

CHAPTER 373

CRIMINAL LAW AND PROCEDURE

HOUSE BILL 13-1160

BY REPRESENTATIVE(S) Pabon, Fields, HULLINGHORST, Levy, Melton, Rosenthal, Vigil, Waller, Wright, Young;
also SENATOR(S) King, Aguilar, Guzman, Jahn, Newell, Nicholson, Steadman, Todd, Ulibarri, Morse.

AN ACT

CONCERNING CRIMINAL THEFT, AND, IN CONNECTION THEREWITH, REDUCING AN APPROPRIATION.

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

SECTION 1. In Colorado Revised Statutes, 18-4-401, **amend** (1), (2) (b), (2) (c), (2) (d), and (4); **repeal** (2) (b.5); and **add** (2) (e), (2) (f), (2) (g), (2) (h), (2) (i), and (2) (j) as follows:

18-4-401. Theft. (1) A person commits theft when he OR SHE knowingly obtains, RETAINS, or exercises control over anything of value of another without authorization or by threat or deception; OR RECEIVES, LOANS MONEY BY PAWN OR PLEDGE ON, OR DISPOSES OF ANYTHING OF VALUE OR BELONGING TO ANOTHER THAT HE OR SHE KNOWS OR BELIEVES TO HAVE BEEN STOLEN, and:

(a) Intends to deprive the other person permanently of the use or benefit of the thing of value; ~~or~~

(b) Knowingly uses, conceals, or abandons the thing of value in such manner as to deprive the other person permanently of its use or benefit; ~~or~~

(c) Uses, conceals, or abandons the thing of value intending that such use, concealment, or abandonment will deprive the other person permanently of its use ~~and~~ OR benefit; ~~or~~

(d) Demands any consideration to which he OR SHE is not legally entitled as a condition of restoring the thing of value to the other person; OR

(e) KNOWINGLY RETAINS THE THING OF VALUE MORE THAN SEVENTY-TWO HOURS

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

AFTER THE AGREED-UPON TIME OF RETURN IN ANY LEASE OR HIRE AGREEMENT.

(2) Theft is:

(b) A ~~class 2 misdemeanor~~ CLASS 1 PETTY OFFENSE if the value of the thing involved is less than ~~five hundred~~ FIFTY dollars;

(b.5) A ~~class 1 misdemeanor if the value of the thing involved is five hundred dollars or more but less than one thousand dollars;~~

(c) A ~~class 4 felony~~ CLASS 3 MISDEMEANOR if the value of the thing involved is ~~one thousand~~ FIFTY dollars or more but less than ~~twenty thousand~~ THREE HUNDRED dollars;

(d) A ~~class 3 felony~~ CLASS 2 MISDEMEANOR if the value of the thing involved is ~~twenty thousand dollars or more~~ THREE HUNDRED DOLLARS OR MORE BUT LESS THAN SEVEN HUNDRED FIFTY DOLLARS;

(e) A CLASS 1 MISDEMEANOR IF THE VALUE OF THE THING INVOLVED IS SEVEN HUNDRED FIFTY DOLLARS OR MORE BUT LESS THAN TWO THOUSAND DOLLARS;

(f) A CLASS 6 FELONY IF THE VALUE OF THE THING INVOLVED IS TWO THOUSAND DOLLARS OR MORE BUT LESS THAN FIVE THOUSAND DOLLARS;

(g) A CLASS 5 FELONY IF THE VALUE OF THE THING INVOLVED IS FIVE THOUSAND DOLLARS OR MORE BUT LESS THAN TWENTY THOUSAND DOLLARS;

(h) A CLASS 4 FELONY IF THE VALUE OF THE THING INVOLVED IS TWENTY THOUSAND DOLLARS OR MORE BUT LESS THAN ONE HUNDRED THOUSAND DOLLARS;

(i) A CLASS 3 FELONY IF THE VALUE OF THE THING INVOLVED IS ONE HUNDRED THOUSAND DOLLARS OR MORE BUT LESS THAN ONE MILLION DOLLARS; AND

(j) A CLASS 2 FELONY IF THE VALUE OF THE THING INVOLVED IS ONE MILLION DOLLARS OR MORE.

(4)(a) When a person commits theft twice or more within a period of six months, two or more of the thefts may be aggregated and charged in a single count, in which event the thefts so aggregated and charged shall constitute a single offense, ~~and, if~~ THE PENALTY FOR WHICH SHALL BE BASED ON the aggregate value of the things involved, ~~is one thousand dollars or more but less than twenty thousand dollars, it is a class 4 felony; however, if the aggregate value of the things involved is twenty thousand dollars or more, it is a class 3 felony~~ PURSUANT TO SUBSECTION (2) OF THIS SECTION.

