

## **CHAPTER 12.1-23**

### **THEFT AND RELATED OFFENSES**

#### **12.1-23-01. Consolidation of theft offenses.**

1. Conduct denominated theft in sections 12.1-23-02 to 12.1-23-04 constitutes a single offense designed to include the separate offenses heretofore known as larceny, stealing, purloining, embezzlement, obtaining money or property by false pretenses, extortion, blackmail, fraudulent conversion, receiving stolen property, misappropriation of public funds, swindling, and the like.
2. An indictment, information, or complaint charging theft under sections 12.1-23-02 to 12.1-23-04 which fairly apprises the defendant of the nature of the charges against him shall not be deemed insufficient because it fails to specify a particular category of theft. The defendant may be found guilty of theft under such an indictment, information, or complaint if his conduct falls under sections 12.1-23-02 to 12.1-23-04, so long as the conduct proved is sufficiently related to the conduct charged that the accused is not unfairly surprised by the case he must meet.

#### **12.1-23-02. Theft of property.** A person is guilty of theft if he:

1. Knowingly takes or exercises unauthorized control over, or makes an unauthorized transfer of an interest in, the property of another with intent to deprive the owner thereof;
2. Knowingly obtains the property of another by deception or by threat with intent to deprive the owner thereof, or intentionally deprives another of his property by deception or by threat; or
3. Knowingly receives, retains, or disposes of property of another which has been stolen, with intent to deprive the owner thereof.

#### **12.1-23-02.1. Disarming or attempting to disarm a law enforcement officer.**

Notwithstanding subdivision d of subsection 2 of section 12.1-23-05, a person is guilty of a class C felony if, without the consent of the law enforcement officer, the person willfully takes or removes, or attempts to take or remove, a firearm from a law enforcement officer engaged in the performance of official duties.

#### **12.1-23-03. Theft of services.** A person is guilty of theft if:

1. He intentionally obtains services, known by him to be available only for compensation, by deception, threat, false token, or other means to avoid payment for the services; or
2. Having control over the disposition of services of another to which he is not entitled, he knowingly diverts those services to his own benefit or to the benefit of another not entitled thereto.

Where compensation for services is ordinarily paid immediately upon their rendition, as in the case of hotels, restaurants, and comparable establishments, absconding without payment or making provision to pay is prima facie evidence that the services were obtained by deception.

**12.1-23-04. Theft of property lost, mislaid, or delivered by mistake.** A person is guilty of theft if he:

1. Retains or disposes of property of another when he knows it has been lost or mislaid; or

2. Retains or disposes of property of another when he knows it has been delivered under a mistake as to the identity of the recipient or as to the nature or amount of the property,

and with intent to deprive the owner of it, he fails to take readily available and reasonable measures to restore the property to a person entitled to have it.

#### **12.1-23-05. Grading of theft offenses.**

1. Notwithstanding the provisions of subsection 2, theft under this chapter is a class B felony if the property or services stolen exceed ten thousand dollars in value or are acquired or retained by a threat to commit a class A or class B felony or to inflict serious bodily injury on the person threatened or on any other person.
2. Theft under this chapter is a class C felony if:
  - a. The property or services stolen exceed five hundred dollars in value;
  - b. The property or services stolen are acquired or retained by threat and (1) are acquired or retained by a public servant by a threat to take or withhold official action, or (2) exceed fifty dollars in value;
  - c. The property or services stolen exceed fifty dollars in value and are acquired or retained by a public servant in the course of official duties;
  - d. The property stolen is a firearm, ammunition, explosive or destructive device, or an automobile, aircraft, or other motor-propelled vehicle;
  - e. The property consists of any government file, record, document, or other government paper stolen from any government office or from any public servant;
  - f. The defendant is in the business of buying or selling stolen property and the defendant receives, retains, or disposes of the property in the course of that business;
  - g. The property stolen consists of any implement, paper, or other thing uniquely associated with the preparation of any money, stamp, bond, or other document, instrument, or obligation of this state;
  - h. The property stolen consists of livestock taken from the premises of the owner;
  - i. The property stolen consists of a key or other implement uniquely suited to provide access to property the theft of which would be a felony and it was stolen to gain such access; or
  - j. The property stolen is a card, plate, or other credit device existing for the purpose of obtaining money, property, labor, or services on credit, or is a debit card, electronic fund transfer card, code, or other means of access to an account for the purposes of initiating electronic fund transfers.
3. All other theft under this chapter is a class A misdemeanor, unless the requirements of subsection 4 are met.
4. Theft under this chapter of property or services of a value not exceeding two hundred fifty dollars shall be a class B misdemeanor if:
  - a. The theft was not committed by threat;

