

CHAPTER 21

CRIMINAL LAW AND PROCEDURE

HOUSE BILL 04-1148

BY REPRESENTATIVE(S) Rippy, Butcher, Cloer, Hefley, Larson, McFadyen, Merrifield, Ragsdale, Salazar, Stengel, White, and Williams S.;
also SENATOR(S) McElhany, Andrews, Arnold, Chlouber, Entz, Fitz-Gerald, Isgar, Jones, Lamborn, Phillips, Sandoval, Taylor, and Tupa.

AN ACT**CONCERNING THE CRIME OF DEFACING A CAVE.**

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. 18-4-509 (1), Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW PARAGRAPH to read:

18-4-509. Defacing property - definitions. (1) (c) (I) ANY PERSON WHO, WITH REGARD TO A CAVE THAT IS PUBLIC PROPERTY OR THE PROPERTY OF ANOTHER, KNOWINGLY PERFORMS ANY OF THE FOLLOWING ACTS WITHOUT THE CONSENT OF THE OWNER COMMITS THE CRIME OF DEFACING PROPERTY:

(A) BREAKING OR DAMAGING ANY LOCK, FASTENING, DOOR, OR STRUCTURE DESIGNED TO ENCLOSE OR PROTECT ANY SUCH CAVE;

(B) DEFACING, DAMAGING, OR BREAKING FROM ANY PART OF SUCH CAVE ANY CAVE RESOURCE; OR

(C) REMOVING FROM SUCH CAVE ANY CAVE RESOURCE.

(II) FOR PURPOSES OF THIS SECTION:

(A) "CAVE" MEANS ANY NATURALLY OCCURRING VOID, CAVITY, RECESS, LAVA TUBE, OR SYSTEM OF INTERCONNECTED PASSAGES THAT OCCURS BENEATH THE SURFACE OF THE EARTH OR WITHIN A CLIFF OR LEDGE, INCLUDING ANY CAVE RESOURCE THEREIN, BUT NOT INCLUDING ANY MINE, TUNNEL, AQUEDUCT, OR OTHER ARTIFICIAL EXCAVATION, AND THAT IS LARGE ENOUGH TO PERMIT AN INDIVIDUAL TO ENTER, REGARDLESS OF WHETHER THE ENTRANCE IS NATURALLY FORMED OR HAS

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

BEEN ARTIFICIALLY CREATED OR ENLARGED. "CAVE" INCLUDES ANY NATURAL PIT, SINKHOLE, OR OTHER FEATURE THAT IS AN EXTENSION OF THE ENTRANCE.

(B) "CAVE RESOURCE" INCLUDES ANY MATERIAL OR SUBSTANCE OCCURRING NATURALLY IN CAVES, SUCH AS ANIMAL LIFE, PLANT LIFE, PALEONTOLOGICAL DEPOSITS, SEDIMENTS, MINERALS, SPELEOGENS, AND SPELEOTHEMS.

(C) "SPELEOGEN" MEANS RELIEF FEATURES ON THE WALLS, CEILING, OR FLOOR OF ANY CAVE THAT ARE PART OF THE SURROUNDING ROCK, INCLUDING, BUT NOT LIMITED TO, ANASTOMOSES, SCALLOPS, MEANDER NICHES, PETROMORPHS, AND ROCK PENDANTS IN SOLUTION CAVES AND SIMILAR FEATURES UNIQUE TO VOLCANIC CAVES.

(D) "SPELEOTHEM" MEANS ANY NATURAL MINERAL FORMATION OR DEPOSIT OCCURRING IN A CAVE, INCLUDING, BUT NOT LIMITED TO, ANY STALACTITE, STALAGMITE, HELICTITE, CAVE FLOWER, FLOWSTONE, CONCRETION, DRAPERY, RIMSTONE, OR FORMATION OF CLAY OR MUD.

SECTION 2. 18-4-509 (2), Colorado Revised Statutes, is amended to read:

18-4-509. Defacing property. (2) (a) Defacing property is a class 2 misdemeanor; except that a second or subsequent conviction for the offense of defacing property is a class 1 misdemeanor and the court shall impose a mandatory minimum fine of seven hundred fifty dollars upon conviction. Fifty percent of the fines collected pursuant to this paragraph (a) shall be credited to the highway user's tax fund, created in section 43-4-201, C.R.S., and fifty percent of the fines collected pursuant to this paragraph (a) shall be credited to the juvenile diversion cash fund created in section 19-2-303.5, C.R.S.; EXCEPT THAT THE FINES COLLECTED PURSUANT TO PARAGRAPH (c) OF SUBSECTION (1) OF THIS SECTION SHALL BE CREDITED TO THE COLORADO TRAVEL AND TOURISM PROMOTION FUND CREATED IN SECTION 24-49.7-106, C.R.S.

(b) Any person convicted of defacing property pursuant to paragraph (b) OR (c) of subsection (1) of this section shall be ordered by the court to personally make repairs to any property damaged, or properties similarly damaged, if possible. If the property cannot be repaired, the court shall order a person convicted of defacing property to replace or compensate the owner for the damaged property but may, IN THE CASE OF A VIOLATION OF PARAGRAPH (b) OF SUBSECTION (1) OF THIS SECTION, limit such compensation to two thousand five hundred dollars.

(c) In addition, upon each conviction for defacing property pursuant to paragraph (b) OR (c) of subsection (1) of this section, or adjudication as a juvenile delinquent for an act that would constitute defacing property pursuant to paragraph (b) of subsection (1) of this section if committed by an adult, the offender's driver's license shall be revoked as provided in section 42-2-125, C.R.S.

SECTION 3. Effective date - applicability. (1) This act shall take effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly that is allowed for submitting a referendum petition pursuant to article V, section 1 (3) of the state constitution (August 4, 2004, if adjournment sine die is on May 5, 2004); except that, if a referendum petition is filed against this act or an item, section, or part of this act within such period, then the

act, item, section, or part, if approved by the people, shall take effect on the date of the official declaration of the vote thereon by proclamation of the governor.

(2) The provisions of this act shall apply to offenses committed on or after the applicable effective date of this act.

Approved: March 8, 2004