

Comments of Kim MacEachern, Staff Attorney, Arizona Prosecuting Attorneys' Advisory Council at the November 15, 2012 Arizona House of Representatives Interim Study Committee on Metal Theft

Current statutes are consistent for classifying metal theft.

Theft: 13-1802

Class 2 felony if the property value \geq \$25,000

Class 3 felony if the value \geq \$4,000 < \$25,000

Class 4 felony if the value \geq \$3,000 < \$4,000 and engine or transmission of any value

Class 5 felony if the value > \$2,000 < \$3,000

Class 6 felony if the value > \$1,000 < \$2,000 and if property taken from the person, firearm, or animal for fighting

Class 1 misdemeanor if the value > \$1,000

Compare:

Kidnapping: Class 2 felony (and/or victim < 15 years)

Class 3 felony if victim released per state

Class 4 felony if victim released

Sex Trafficking: Class 2 felony (DCAC if victim <15 years)

Labor Trafficking: Class 2 felony

Burglary: 3rd degree: Class 4 felony (commercial)
2nd degree: Class 3 felony (residential)
1st degree: Class 2 felony (explosives/arms)

Forgery: Class 4 felony
Class 3 felony (to rent a drop house)

Trafficking Stolen Property: 2nd degree (reckless) Class 3 felony
Terrorism: Class 2 felony; with aggravator=Life

Misconduct/Weapons:

To facilitate terrorism: Class 2 felony

To facilitate a crime: Class 3 felony

Prohibited weapons/possessor; using for a felony, entering nuclear
plant: Class 4 felony

Possession on school grounds: Class 1 misdemeanor

Other: Class 6 felony, Class 1 misdemeanor

Homicide:

Negligent homicide: Class 4 felony

Manslaughter: Class 2 felony

Second degree murder: Class 1 felony

First degree murder: Class 1 felony-death or life in prison

Suggestion-

- 1) Create a stand-alone statute for Scrap Metal/Nonferrous Metal Theft Infrastructure Damage:

Any person who negligently causes infrastructure damage in the course of committing theft of scrap/ferrous or non-ferrous metal is guilty of a class 2 felony.

Infrastructure damage is defined as:

Substantial damage to structures used for or by, or substantial damage to or substantial interruption of public communications, communication services, public transportation, common carriers, public utilities, public establishments or other public services.

2) Fund a public awareness campaign. The greatest disconnect is between the crime and the evidence needed to prosecute the crime. Short of catching a person in the act it is difficult to link a person with a particular metal, even when the dealer follows his reporting obligations. In order to enlist the assistance of the public and the victims to be the eyes and ears of law enforcement so that timely reports and investigations can be made raising the potential for convictions and to raise public awareness to ensure that potential violators know the consequences-both in terms of personal risk and public safety risk and criminal consequences- a public service announcement campaign complete with posters for each recycler, flyers, billboards and PSAs on radio and TV are imperative. Similar models have had success in reaching the public. See e.g. Youth and Tobacco programs of ADHS.

3) Clarify the current scrap metal transaction limitation statute:

Reference:

44-1642. Records of purchase; transaction limitations; age requirement for scrap metal seller; exception

C. A scrap metal dealer shall not provide payment for any scrap metal on site at the time of the scrap metal transaction. Payment shall be made by mailing a check or money order to a physical address provided by the seller through a current driver license or other identification prescribed in subsection A, paragraph 4 of this

section. The check or money order shall be made payable to the business name for an industrial account. This subsection:

1. Except as provided in paragraphs 2 and 3 of this subsection, only applies to industrial accounts, copper and aluminum wire with a diameter of at least three-eighths of an inch. **Any item imprinted with an official logo, such as a manhole cover, etc. should be included. Verification could be made with that logo holder after the transaction but before the check is mailed that the item is not one which has been reported stolen.**
2. Except as provided in paragraph 3 of this subsection, applies to all scrap metal transactions of three hundred dollars or more. **Perhaps it should apply to all transactions or at least to those where the FMV of the item as presented to the scrap dealer would exceed the value of the scrap metal by [x]% or more.**
3. Does not apply to industrial accounts if the industrial accounts annually pre-register employees who are authorized sellers on behalf of the industrial accounts.