

CHAPTER 58

AN ACT concerning criminal penalties for offenses related to theft from a cargo carrier and designated as Lieutenant Scott Jenkins' Law, amending N.J.S.2C:20-1, N.J.S.2C:20-2, and N.J.S. 2C:20-7 and supplementing Title 2C of the New Jersey Statutes.

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

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

Definitions.

2C:20-1. Definitions. In chapters 20 and 21, unless a different meaning plainly is required:

a. "Deprive" means: (1) to withhold or cause to be withheld property of another permanently or for so extended a period as to appropriate a substantial portion of its economic value, or with purpose to restore only upon payment of reward or other compensation; or (2) to dispose or cause disposal of the property so as to make it unlikely that the owner will recover it.

b. "Fiduciary" means an executor, general administrator of an intestate, administrator with the will annexed, substituted administrator, guardian, substituted guardian, trustee under any trust, express, implied, resulting or constructive, substituted trustee, executor, conservator, curator, receiver, trustee in bankruptcy, assignee for the benefit of creditors, partner, agent or officer of a corporation, public or private, temporary administrator, administrator, administrator pendente lite, administrator ad prosequendum, administrator ad litem or other person acting in a similar capacity. "Fiduciary" shall also include an employee or an agent of a cargo carrier, as the term is defined in subsection w. of this section, while acting in that capacity, or an independent contractor providing services to a cargo carrier as that term is defined in subsection w. of this section.

c. "Financial institution" means a bank, insurance company, credit union, 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.

d. "Government" means the United States, any state, county, municipality, or other political unit, or any department, agency or subdivision of any of the foregoing, or any corporation or other association carrying out the functions of government.

e. "Movable property" means property 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. "Immovable property" is all other property.

f. "Obtain" means: (1) in relation to property, to bring about a transfer or purported transfer of a legal interest in the property, whether to the obtainer or another; or (2) in relation to labor or service, to secure performance thereof.

g. "Property" means anything of value, including real estate, tangible and intangible personal property, trade secrets, contract rights, choses in action and other interests in or claims to wealth, admission or transportation tickets, captured or domestic animals, food and drink, electric, gas, steam or other power, financial instruments, information, data, and computer software, in either human readable or computer readable form, copies or originals.

h. "Property of another" includes property in which any person other than the actor has an interest which the actor is not privileged to infringe, regardless of the fact that the actor also has an interest in the property and regardless of the fact that the other person 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 only a security interest therein, even if legal title is in the creditor pursuant to a conditional sales contract or other security agreement.

i. "Trade secret" means the whole or any portion or phase of any scientific or technical information, design, process, procedure, formula or improvement which is secret and of value. A trade secret shall be presumed to be secret when the owner thereof takes measures to prevent it from becoming available to persons other than those selected by the owner to have access thereto for limited purposes.

j. "Dealer in property" means a person who buys and sells property as a business.

k. "Traffic" means:

(1) To sell, transfer, distribute, dispense or otherwise dispose of property to another person; or

(2) To buy, receive, possess, or obtain control of or use property, with intent to sell, transfer, distribute, dispense or otherwise dispose of such property to another person.

l. "Broken succession of title" means lack of regular documents of purchase and transfer by any seller except the manufacturer of the subject property, or possession of documents of purchase and transfer by any buyer without corresponding documents of sale and transfer in possession of seller, or possession of documents of sale and transfer by seller without corresponding documents of purchase and transfer in possession of any buyer.

m. "Person" includes any individual or entity or enterprise, as defined herein, holding or capable of holding a legal or beneficial interest in property.

n. "Anything of value" means any direct or indirect gain or advantage to any person.

o. "Interest in property which has been stolen" means title or right of possession to such property.

p. "Stolen property" means property that has been the subject of any unlawful taking.

q. "Enterprise" includes any individual, sole proprietorship, partnership, corporation, business trust, association, or other legal entity, and any union or group of individuals associated in fact, although not a legal entity, and it includes illicit as well as licit enterprises and governmental as well as other entities.