- b. The theft was not committed by deception by one who stood in a confidential or fiduciary relationship to the victim of the theft; and
- c. The defendant was not a public servant or an officer or employee of a financial institution who committed the theft in the course of official duties.

The special classification provided in this subsection shall apply if the offense is classified under this subsection in the charge or if, at sentencing, the required factors are established by a preponderance of the evidence.

- 5. Notwithstanding the provisions of subsection 3 of section 12.1-06-01, an attempt to commit a theft under this chapter is punishable equally with the completed offense when the actor has completed all of the conduct which he believes necessary on his part to complete the theft except receipt of the property.
- 6. For purposes of grading, the amount involved in a theft under this chapter shall be the highest value by any reasonable standard, regardless of the actor's knowledge of such value, of the property or services which were stolen by the actor, or which the actor believed that the actor was stealing, or which the actor could reasonably have anticipated to have been the property or services involved. Thefts committed pursuant to one scheme or course of conduct, whether from the same person or several persons, may be charged as one offense and the amounts proved to have been stolen may be aggregated in determining the grade of the offense.

**12.1-23-06. Unauthorized use of a vehicle.**

- 1. A person is guilty of an offense if, knowing that he does not have the consent of the owner, he takes, operates, or exercises control over an automobile, train, aircraft, motorcycle, motorboat, or other motor-propelled vehicle of another.
- 2. It is a defense to a prosecution under this section that the actor reasonably believed that the owner would have consented had he known of the conduct on which the prosecution was based.
- 3. The offense is a class C felony if the vehicle is an aircraft or if the value of the use of the vehicle and the cost of retrieval and restoration exceeds five hundred dollars. Otherwise the offense is a class A misdemeanor.

**12.1-23-07. Misapplication of entrusted property.**

- 1. A person is guilty of misapplication of entrusted property if the person disposes of, uses, or transfers any interest in property that has been entrusted to the person as a fiduciary, or in the person's capacity as a public servant or an officer, director, agent, employee of, or a person controlling a financial institution, in a manner that the person knows is not authorized and that the person knows to involve a risk of loss or detriment to the owner of the property or to the government or other person for whose benefit the property was entrusted.
- 2. Misapplication of entrusted property is:
  - a. A class B felony if the value of the property misapplied exceeds ten thousand dollars.
  - b. A class C felony if the value of the property misapplied exceeds five hundred dollars but does not exceed ten thousand dollars.
  - c. A class A misdemeanor if the value of the property misapplied exceeds two hundred fifty dollars but does not exceed five hundred dollars.

- d. A class B misdemeanor in all other cases.

#### **12.1-23-08. Defrauding secured creditors.**

1. An owner of property who creates a security interest in such property may not intentionally alter, conceal, destroy, damage, encumber, transfer, remove, or otherwise deal with property that is subject to the security interest without the prior consent of the secured party if that action has the effect of hindering the enforcement of the security interest.
2. A person may not destroy, remove, damage, conceal, encumber, transfer, or otherwise deal with property that is subject to a security interest with the intent to prevent collection of the debt represented by the security interest.
3. A person may not, at the time of sale of property that is subject to a security interest, or is described in a certificate provided for under section 41-09-28, make false statements as to the existence of security interests in the property, or as to the ownership or location of the property.
4. A violation of subsection 2 or 3 must be prosecuted as theft under section 12.1-23-02 or 12.1-23-04. Violation of subsection 2 or 3 is a class C felony if the property has a value of more than five hundred dollars, as determined under subsection 6 of section 12.1-23-05. In all other cases, violation of this section is a class A misdemeanor.

