

Theft and Motor Vehicle Theft v.2 [was #72, now with repeal and reenact]

Be it Enacted by the People of the state of Colorado:

SECTION 1. In Colorado Revised Statutes, **repeal and reenact** 18-4-401 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; 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;

(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;

(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 OR BENEFIT;

(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;

(e) KNOWINGLY RETAINS THE THING OF VALUE MORE THAN SEVENTY-TWO HOURS AFTER THE AGREED-UPON TIME OF RETURN IN ANY LEASE OR HIRE AGREEMENT; OR

(f) INTENTIONALLY MISREPRESENTS OR WITHHOLDS A MATERIAL FACT FOR DETERMINING ELIGIBILITY FOR A PUBLIC BENEFIT AND DOES SO FOR THE PURPOSE OF OBTAINING OR RETAINING PUBLIC BENEFITS FOR WHICH THE PERSON IS NOT ELIGIBLE.

(2) FOR THE PURPOSES OF THIS SECTION, A THING OF VALUE IS THAT OF “ANOTHER” IF ANYONE OTHER THAN THE DEFENDANT HAS A POSSESSORY OR PROPRIETARY INTEREST THEREIN.

(3) THEFT IS:

(a) A CLASS 2 MISDEMEANOR IF THE VALUE OF THE THING INVOLVED IS LESS THAN THREE HUNDRED DOLLARS;

(b) A CLASS 1 MISDEMEANOR IF THE VALUE OF THE THING INVOLVED IS LESS THAN THREE HUNDRED DOLLARS AND THE PERSON HAS PREVIOUSLY BEEN CONVICTED FOR ANY CRIME ENUMERATED IN SUBSECTION (2) AND IS CONVICTED AND SENTENCED FOR A VIOLATION OF THIS SUBSECTION (2) COMMITTED AFTER JANUARY 1, 2027;

(c) A CLASS 1 MISDEMEANOR IF THE VALUE OF THE THING INVOLVED IS THREE HUNDRED DOLLARS OR MORE BUT LESS THAN ONE THOUSAND DOLLARS;

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

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

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

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

(h) A CLASS 2 FELONY IF THE VALUE OF THE THING INVOLVED IS ONE MILLION DOLLARS OR MORE; AND

(i) A CLASS 6 FELONY FOR ANY INDIVIDUAL CONVICTED AND SENTENCED FOR A VIOLATION OF SUBSECTION (2)(a), (2)(b), OR (2)(c) COMMITTED AFTER JANUARY 1, 2027 WHO HAS TWICE BEEN PREVIOUSLY CONVICTED OF ANY VIOLATION OF THIS SUBSECTION (2).

(4) NOTWITHSTANDING ANY OTHER PROVISION OF THIS TITLE 18, ANY PERSON CONVICTED OF A CLASS 1 MISDEMEANOR VIOLATION OR A FELONY VIOLATION OF SUBSECTION (2) SHALL BE SENTENCED TO NO FEWER THAN THIRTY DAYS IMPRISONMENT.

(5) ANY PERSON WHO ACTS IN CONSPIRACY OR CONCERT WITH TWO OR MORE PERSONS TO TAKE, ATTEMPT TO TAKE, DAMAGE, OR DESTROY ANY PROPERTY, IN THE COMMISSION OR ATTEMPTED COMMISSION OF A VIOLATION OF THIS SECTION OR SECTION 18-4-409 SHALL BE PUNISHED BY AN ADDITIONAL AND CONSECUTIVE TERM OF IMPRISONMENT OF BETWEEN ONE AND THREE YEARS.

(6)(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, THE PENALTY FOR WHICH SHALL BE BASED ON THE AGGREGATE VALUE OF THE THINGS INVOLVED, 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, THE PENALTY FOR WHICH SHALL BE BASED ON THE AGGREGATE VALUE OF THE THINGS INVOLVED, PURSUANT TO SUBSECTION (2) OF THIS SECTION.

(7) THEFT FROM THE PERSON OF ANOTHER BY MEANS OTHER THAN THE USE OF FORCE, THREAT, OR INTIMIDATION IS A CLASS 5 FELONY WITHOUT REGARD TO THE VALUE OF THE THING TAKEN.

(8) IN EVERY INDICTMENT OR INFORMATION CHARGING A VIOLATION OF THIS SECTION, IT SHALL BE SUFFICIENT TO ALLEGE THAT, ON OR ABOUT A DAY CERTAIN, THE DEFENDANT COMMITTED THE CRIME OF THEFT BY UNLAWFULLY TAKING A THING OR THINGS OF VALUE OF A PERSON OR PERSONS NAMED IN THE INDICTMENT OR INFORMATION. THE PROSECUTING ATTORNEY SHALL AT THE REQUEST OF THE DEFENDANT PROVIDE A BILL OF PARTICULARS.

(9) A MUNICIPALITY SHALL HAVE CONCURRENT POWER TO PROHIBIT THEFT, BY ORDINANCE, WHERE THE VALUE OF THE THING INVOLVED IS LESS THAN ONE THOUSAND DOLLARS.

(10)(a) IF A PERSON IS CONVICTED OF OR PLEADS GUILTY OR NOLO CONTENDERE TO THEFT BY DECEPTION AND THE UNDERLYING FACTUAL BASIS OF THE CASE INVOLVES THE MORTGAGE LENDING PROCESS, A MINIMUM FINE OF THE AMOUNT OF PECUNIARY HARM RESULTING FROM THE THEFT SHALL BE MANDATORY, IN ADDITION TO ANY OTHER PENALTY THE COURT MAY IMPOSE.