r. "Attorney General" includes the Attorney General of New Jersey, his assistants and deputies. The term shall also include a county prosecutor or his designated assistant prosecutor, if a county prosecutor is expressly authorized in writing by the Attorney General to carry out the powers conferred on the Attorney General by this chapter.

s. "Access device" means property consisting of any telephone calling card number, credit card number, account number, mobile identification number, electronic serial number, personal identification number, or any other data intended to control or limit access to telecommunications or other computer networks in either human readable or computer readable form, either copy or original, that can be used to obtain telephone service. Access device also means property consisting of a card, code or other means of access to an account held by a financial institution, or any combination thereof, that may be used by the account holder for the purpose of initiating electronic fund transfers.

t. "Defaced access device" means any access device, in either human readable or computer readable form, either copy or original, which has been removed, erased, defaced, altered, destroyed, covered or otherwise changed in any manner from its original configuration.

u. "Domestic companion animal" means any animal commonly referred to as a pet or one that has been bought, bred, raised or otherwise acquired, in accordance with local ordinances and State and federal law for the primary purpose of providing companionship to the owner, rather than for business or agricultural purposes.

v. "Personal identifying information" means any name, number or other information that may be used, alone or in conjunction with any other information, to identify a specific individual and includes, but is not limited to, the name, address, telephone number, date of birth, social security number, official State issued identification number, employer or taxpayer number, place of employment, employee identification number, demand deposit account number, savings account number, credit card number, mother's maiden name, unique biometric data, such as fingerprint, voice print, retina or iris image or other unique physical representation, or unique electronic identification number, address or routing code of the individual.

w. "Cargo carrier" means: (1) any business or establishment regularly operating for the purpose of conveying goods or property for compensation from one place to another by road, highway, rail, water or air, by any means including but not limited to any pipeline system, railroad car, motor truck, truck, trailer, semi-trailer, commercial motor vehicle or other vehicle, any steamboat, vessel or aircraft, and any business or establishment regularly engaged in the temporary storage of goods or property incident to further distribution of the goods or property elsewhere for commercial purposes, including but not limited to businesses or establishments operating a tank or storage facility, warehouse, terminal, station, station house, platform, depot, wharf, pier, or from any ocean, intermodal, container freight station or freight consolidation facility; or (2) any business or establishment that conveys goods or property which it owns or has title to, from one place to another, by road, highway, rail, water or air by any means including but not limited to any pipeline system, railroad car, motor truck, truck, trailer, semi-trailer, commercial motor vehicle or other vehicle, any steamboat, vessel or aircraft, and including the storage and warehousing of goods and property incidental to their conveyance from one place to another.

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

Consolidation of theft and computer criminal activity offenses.

2C:20-2. a. Consolidation of Theft and Computer Criminal Activity Offenses. Conduct denominated theft or computer criminal activity in this chapter constitutes a single offense, but each episode or transaction may be the subject of a separate prosecution and conviction. A charge of theft or computer criminal activity may be supported by evidence that it was committed in any manner that would be theft or computer criminal activity under this chapter, notwithstanding the specification of a different manner in the indictment or accusation, subject only to the power of the court to ensure fair trial by granting a bill of particulars, discovery, a continuance, or other appropriate relief where the conduct of the defense would be prejudiced by lack of fair notice or by surprise.

b. Grading of theft offenses.

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

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

(b) The property is taken by extortion;

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

(d) The property stolen is a person's benefits under federal or State law, or from any other source, which the Department of Human Services or an agency acting on its behalf has budgeted for the person's health care and the amount involved is \$75,000.00 or more;

(e) The property stolen is human remains or any part thereof; except that, if the human remains are stolen by deception or falsification of a document by which a gift of all or part of

a human body may be made pursuant to P.L.2008, c.50 (C.26:6-77 et al.), the theft constitutes a crime of the first degree; or

(f) It is in breach of an obligation by a person in his capacity as a fiduciary and the amount involved is \$50,000.00 or more.