#### **12.1-23-08.1. Removal of identification marks.**

1. A person commits the offense of removal of identification marks if he, with intent to cause interruption of the ownership of another, defaces, erases, or otherwise alters any serial number or identification mark placed or inscribed on any personal property by the manufacturer or owner for the purpose of identifying the personal property or its component parts, provided the personal property exceeds one hundred dollars in value. A person removes identification marks if he attempts to or succeeds in erasing, defacing, altering, or removing a serial number or identification mark or part thereof, on the personal property of another, that exceeds one hundred dollars in value.
2. A person who commits the offense of removal of identification marks on property or its component parts which exceeds one hundred dollars in value is guilty of a class A misdemeanor.

#### **12.1-23-08.2. Possession of altered property.**

1. A person is guilty of the offense of possession of altered property if he possesses property the identifying features of which, including serial numbers or labels, have been removed or in any fashion altered, knowing the serial number or identification mark placed on the same by the manufacturer or owner for the purpose of identification, has been erased, altered, changed, or removed for the purpose of changing the identity of such personal property.
2. A person who commits the offense of possession of altered property or its component parts which exceed one hundred dollars in value, shall be guilty of a class A misdemeanor. In the event that more than one item of personal property is defaced, erased, or otherwise altered or unlawfully possessed, as specified in sections 12.1-23-08.2 and 12.1-23-08.3, by an individual, then an offense is determined to be committed under this section if the aggregate of the value of the property so defaced, erased, or otherwise altered or unlawfully possessed is in excess of one hundred dollars.

### **12.1-23-08.3. Dealing in stolen property.**

1. A person is guilty of the offense of dealing in stolen property if he:
  - a. Traffics in, or endeavors to traffic in, the property of another that has been stolen; or
  - b. Initiates, organizes, plans, finances, directs, manages, or supervises the theft and trafficking in the property of another that has been stolen.
2. A person who commits the offense of dealing in stolen property in violation of:
  - a. Subdivision a of subsection 1 shall be guilty of a class C felony; or
  - b. Subdivision b of subsection 1 shall be guilty of a class B felony.

### **12.1-23-08.4. Duplication of keys.**

1. Except as provided in subsection 2, no person shall duplicate or make a key from another key marked with the words "Do Not Duplicate", "Do Not Copy", or words of similar intent.
2. It shall be an affirmative defense to prosecution under subsection 1 that:
  - a. The person made or duplicated the key for his employer, solely for use within the employer's place of business.
  - b. The person for whom the key was made or duplicated owns the lock which the key fits.
3. Any person who violates any provision of this section is guilty of a class B misdemeanor.

### **12.1-23-09. Defenses and proof as to theft and related offenses.**

1. It is a defense to a prosecution under this chapter that:
  - a. The actor honestly believed that he had a claim to the property or services involved which he was entitled to assert in the manner which forms the basis for the charge against him; or
  - b. The victim is the actor's spouse, but only when the property involved constitutes household or personal effects or other property normally accessible to both spouses and the parties involved are living together. The term "spouse", as used in this section, includes persons living together as husband and wife.
2. It does not constitute a defense to a prosecution for conduct constituting an offense in violation of this chapter that:
  - a. Stratagem or deception, including the use of an undercover operative or law enforcement officer, was employed;
  - b. A facility or an opportunity to engage in such conduct, including offering for sale property not stolen as if it were stolen, was provided; or
  - c. Mere solicitation that would not induce an ordinary law-abiding person to engage in such conduct was made by a law enforcement officer to gain evidence against a person predisposed to engage in such conduct.