(b) When a person commits theft twice or more against the same person pursuant to one scheme or course of conduct, the thefts may be aggregated and charged in a single count, in which event they shall constitute a single offense, ~~and, if~~ THE PENALTY FOR WHICH SHALL BE BASED ON the aggregate value of the things involved, ~~is one thousand dollars or more but less than twenty thousand dollars, it is a class 4 felony; however, if the aggregate value of the things involved is twenty thousand~~

dollars or more, it is a class 3 felony PURSUANT TO SUBSECTION (2) OF THIS SECTION.

SECTION 2. In Colorado Revised Statutes, **repeal** 18-4-402 as follows:

18-4-402. Theft of rental property. ~~(1) A person commits theft of rental property if he:~~

~~(a) Obtains the temporary use of personal property of another, which is available only for hire, by means of threat or deception, or knowing that such use is without the consent of the person providing the personal property; or~~

~~(b) Having lawfully obtained possession for temporary use of the personal property of another which is available only for hire, knowingly fails to reveal the whereabouts of or to return said property to the owner thereof or his representative or to the person from whom he has received it within seventy-two hours after the time at which he agreed to return it.~~

~~(2) (Deleted by amendment, L. 2007, p. 1691, § 4, effective July 1, 2007.)~~

~~(3) Theft of rental property is a class 2 misdemeanor where the value of the property involved is less than five hundred dollars.~~

~~(3.5) Theft of rental property is a class 1 misdemeanor where the value of the property involved is five hundred dollars or more but less than one thousand dollars.~~

~~(4) Theft of rental property is a class 5 felony where the value of the property involved is one thousand dollars or more but less than twenty thousand dollars.~~

~~(5) Theft of rental property is a class 3 felony where the value of the property involved is twenty thousand dollars or more.~~

~~(6) When a person commits theft of rental property twice or more within a period of six months, two or more of the thefts of rental property may be aggregated and charged in a single count, in which event the thefts so aggregated and charged shall constitute a single offense, and, if the aggregate value of the property involved is one thousand dollars or more but less than twenty thousand dollars, it is a class 5 felony; however, if the aggregate value of the property involved is twenty thousand dollars or more, it is a class 3 felony.~~

SECTION 3. In Colorado Revised Statutes, **repeal** 18-4-410 as follows:

18-4-410. Theft by receiving. ~~(1) Except as provided in subsection (6) of this section, a person commits theft by receiving when he receives, retains, loans money by pawn or pledge on, or disposes of anything of value of another, knowing or believing that said thing of value has been stolen, and when he intends to deprive the lawful owner permanently of the use or benefit of the thing of value.~~

~~(2) (Deleted by amendment, L. 2007, p. 1692, § 6, effective July 1, 2007.)~~

~~(3) Where the value of the thing involved is less than five hundred dollars, theft by receiving is a class 2 misdemeanor.~~

~~(3.5) Where the value of the thing involved is five hundred dollars or more but less than one thousand dollars, theft by receiving is a class 1 misdemeanor.~~

~~(4) Where the value of the thing involved is one thousand dollars or more but less than twenty thousand dollars, theft by receiving is a class 4 felony.~~

~~(5) Where the value of the thing involved is twenty thousand dollars or more, theft by receiving is a class 3 felony.~~

~~(6) When the aggregate value of the thing or things involved is one thousand dollars or more and the person committing theft by receiving is engaged in the business of buying, selling, or otherwise disposing of stolen goods for a profit, theft by receiving is a class 3 felony.~~

~~(7) When a person commits theft by receiving twice or more within a period of six months, two or more of the thefts by receiving may be aggregated and charged in a single count, in which event the thefts so aggregated and charged shall constitute a single offense, and, if the aggregate value of the things involved is one thousand dollars or more but less than twenty thousand dollars, it is a class 4 felony; however, if the aggregate value of the things involved is twenty thousand dollars or more, it is a class 3 felony.~~

SECTION 4. In Colorado Revised Statutes, **amend** 18-4-411 as follows:

18-4-411. Transactions for profit in stolen goods. If any person ~~commits theft by receiving as defined in section 18-4-410 (1) when~~ OBTAINS CONTROL OVER STOLEN PROPERTY KNOWING OR BELIEVING THE PROPERTY TO HAVE BEEN STOLEN, AND such offense involves two or more separate stolen things of value each of which is the property of a separate owner, such commission of theft ~~by receiving~~ constitutes prima facie evidence that the person is engaged in the business of buying, selling, or otherwise disposing of stolen goods for a profit.