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

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

(b) The property stolen is a firearm, motor vehicle, vessel, boat, horse, domestic companion animal or airplane;

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

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

(e) It is in breach of an obligation by a person in his capacity as a fiduciary and the amount involved is less than \$50,000.00;

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

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

(h) The property stolen is a person's benefits under federal or State law, or from any other source, which the Department of Human Services or an agency acting on its behalf has budgeted for the person's health care and the amount involved is less than \$75,000.00;

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

(j) The property stolen is a New Jersey Prescription Blank as referred to in R.S.45:14-14;

(k) The property stolen consists of an access device or a defaced access device; or

(l) The property stolen consists of anhydrous ammonia and the actor intends it to be used to manufacture methamphetamine.

(3) Theft constitutes a crime of the fourth degree if the amount involved is at least \$200.00 but does not exceed \$500.00.

(4) Theft constitutes a disorderly persons offense if:

(a) The amount involved was less than \$200.00; or

(b) The property stolen is an electronic vehicle identification system transponder.

The amount involved in a theft or computer criminal activity shall be determined by the trier of fact. The amount shall include, but shall not be limited to, the amount of any State tax avoided, evaded or otherwise unpaid, improperly retained or disposed of. Amounts involved in thefts or computer criminal activities committed pursuant to one scheme or course of conduct, whether from the same person or several persons, may be aggregated in determining the grade of the offense.

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

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

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

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

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

3. N.J.S.2C:20-7 is amended to read as follows:

Receiving stolen property.

2C:20-7. Receiving Stolen Property.

a. Receiving. A person is guilty of theft if he knowingly receives or brings into this State movable property of another knowing that it has been stolen, or believing that it is probably stolen. It is an affirmative defense that the property was received with purpose to restore it to the owner. "Receiving" means acquiring possession, control or title, or lending on the security of the property.

b. Presumption of knowledge. The requisite knowledge or belief is presumed in the case of a person who:

(1) Is found in possession or control of two or more items of property stolen on two or more separate occasions; or

(2) Has received stolen property in another transaction within the year preceding the transaction charged; or

(3) Being a person in the business of buying or selling property of the sort received, acquires the property without having ascertained by reasonable inquiry that the person from whom he obtained it had a legal right to possess and dispose of it; or

(4) Is found in possession of two or more defaced access devices; or

(5) Is found in possession of property of a cargo carrier without proper documentation or other evidence of right to possession.

C.2C:20-2.4 Leader of cargo theft network.

4. a. A person is a leader of a cargo theft network if he conspires with others as an organizer, supervisor, financier or manager to engage for profit in a scheme or course of conduct to unlawfully take, dispose of, distribute, bring into, transport, or store in this State property stolen from a cargo carrier, where the amount is at least \$5,000.

(1) Except as provided in paragraph (2) of this subsection, leader of a cargo theft network is a crime of the second degree. Notwithstanding the provisions of subsection a. of N.J.S.2C:43-3, the court may impose a fine not to exceed \$250,000 or five times the retail value of the property seized at the time of the arrest, whichever is greater.

(2) Leader of a cargo theft network is a crime of the first degree if the scheme or course of conduct to unlawfully take, dispose of, distribute, bring into, transport, or store in this State property stolen from a cargo carrier included the use or threatened use of any deadly weapon, as defined in N.J.S.2C:39-1 in the commission of the theft. Nothing in this subsection shall be deemed to limit the authority or discretion of the State to charge or prosecute any person for robbery under N.J.S.2C:15-1 or for any other offense, nor shall a conviction for robbery merge with any conviction under this section. Notwithstanding the provisions of subsection a. of N.J.S.2C:43-3, the court may impose a fine not to exceed \$500,000 or five times the retail value of the property seized at the time of the arrest, whichever is greater.