3.
  - a. It is a prima facie case of theft under this chapter if it is shown that a public servant or an officer, director, agent, employee of, or a person connected in any capacity with a financial institution has failed to pay or account upon lawful demand for money or property entrusted to him as part of his official duties or if an audit reveals a shortage or falsification of his accounts.
  - b. It is a prima facie case of theft under this chapter if it is shown that a person, having successfully bid on and obtained an item at an auction, removed the item from the auction premises without paying or making provisions to pay for the item.
  - c. Proof of the purchase or sale of stolen property at a price substantially below its fair market value, unless satisfactorily explained, gives rise to an inference that the person buying or selling the property was aware of the risk that it had been stolen.
  - d. Proof of the purchase or sale of stolen property by a dealer in property, out of the regular course of business, or without the usual indicia of ownership other than mere possession, unless satisfactorily explained, gives rise to an inference that the person buying or selling the property was aware of the risk that it had been stolen.
4. The testimony of an accomplice, if believed beyond a reasonable doubt, is sufficient for a conviction for conduct constituting an offense in violation of sections 12.1-23-08.1 through 12.1-23-08.3 when:
  - a. Stratagem or deception, including the use of an undercover operative or law enforcement officer, was employed;
  - b. A facility or an opportunity to engage in such conduct including offering for sale property not stolen as if it were stolen, was provided; or
  - c. Mere solicitation that would not induce an ordinary law-abiding person to engage in such conduct was made by a law enforcement officer to gain evidence against a person predisposed to engage in such conduct.

**12.1-23-10. Definitions for theft and related offenses.** In this chapter:

1. "Dealer in property" means a person who buys or sells property as a business.
2. "Deception" means:
  - a. Creating or reinforcing a false impression as to fact, law, status, value, intention, or other state of mind; or obtaining or attempting to obtain public assistance by concealing a material fact, making a false statement or representation, impersonating another, concealing the transfer of property without adequate consideration, or using any other fraudulent method; but deception as to a person's intention to perform a promise may not be inferred from the fact alone that the person did not substantially perform the promise unless it is part of a continuing scheme to defraud;
  - b. Preventing another from acquiring information which would affect his judgment of a transaction;
  - c. Failing to correct a false impression which the actor previously created or reinforced, or which he knows to be influencing another to whom he stands in a fiduciary or confidential relationship;

- d. Failing to correct an impression which the actor previously created or reinforced and which the actor knows to have become false due to subsequent events;
  - e. Failing to disclose a lien, adverse claim, or other impediment to the enjoyment of property which he transfers or encumbers in consideration for the property obtained or in order to continue to deprive another of his property, whether such impediment is or is not valid, or is or is not a matter of official record;
  - f. Using a credit card, charge plate, or any other instrument which purports to evidence an undertaking to pay for property or services delivered or rendered to or upon the order of a designated person or bearer (1) where such instrument has been stolen, forged, revoked, or canceled, or where for any other reason its use by the actor is unauthorized, and (2) where the actor does not have the intention and ability to meet all obligations to the issuer arising out of his use of the instrument; or
  - g. Any other scheme to defraud. The term "deception" does not, however, include falsifications as to matters having no pecuniary significance, or puffing by statements unlikely to deceive ordinary persons in the group addressed. "Puffing" means an exaggerated commendation of wares in communications addressed to the public or to a class or group.
3. "Deprive" means:
- a. To withhold property or to cause it to be withheld either permanently or under such circumstances that a major portion of its economic value, or its use and benefit, has, in fact, been appropriated;
  - b. To withhold property or to cause it to be withheld with the intent to restore it only upon the payment of a reward or other compensation; or
  - c. To dispose of property or use it or transfer any interest in it under circumstances that make its restoration, in fact, unlikely.
4. "Fiduciary" means a trustee, guardian, executor, administrator, receiver, or any other person acting in a fiduciary capacity, or any person carrying on fiduciary functions on behalf of a corporation, limited liability company, or other organization which is a fiduciary.
5. "Financial institution" means a bank, insurance company, credit union, safety deposit company, savings and loan association, investment trust, or other organization held out to the public as a place of deposit of funds or medium of savings or collective investment.
6. "Obtain" means:
- a. In relation to property, to bring about a transfer or purported transfer of an interest in the property, whether to the actor or another.
  - b. In relation to services, to secure performance thereof.
7. "Property" means any money, tangible or intangible personal property, property (whether real or personal) the location of which can be changed (including things growing on, affixed to, or found in land and documents although the rights represented thereby have no physical location), contract right, chose-in-action, interest in or claim to wealth, credit, or any other article or thing of value of any kind. "Property" also means real property the location of which cannot be moved if the offense involves transfer or attempted transfer of an interest in the property.