SECTION 5. In Colorado Revised Statutes, **repeal** 18-4-418 as follows:

18-4-418. Fuel piracy. ~~(1) A person commits fuel piracy when such person knowingly leaves the premises of an establishment that offers fuel for sale after dispensing fuel and knowingly fails to pay for such fuel.~~

~~(2) Fuel piracy is:~~

~~(a) A class 3 misdemeanor if the value of such fuel is less than one hundred dollars;~~

~~(b) A class 2 misdemeanor if the value of such fuel is one hundred dollars or more but less than five hundred dollars.~~

~~(3) In addition to any other penalty authorized by law, after a defendant has been convicted of or has entered a plea of guilty or nolo contendere to fuel piracy, the mandatory minimum fine shall be two hundred fifty dollars.~~

SECTION 6. In Colorado Revised Statutes, **repeal** 18-4-419 as follows:

18-4-419. Newspaper theft. ~~(1) A person commits the offense of newspaper theft when that person obtains or exerts unauthorized control over more than five copies of an edition of a newspaper from a newspaper distribution container owned or leased by the newspaper publisher with the intent to prevent other individuals from reading that edition of the newspaper. Control is unauthorized if there is a notice on the newspaper or on the newspaper distribution container that possession of more than five copies with intent to prevent other individuals from reading that edition of the newspaper is illegal.~~

~~(2) Newspaper theft is a misdemeanor and shall be punished by a fine of:~~

~~(a) Up to one thousand dollars if the number of newspapers involved was one hundred or fewer or the number of newspapers involved was not determined;~~

~~(b) Up to two thousand five hundred dollars if the number of newspapers involved was more than one hundred and fewer than five hundred;~~

~~(c) Up to five thousand dollars if the number of newspapers involved was five hundred or more.~~

~~(3) As used in this section:~~

~~(a) "Edition of a newspaper" means a single press run of a newspaper.~~

~~(b) "Newspaper" means a periodical that includes news, editorials, opinion, features, or other matters of public interest that is distributed on a complimentary basis. Newspaper includes any student periodical distributed at any institution of higher education.~~

~~(c) "Periodical" means a publication produced on a regular interval.~~

~~(4) Notwithstanding any other remedies provided under this section, a newspaper publisher who is the victim of newspaper theft, an advertiser who placed an advertisement in a newspaper that was subject to newspaper theft, or a newspaper reader who regularly reads the newspaper subject to newspaper theft shall have a private civil right of action as provided in section 13-21-123, C.R.S., against the person or persons who acted in violation of subsection (1) of this section.~~

~~(5) This section shall not apply to a person who, with the authority or permission of the person who possesses real or personal property, removes or disposes of newspapers that have been deposited in or left on that property without the authority or permission of the person who possesses the real or personal property.~~

SECTION 7. In Colorado Revised Statutes, **repeal** 13-21-123 as follows:

13-21-123. Civil liability for newspaper theft. ~~Notwithstanding any other remedies provided under this section, a newspaper publisher who is the victim of newspaper theft as described in section 18-4-419, C.R.S., or who had compensatory newspapers stolen, an advertiser who placed an advertisement in a newspaper that was subject to newspaper theft or a compensatory newspaper that was stolen, or a newspaper reader who regularly reads a newspaper subject to newspaper theft or a~~

compensatory newspaper that was stolen shall have a private civil right of action against the party who stole the newspapers. In any such action, the newspaper publisher shall be entitled to actual damages, a civil penalty of ten dollars for each newspaper obtained in violation of section ~~18-4-419~~, C.R.S., and attorney fees and costs, and the advertiser or newspaper reader shall be entitled to actual damages and attorney fees and costs:

SECTION 8. In Colorado Revised Statutes, 16-13-303, **amend** (1) (e) (I) and (1) (e) (II) as follows:

16-13-303. Class 1 public nuisance. (1) Every building or part of a building including the ground upon which it is situate and all fixtures and contents thereof, every vehicle, and any real property shall be deemed a class 1 public nuisance when:

(e) (I) Used as a place where the commission of ~~felony theft, by receiving~~, as specified in ~~section 18-4-410, C.R.S., occurs or as a place where misdemeanor theft by receiving~~, as specified in said section, ~~repeatedly~~ SECTION 18-4-401, C.R.S., occurs;

(II) Used for transporting property which is the subject of ~~felony theft, by receiving~~, as specified in ~~section 18-4-410, C.R.S., or used for repeatedly transporting property which is the subject of misdemeanor theft by receiving~~, as specified in said section 18-4-401, C.R.S.;

