

ASSEMBLY, No. 769

STATE OF NEW JERSEY

Introduced Pending Technical Review by Legislative Counsel

PRE-FILED FOR INTRODUCTION IN THE 1996 SESSION

By Assemblywoman BUONO

1 AN ACT concerning certain thefts and amending N.J.S.2C:20-2.

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3 **BE IT ENACTED** *by the Senate and General Assembly of the State*
4 *of New Jersey:*

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6 1. N.J.S.2C:20-2 is amended to read as follows:

7 2C:20-2. Consolidation of Theft Offenses; Grading; Provisions
8 Applicable to Theft Generally. a. Consolidation of Theft Offenses.
9 Conduct denominated theft in this chapter constitutes a single offense,
10 but each episode or transaction may be the subject of a separate
11 prosecution and conviction. A charge of theft may be supported by
12 evidence that it was committed in any manner that would be theft
13 under this chapter, notwithstanding the specification of a different
14 manner in the indictment or accusation, subject only to the power of
15 the court to ensure fair trial by granting a bill of particulars, discovery,
16 a continuance, or other appropriate relief where the conduct of the
17 defense would be prejudiced by lack of fair notice or by surprise.

18 b. Grading of theft offenses.

19 (1) Theft constitutes a crime of the second degree if:

20 (a) The amount involved is \$75,000.00 or more;

21 (b) The property is taken by extortion;

22 (c) The property stolen is a controlled dangerous substance or
23 controlled substance analog as defined in N.J.S.2C:35-2 and the
24 quantity is in excess of one kilogram; or

25 (d) The property stolen is a person's benefits under federal or State
26 law, or from any other source, which the Department of Human
27 Services or an agency acting on its behalf has budgeted for the
28 person's health care and the amount involved is \$75,000 or more.

29 (2) Theft constitutes a crime of the third degree if:

30 (a) The amount involved exceeds \$500.00 but is less than
31 \$75,000.00;

32 (b) The property stolen is a firearm, motor vehicle, vessel, boat,

EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and intended to be omitted in the law.

Matter underlined thus is new matter.

1 horse or airplane;

2 (c) The property stolen is a controlled dangerous substance or
3 controlled substance analog as defined in N.J.S.2C:35-2 and the
4 amount involved is less than \$75,000.00 or is undetermined and the
5 quantity is one kilogram or less;

6 (d) It is from the person of the victim;

7 (e) It is in breach of an obligation by a person in his capacity as a
8 fiduciary;

9 (f) It is by threat not amounting to extortion;

10 (g) It is of a public record, writing or instrument kept, filed or
11 deposited according to law with or in the keeping of any public office
12 or public servant; [or]

13 (h) The property stolen is a person's benefits under federal or State
14 law, or from any other source, which the Department of Human
15 Services or an agency acting on its behalf has budgeted for the
16 person's health care and the amount involved is less than \$75,000; or

17 (i) The property stolen is any real or personal property related to,
18 necessary for, or derived from research, regardless of value, including,
19 but not limited to, any sample, specimens and components thereof,
20 research subject, including any warm-blooded or cold-blooded animals
21 being used for research or intended for use in research, supplies,
22 records, data or test results, prototypes or equipment, as well as any
23 proprietary information or other type of information related to
24 research.

25 (3) Theft constitutes a crime of the fourth degree if:

26 (a.) the amount involved is at least \$200.00 but does not exceed
27 \$500.00; or

28 (b.) the property stolen is designated recyclable material as defined
29 in section 7 of P.L.1987, c.102 (C.13:1E-99.12), either bundled or in
30 a recycling receptacle, which has been placed for collection in the
31 manner provided by the municipal recycling ordinance adopted
32 pursuant to section 6 of P.L.1987, c.102 (C.13:1E-99.17).

33 (4) If the amount involved was less than \$200.00 the offense
34 constitutes a disorderly persons offense.

35 [(4)](5) The amount involved in a theft shall be determined by the
36 trier of fact. The amount shall include, but shall not be limited to, the
37 amount of any State tax avoided, evaded or otherwise unpaid,
38 improperly retained or disposed of. Amounts involved in thefts
39 committed pursuant to one scheme or course of conduct, whether
40 from the same person or several persons, may be aggregated in
41 determining the grade of the offense.

42 c. Claim of right. It is an affirmative defense to prosecution for
43 theft that the actor:

44 (1) Was unaware that the property or service was that of another;

45 (2) Acted under an honest claim of right to the property or service
46 involved or that he had a right to acquire or dispose of it as he did; or

1 (3) Took property exposed for sale, intending to purchase and pay
2 for it promptly, or reasonably believing that the owner, if present,
3 would have consented.

4 d. Theft from spouse. It is no defense that theft was from the
5 actor's spouse, except that misappropriation of household and personal
6 effects, or other property normally accessible to both spouses, is theft
7 only if it occurs after the parties have ceased living together.

8 (cf: P.L.1995, c.20, s.5)

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10 2. This act shall take effect immediately.

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13 STATEMENT

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15 This bill would upgrade the offense of theft of recyclable materials.

16 According to recent reports, a growing market for recyclables has
17 led to "scavenging" of these items. Old newsprint, aluminum cans and
18 other recyclable materials left at curbside for pick-up have been hauled
19 away by thieves, who sell the items to recycling processors and pocket
20 the proceeds themselves. This activity deprives municipalities of
21 needed revenues from the legitimate sale of the recyclables and, in
22 addition, deprives them of a source of State funds; the amount of
23 funds received by municipalities from State recycling grants is based
24 on the amount of recycling done in the municipality.

25 These thefts increase recycling costs for local taxpayers and
26 increase law enforcement costs as well, because they force
27 municipalities to expend additional funds on deterrence and
28 apprehension efforts. Several municipalities have responded to the
29 problem by enacting anti-scavenging ordinances, but municipal
30 ordinances can only have a limited deterrence effect. The sponsor
31 believes that it will be more effective to criminalize such scavenging
32 under the Criminal Code.

33 Although scavenging is considered theft under the Criminal Code,
34 it is difficult to prosecute these cases as crimes. Under the Code, it is
35 only a disorderly persons offense to steal items with a value of less
36 than \$200, and a pick-up truck filled with stolen newsprint is likely to
37 be worth slightly less than that. A disorderly persons offense is
38 punishable by a term of imprisonment of up to six months or a fine of
39 up to \$1,000, or both.

40 This bill would upgrade the offense of theft of recyclables to make
41 it a crime of the fourth degree, regardless of the value of the
42 recyclables, if the items have been placed at a curbside or other
43 appropriate location for pick-up. A crime of the fourth degree is
44 punishable by a term of imprisonment of up to 18 months or a fine of
45 up to \$7,500 or both.

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3 Makes it a crime of the fourth degree to scavenge recyclable materials.