8. "Property of another" means property in which a person other than the actor or in which a government has an interest which the actor is not privileged to infringe without consent, regardless of the fact that the actor also has an interest in the property and regardless of the fact that the other person or government 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 actor shall not be deemed property of another who has a security interest therein, even if legal title is in the creditor pursuant to a conditional sales contract or other security agreement. "Owner" means any person or a government with an interest in property such that it is "property of another" as far as the actor is concerned.
9. "Receiving" means acquiring possession, control, or title, or lending on the security of the property.
10. "Services" means labor, professional service, transportation, telephone, mail or other public service, gas, electricity and other public utility services, accommodations in hotels, restaurants, or elsewhere, admission to exhibitions, and use of vehicles or other property.
11. "Stolen" means property which has been the subject of theft or robbery or a vehicle which is received from a person who is then in violation of section 12.1-23-06.
12. "Threat" means an expressed purpose, however communicated, to:
  - a. Cause bodily injury in the future to the person threatened or to any other person;
  - b. Cause damage to property;
  - c. Subject the person threatened or any other person to physical confinement or restraint;
  - d. Engage in other conduct constituting a crime;
  - e. Accuse anyone of a crime;
  - f. Expose a secret or publicize an asserted fact, whether true or false, tending to subject a person living or deceased, to hatred, contempt, or ridicule or to impair another's credit or business repute;
  - g. Reveal any information sought to be concealed by the person threatened;
  - h. Testify or provide information or withhold testimony or information with respect to another's legal claim or defense;
  - i. Take or withhold official action as a public servant, or cause a public servant to take or withhold official action;
  - j. Bring about or continue a strike, boycott, or other similar collective action to obtain property or deprive another of his property which is not demanded or received for the benefit of the group which the actor purports to represent;
  - k. Cause anyone to be dismissed from his employment, unless the property is demanded or obtained for lawful union purposes; or
  - l. Do any other act which would not in itself substantially benefit the actor or a group he represents but which is calculated to harm another person in a substantial manner with respect to his health, safety, business, employment, calling, career, financial condition, reputation, or personal relationship.



Upon a charge of theft, the receipt of property in consideration for taking or withholding official action shall be deemed to be theft by threat regardless of whether the owner voluntarily parted with his property or himself initiated the scheme.

13. "Traffic" means:

- a. To sell, transfer, distribute, dispense, or otherwise dispose of to another person; or
- b. To buy, receive, possess, or obtain control of, with intent to sell, transfer, distribute, dispense, or otherwise dispose of to another person.

**12.1-23-11. Unauthorized use of personal identifying information - Penalty.**

1. As used in this section, "personal identifying information" means any of the following information:
  - a. An individual's name;
  - b. An individual's address;
  - c. An individual's telephone number;
  - d. The distinguishing operator's license number assigned to an individual by the department of transportation under section 39-06-14;
  - e. An individual's social security number;
  - f. An individual's employer or place of employment;
  - g. An identification number assigned to the individual by the individual's employer;
  - h. The maiden name of the individual's mother;
  - i. The identifying number of a depository account in a financial institution; or
  - j. An individual's birth, death, or marriage certificate.
2. A person is guilty of an offense if the person uses or attempts to use any personal identifying information of an individual, living or deceased, to obtain credit, money, goods, services, or anything else of value without the authorization or consent of the individual and by representing that person is the individual or is acting with the authorization or consent of the individual. The offense is a class B felony if the credit, money, goods, services, or anything else of value exceeds one thousand dollars in value, otherwise the offense is a class C felony. A second or subsequent offense is a class A felony.
3. A violation of this section, of a law of another state, or of federal law that is equivalent to this section and which resulted in a plea or finding of guilt must be considered a prior offense. The prior offense must be alleged in the complaint, information, or indictment. The plea or finding of guilt for the prior offense must have occurred before the date of the commission of the offense or offenses charged in the complaint, information, or indictment.
4. A prosecution for a violation of this section must be commenced within six years after discovery by the victim of the offense of the facts constituting the violation.
5. When a person commits violations of this section in more than one county involving either one or more victims or the commission of acts constituting an element of the