SECTION 9. In Colorado Revised Statutes, 18-1-202, **repeal** (7) (b) (II) (B) and (7) (b) (II) (C) as follows:

18-1-202. Place of trial. (7) (b) (II) The provisions of subparagraph (I) of this paragraph (b) shall apply to the following offenses:

(B) ~~Theft of rental property, as defined in section 18-4-402;~~

(C) ~~Theft by receiving, as defined in section 18-4-410;~~

SECTION 10. In Colorado Revised Statutes, 18-13-115, **amend** (1) as follows:

18-13-115. Notice - penalties. (1) Except in the case of flea markets and similar facilities as provided in this subsection (1), every secondhand dealer shall conspicuously post a notice in a place clearly visible to all buyers and traders which sets forth the provisions of this section and of sections 18-13-114 and 18-13-116 and which sets forth the penalties for violating such sections and for violating ~~section 18-4-410~~ SECTION 18-4-401, concerning theft. ~~by receiving~~. Such notification shall include information to the effect that stolen property may be confiscated by any peace officer and returned to the rightful owner without compensation to the buyer. In the case of flea markets and similar facilities, the operator thereof shall post the notice required in this subsection (1) in such a manner as to be obvious to all persons who enter the flea market or similar facility.

SECTION 11. In Colorado Revised Statutes, 18-17-103, **amend** (5) (b) (II) as follows:

18-17-103. Definitions. As used in this article, unless the context otherwise requires:

(5) "Racketeering activity" means to commit, to attempt to commit, to conspire to commit, or to solicit, coerce, or intimidate another person to commit:

(b) Any violation of the following provisions of the Colorado statutes or any criminal act committed in any jurisdiction of the United States which, if committed in this state, would be a crime under the following provisions of the Colorado statutes:

(II) Offenses against property, as defined in sections 18-4-102 (first degree arson), 18-4-103 (second degree arson), 18-4-104 (third degree arson), 18-4-105 (fourth degree arson), 18-4-202 (first degree burglary), 18-4-203 (second degree burglary), 18-4-301 (robbery), 18-4-302 (aggravated robbery), 18-4-303 (aggravated robbery of controlled substances), 18-4-401 (theft), ~~18-4-402 (theft of rental property)~~; 18-4-409 (aggravated motor vehicle theft), ~~18-4-410 (theft by receiving)~~; and 18-4-501 (criminal mischief);

SECTION 12. In Colorado Revised Statutes, 42-2-127, **repeal** (15) as follows:

42-2-127. Authority to suspend license - to deny license - type of conviction - points. (15) (a) ~~(I) Whenever the department receives notice that a person has twice been convicted of, adjudicated for, or entered a plea of guilty or nolo contendere to a violation of section 18-4-418, C.R.S., the department shall suspend the license of the person for a period of six months:~~

~~(II) Whenever the department receives notice that a person has three or more times been convicted of, adjudicated for, or entered a plea of guilty or nolo contendere to a violation of section 18-4-418, C.R.S., the department shall suspend the license of the person for a period of one year:~~

~~(b) Upon suspending the license of any person as required by this subsection (15), the department shall immediately notify the licensee as provided in section 42-2-119 (2):~~

~~(c) Upon a licensee's receipt of the notice of suspension, the licensee or the licensee's attorney may submit a written request to the department for a hearing. The department shall hold a hearing not less than thirty days after receiving such request. The hearing shall be conducted by a hearing commissioner appointed by the executive director of the department, and shall be conducted in accordance with the provisions of section 24-4-105, C.R.S.~~

~~(d) If a driver who has had a license suspended under this subsection (15) is subsequently acquitted of such charge by a court of record, the department shall immediately, or in any event no later than ten days after the receipt of notice of such acquittal, reinstate said license.~~

SECTION 13. Appropriation - adjustments to 2013 long bill. (1) For the implementation of this act, appropriations made in the annual general appropriation act to the department of corrections for the fiscal year beginning July 1, 2013, are

adjusted as follows:

(a) The general fund appropriation for payments to in-state private prisons is decreased by \$520,400.

(2) For the implementation of this act, appropriations made in the annual general appropriation act to the judicial department for the fiscal year beginning July 1, 2013, are adjusted as follows:

(a) The general fund appropriation for trial court programs for personal services, is decreased by \$186,382 and 3.3 FTE.

(b) The general fund appropriation for trial court programs for operating expenses, is decreased by \$5,901.

(c) The general fund appropriation for the office of the state public defender for personal services, is decreased by \$167,891 and 2.7 FTE.

(d) The general fund appropriation for the office of the state public defender for operating expenses, is decreased by \$2,351.

SECTION 14. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: June 5, 2013