b. Notwithstanding the provisions of N.J.S.2C:1-8, a conviction of leader of a cargo theft network shall not merge with the conviction for any offense which is the object of the

conspiracy. Nothing contained in this act shall prohibit the court from imposing an extended term pursuant to N.J.S.2C:43-7; nor shall this act be construed in any way to preclude or limit the prosecution or conviction of any person for conspiracy under N.J.S.2C:5-2, or any prosecution or conviction for any other offense.

c. It shall not be necessary in any prosecution under this section for the State to prove that any intended profit was actually realized. The trier of fact may infer that a particular scheme or course of conduct was undertaken for profit from all of the attending circumstances, including but not limited to the number of persons involved in the scheme or course of conduct, the actor's net worth and his expenditures in relation to his legitimate sources of income, the amount of property or number of incidents of theft, or the amount of cash or currency involved.

d. It shall not be a defense to a prosecution under this section that the stolen property was brought into, transported or stored in this State solely for ultimate distribution in another jurisdiction; nor shall it be a defense that any profit was intended to be made in another jurisdiction.

e. A person convicted of a second or subsequent offense under this section shall be sentenced to a term of imprisonment that shall include a mandatory minimum term of one-third to one-half of the sentence imposed, during which time the defendant shall not be eligible for parole. The court may not suspend or make any other non-custodial disposition of any person sentenced as a second or subsequent offender pursuant to this section. For the purposes of this section an offense is considered a second or subsequent offense if the actor has at any time been convicted pursuant to this section, or under any similar statute of the United States, this State or any other state for an offense that is substantially equivalent to this section.

C.2C:20-2.5 Additional disposition for certain offenses; degree of crime, penalties.

5. a. In addition to any other disposition authorized by law, a person convicted under the provisions of chapter 20 of Title 2C of the New Jersey Statutes of an offense involving the taking of property by a fiduciary, or a person convicted under P.L.2013, c.58 (C.2C:20-2.4 et al.) of leader of a cargo theft network or operating a facility for the sale or storage of property stolen from a cargo carrier, shall be subject:

- (1) For a crime of the third degree, to a penalty of \$500;
- (2) For a crime of the second degree, to a penalty of \$2,500; and
- (3) For a crime of the first degree or any crime where the person to be sentenced has a prior conviction for a crime defined in chapter 20 of Title 2C of the New Jersey Statutes, to a penalty of \$5,000.

b. All penalties provided for in this section shall be collected as provided for the collection of fines and restitutions in section 3 of P.L.1979, c.396 (C.2C:46-4), and shall be distributed in accordance with the provisions of N.J.S.2C:64-6 as if the collected monies were the proceeds of property forfeited pursuant to the provisions of chapter 64 of Title 2C of the New Jersey Statutes. However, the distributed monies are first to be considered for use for law enforcement activities related to theft from a cargo carrier.

C.2C:20-2.6 Crimes involving theft from cargo carrier; degree of crime, penalties.

6. a. A person who knowingly maintains or operates any premises, place or facility used for the storage or resale of any property stolen from a cargo carrier is guilty of a crime. Where the property involved in the offense is valued at \$50,000 or more, the offense is a crime of the second degree. Otherwise, the offense is a crime of the third degree.

b. Notwithstanding the provisions of subsection a. of N.J.S.2C:43-3, the court may impose a fine not to exceed \$250,000 or five times the retail value of the property stolen from the carrier seized at the time of the arrest, whichever is greater.

c. A person convicted of a second or subsequent offense under this section shall be sentenced to a term of imprisonment that shall include a mandatory minimum term of one-third to one-half of the sentence imposed, during which time the defendant shall not be eligible for parole. The court may not suspend or make any other non-custodial disposition of any person sentenced as a second or subsequent offender pursuant to this section. For the purposes of this section an offense is considered a second or subsequent offense if the actor has at any time been convicted pursuant to this section, or under any similar statute of the United States, this State or any other state for an offense that is substantially equivalent to this section.

7. This act shall take effect immediately.

Approved May 9, 2013.