offense, the multiple offenses may be consolidated for commencement of prosecution in any county where one of the offenses was committed.

**12.1-23-12. Jurisdiction - Conduct outside this state.** Notwithstanding section 29-03-01.1, a person who, while outside this state and by use of deception, obtains, deprives, or conspires, solicits, or attempts to obtain the property of a person within this state or to deprive the person of property is subject to prosecution under this chapter in the courts of this state. Except as provided in section 12.1-23-11, the venue is in the county in which the victim resides or any other county in which any part of the crime occurred.

**12.1-23-13. Distribution and use of theft detection shielding devices.**

1. A person is guilty of unlawful distribution of a theft detection shielding device if the person knowingly manufactures, sells, offers for sale, or distributes any laminated or coated bag or device peculiar to shielding and intended to shield merchandise from detection by an electronic or magnetic theft alarm sensor.
2. A person is guilty of unlawful possession of a theft detection shielding device if the person knowingly possesses any laminated or coated bag or device peculiar to and designed for shielding and intended to shield merchandise from detection by an electronic or magnetic theft alarm sensor, with the intent to commit theft.
3. A person is guilty of unlawful possession of a theft detection device deactivator or remover if the person knowingly possesses any tool or device designed to allow the deactivation or removal of any theft detection device from any merchandise without the permission of the merchant or person owning or holding the merchandise.
4. A person is guilty of unlawful deactivation or removal of a theft detection device if the person intentionally deactivates or removes the device from a product before purchase.
5. A person is guilty of unlawful distribution of a theft detection device deactivator or remover if the person knowingly manufactures, sells, offers for sale, or distributes any tool or device designed to allow the deactivation or removal of a theft detection device from merchandise without the permission of the merchant or person owning or holding the merchandise.
6. An offense under subsections 1 and 5 is a class C felony. An offense under subsections 2, 3, and 4 is a class A misdemeanor.

**12.1-23-14. Detention of persons suspected of unlawful use or removal of theft detection devices - Reasonable cause.**

1. The activation of an antishoplifting or inventory control device as a result of a person exiting the establishment or a protected area within the establishment constitutes reasonable cause for the detention of the person exiting by the owner or operator of the establishment or by an agent or employee of the owner or operator, provided sufficient notice has been posted to advise the patrons that the device is being utilized. Each detention must be made in a reasonable manner and only for a reasonable period of time sufficient for any inquiry into the circumstances surrounding the activation of the device or for the recovery of goods.
2. If the taking into custody and detention of the person by a law enforcement officer, security officer, merchant, or merchant's employee is done in compliance with the requirements of this section, the law enforcement officer, security officer, merchant, or merchant's employee may not be held criminally or civilly liable, including any liability for false arrest, false imprisonment, unlawful detention, malicious prosecution, intentional infliction of emotional distress, or defamation.

**12.1-23-15. Purchase of beer kegs - Penalty.** A recycler, scrap metal dealer, or scrapyard operator may not purchase a metal beer keg, whether damaged or undamaged, except from the brewer or the brewer's authorized representative, if:

1. The keg is clearly marked as the property of a brewery manufacturer; or
2. The keg's identification markings have been made illegible.

A person who willfully violates this section is guilty of a class B misdemeanor.