

CHAPTER 254

CRIMINAL LAW AND PROCEDURE

SENATE BILL 11-256

BY SENATOR(S) Guzman and King S., Aguilar, Foster, Newell, Williams S., Giron;
also REPRESENTATIVE(S) Ferrandino and Kerr J., Conti, Court, Duran, Fields, Fischer, Gardner B., Gerou, Hamner, Labuda,
Pace, Priola, Ryden, Schafer S., Summers, Todd, Tyler, Vigil, Williams A., Wilson.

AN ACT**CONCERNING GRAFFITI.**

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

SECTION 1. 18-4-509 (2) (a), Colorado Revised Statutes, is amended to read:

18-4-509. Defacing property - definitions. (2) (a) (I) Defacing property is a class 2 misdemeanor; except that:

(A) 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; AND

(B) IF A PERSON VIOLATES PARAGRAPH (b) OF SUBSECTION (1) OF THIS SECTION TWICE OR MORE WITHIN A PERIOD OF SIX MONTHS, THE DAMAGES CAUSED BY TWO OR MORE OF THE VIOLATIONS MAY BE AGGREGATED AND CHARGED IN A SINGLE COUNT, IN WHICH EVENT THE VIOLATIONS SO AGGREGATED AND CHARGED SHALL CONSTITUTE A SINGLE OFFENSE, AND, IF THE AGGREGATE DAMAGES ARE FIVE HUNDRED DOLLARS OR MORE, IT IS A CLASS 1 MISDEMEANOR AND THE COURT SHALL IMPOSE A MANDATORY MINIMUM FINE OF SEVEN HUNDRED FIFTY DOLLARS UPON CONVICTION.

(II) IN SENTENCING A PERSON WHO VIOLATES THIS SECTION, THE COURT HAS DISCRETION TO IMPOSE ALTERNATIVES IN SENTENCING AS DESCRIBED IN PART 1 OF ARTICLE 1.3 OF THIS TITLE, INCLUDING BUT NOT LIMITED TO RESTORATIVE JUSTICE PRACTICES, AS DEFINED IN SECTION 18-1-901 (3) (o.5), OR IN THE CASE OF A JUVENILE OFFENDER, TO IMPOSE RESTORATIVE JUSTICE, AS DEFINED IN SECTION 19-1-103 (94.1), C.R.S.

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

(III) THE COURT MAY SUSPEND ALL OR PART OF THE MANDATORY MINIMUM FINE ASSOCIATED WITH A CONVICTION UNDER THIS SECTION UPON THE OFFENDER'S SUCCESSFUL COMPLETION OF ANY SENTENCE ALTERNATIVE IMPOSED BY THE COURT PURSUANT TO SUBPARAGRAPH (II) OF THIS PARAGRAPH (a).

(IV) Fifty percent of the fines collected pursuant to this paragraph (a) shall be credited to the highway users tax fund, created in section 43-4-201, C.R.S., and allocated and expended as specified in section 43-4-205 (5.5) (a), 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.

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

18-4-509. Defacing property - definitions. (2) (a) (I) Defacing property is a class 2 misdemeanor; except that:

(A) 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; AND

(B) IF A PERSON VIOLATES PARAGRAPH (b) OF SUBSECTION (1) OF THIS SECTION TWICE OR MORE WITHIN A PERIOD OF SIX MONTHS, THE DAMAGES CAUSED BY TWO OR MORE OF THE VIOLATIONS MAY BE AGGREGATED AND CHARGED IN A SINGLE COUNT, IN WHICH EVENT THE VIOLATIONS SO AGGREGATED AND CHARGED SHALL CONSTITUTE A SINGLE OFFENSE, AND, IF THE AGGREGATE DAMAGES ARE FIVE HUNDRED DOLLARS OR MORE, IT IS A CLASS 1 MISDEMEANOR AND THE COURT SHALL IMPOSE A MANDATORY MINIMUM FINE OF SEVEN HUNDRED FIFTY DOLLARS UPON CONVICTION.

(II) IN SENTENCING A JUVENILE WHO VIOLATES THIS SECTION, THE COURT HAS DISCRETION TO IMPOSE RESTORATIVE JUSTICE, AS DEFINED IN SECTION 19-1-103 (94.1), C.R.S.

(III) THE COURT MAY SUSPEND ALL OR PART OF THE MANDATORY MINIMUM FINE ASSOCIATED WITH A CONVICTION UNDER THIS SECTION UPON THE OFFENDER'S SUCCESSFUL COMPLETION OF ANY RESTORATIVE JUSTICE REQUIREMENTS IMPOSED BY THE COURT PURSUANT TO SUBPARAGRAPH (II) OF THIS PARAGRAPH (a).

(IV) Fifty percent of the fines collected pursuant to this paragraph (a) shall be credited to the highway users tax fund, created in section 43-4-201, C.R.S., and allocated and expended as specified in section 43-4-205 (5.5) (a), 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.

SECTION 3. 18-4-509 (1) (c) (II), Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUB-SUBPARAGRAPH to read:

18-4-509. Defacing property - definitions. (1) (c) (II) For purposes of this section:

(B.5) "JUVENILE" SHALL HAVE THE SAME MEANING AS SET FORTH IN SECTION 19-1-103 (68), C.R.S.

SECTION 4. Part 1 of article 1 of title 43, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

43-1-122. Removal of graffiti from departmental facilities - memorandums of understanding. (1) THE DEPARTMENT MAY, AT ITS DISCRETION, ENTER INTO A MEMORANDUM OF UNDERSTANDING WITH ANY CITY, COUNTY, CITY AND COUNTY, OR OTHER MUNICIPALITY OF THE STATE TO ALLOW THE CITY, COUNTY, CITY AND COUNTY, OR OTHER MUNICIPALITY TO REMOVE GRAFFITI AS NEEDED FROM DEPARTMENTAL PROPERTY LOCATED WITHIN THE CITY, COUNTY, CITY AND COUNTY, OR OTHER MUNICIPALITY.

(2) A MEMORANDUM OF UNDERSTANDING ENTERED INTO BY THE DEPARTMENT PURSUANT TO SUBSECTION (1) OF THIS SECTION SHALL STATE THAT IF THE CITY, COUNTY, CITY AND COUNTY, OR OTHER MUNICIPALITY CHOOSES TO REMOVE GRAFFITI FROM A DEPARTMENTAL FACILITY, THE CITY, COUNTY, CITY AND COUNTY, OR OTHER MUNICIPALITY SHALL DO SO AT ITS OWN EXPENSE.

SECTION 5. Act subject to petition - effective date. (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 (August 10, 2011, if adjournment sine die is on May 11, 2011); except that:

(a) Section 1 of this act shall take effect only if House Bill 11-1032 is enacted and becomes law;

(b) Section 2 of this act shall take effect only if House Bill 11-1032 is not enacted and does not become law; and

(c) If a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within such period, then the act, item, section, or part shall not take effect unless approved by the people at the general election to be held in November 2012 and shall take effect on the date of the official declaration of the vote thereon by the governor.

Approved: June 2, 2011