property. For the purposes of this _____, the value of property shall be ascertained as follows:

(1) Except as otherwise specified in this section, value means the market value of the property at the time and place of the crime, or if such cannot be satisfactorily ascertained, the cost of replacement of the property within a reasonable time after the crime.

(2) Whether or not they have been issued or delivered, certain written instruments, not including those having a readily ascertainable market value, shall be evaluated as follows:

(a) The value of an instrument constituting an evidence of debt, such as a check, draft or promissory note, shall be deemed the amount due or collectible thereon or thereby, such figure ordinarily being the face amount of the indebtedness less any portion thereof which has been satisfied.

(b) The value of any other instrument which creates, releases, discharges or otherwise affects any valuable legal right, privilege or obligation shall be deemed the greatest amount of economic loss which the owner might reasonably suffer because of the loss of the instrument.

(3) When the value of property cannot be satisfactorily ascertained, it shall be presumed to be an amount less than one hundred dollars.

Section 12. Petty larceny. (1) A person commits petty larceny when he steals property.

(2) Petty larceny is a _____.

Section 13. Grand larceny in the third degree. (1) A person commits grand larceny in the third degree when he steals property and when:

- (a) The value of the property exceeds one hundred dollars; or
- (b) The property consists of a public record, writing or instrument kept, held or deposited according to law with or in the keeping of any public office or public servant; or
- (c) The property, regardless of its nature and value, is taken from the person of another; or
- (d) The property, regardless of its nature and value, is obtained by extortion.

(2) Grand larceny in the third degree is a _____.

Section 14. Grand larceny in the second degree. (1) A person commits grand larceny in the second degree when he steals property and when the value of the property exceeds five hundred dollars.

(2) Grand larceny in the second degree is a _____.

Section 15. Grand larceny in the first degree. (1) A person commits grand larceny in the first degree when he steals property and when:

(a) The property, regardless of its nature and value, is obtained by extortion committed by instilling in the victim a fear that the actor or another person will:

- (A) Cause physical injury to some person in the future; or
- (B) Cause damage to property; or

(C) Use or abuse his position as a public servant by engaging in conduct within or related to his official duties, or by failing or refusing to perform an official duty, in such a manner as to affect some person adversely; or

(b) The value of the property exceeds two thousand dollars.

(2) Grand larceny in the first degree is a _____.