(b) A COURT SHALL NOT ACCEPT A PLEA OF GUILTY OR NOLO CONTENDERE TO ANOTHER OFFENSE FROM A PERSON CHARGED WITH A VIOLATION OF THIS SECTION THAT INVOLVES THE MORTGAGE LENDING PROCESS UNLESS THE PLEA AGREEMENT CONTAINS AN ORDER OF RESTITUTION IN ACCORDANCE WITH PART 6 OF ARTICLE 1.3 OF THIS TITLE THAT COMPENSATES THE VICTIM FOR ANY COSTS TO THE VICTIM CAUSED BY THE OFFENSE.

(c) THE DISTRICT ATTORNEYS AND THE ATTORNEY GENERAL HAVE CONCURRENT JURISDICTION TO INVESTIGATE AND PROSECUTE A VIOLATION OF THIS SECTION THAT INVOLVES MAKING FALSE STATEMENTS OR FILING OR FACILITATING THE USE OF A DOCUMENT KNOWN TO CONTAIN A FALSE STATEMENT OR MATERIAL OMISSION RELIED UPON BY ANOTHER PERSON IN THE MORTGAGE LENDING PROCESS.

(d) DOCUMENTS INVOLVED IN THE MORTGAGE LENDING PROCESS INCLUDE, BUT ARE NOT LIMITED TO, UNIFORM RESIDENTIAL LOAN APPLICATIONS OR OTHER LOAN APPLICATIONS; APPRAISAL REPORTS; HUD-1 SETTLEMENT STATEMENTS; SUPPORTING PERSONAL DOCUMENTATION FOR LOAN APPLICATIONS SUCH AS W-2 FORMS, VERIFICATIONS OF INCOME AND EMPLOYMENT, BANK STATEMENTS, TAX RETURNS, AND PAYROLL STUBS; AND ANY REQUIRED DISCLOSURES.

(e) FOR THE PURPOSES OF THIS SUBSECTION (9):

(I) "MORTGAGE LENDING PROCESS" MEANS THE PROCESS THROUGH WHICH A PERSON SEEKS OR OBTAINS A RESIDENTIAL MORTGAGE LOAN, INCLUDING, WITHOUT LIMITATION, SOLICITATION, APPLICATION, OR ORIGINATION; NEGOTIATION OF TERMS; THIRD-PARTY PROVIDER SERVICES; UNDERWRITING; SIGNING AND CLOSING; FUNDING OF THE LOAN; AND PERFECTING AND RELEASING THE MORTGAGE.

(II) "RESIDENTIAL MORTGAGE LOAN" MEANS A LOAN OR AGREEMENT TO EXTEND CREDIT, MADE TO A PERSON AND SECURED BY A MORTGAGE OR LIEN ON RESIDENTIAL REAL PROPERTY, INCLUDING, BUT NOT LIMITED TO, THE REFINANCING OR RENEWAL OF A LOAN SECURED BY RESIDENTIAL REAL PROPERTY.

(III) "RESIDENTIAL REAL PROPERTY" MEANS REAL PROPERTY USED AS A RESIDENCE AND CONTAINING NO MORE THAN FOUR FAMILIES HOUSED SEPARATELY.

(11) UPON A CONVICTION FOR THEFT AS DESCRIBED IN SUBSECTION (1)(e) OF THIS SECTION, THE COURT SHALL CONSIDER AS PART OF ANY RESTITUTION ORDERED THE LOSS OF REVENUE PROXIMATELY RESULTING FROM THE FAILURE OF THE DEFENDANT TO TIMELY RETURN THE PROPERTY INVOLVED.

(12)(a) IF THE ITEM OF VALUE INVOLVED IS A PUBLIC BENEFIT, THEN FOR PURPOSES OF DETERMINING THE OFFENSE LEVEL FOR SUBSECTION (2) OF THIS SECTION, THE VALUE IS THE DIFFERENCE BETWEEN THE VALUE OF THE PUBLIC BENEFIT RECEIVED AND THE VALUE OF THE PUBLIC BENEFIT FOR WHICH THE RECIPIENT WAS ELIGIBLE.

(b) AS USED IN THIS SUBSECTION (11), "PUBLIC BENEFITS" MEANS SERVICES OR AID, OR BOTH, INCLUDING FOOD, CASH, AND MEDICAL ASSISTANCE, PROVIDED THROUGH AN APPROPRIATION OF FEDERAL, STATE, OR LOCAL GOVERNMENT MONEY TO INDIVIDUALS OR HOUSEHOLDS THAT, BECAUSE OF THEIR ECONOMIC CIRCUMSTANCES OR SOCIAL CONDITION, ARE IN NEED OF AND MAY BENEFIT FROM SUCH SERVICES OR AID.

(13) A PERSON'S CONDUCT THAT IS LIMITED TO THE ELEMENTS OF SUBSECTION (1)(f) OF THIS SECTION IS NOT SUBJECT TO PROSECUTION PURSUANT TO ANY OTHER PROVISION OF THIS SECTION.

SECTION 2. In Colorado revised statutes, **repeal and reenact** 18-4-409 as follows:
18-4-409. Motor vehicle theft – definitions.

(1) AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(a) "MOTOR VEHICLE" MEANS ANY SELF-PROPELLED VEHICLE THAT IS DESIGNED PRIMARILY FOR TRAVEL ON PUBLIC HIGHWAYS AND THAT IS GENERALLY AND COMMONLY USED TO TRANSPORT PERSONS AND PROPERTY OVER THE PUBLIC HIGHWAYS.

(b) "VEHICLE IDENTIFICATION NUMBER" MEANS THE SERIAL NUMBER PLACED UPON THE MOTOR VEHICLE BY THE MANUFACTURER THEREOF OR ASSIGNED TO THE MOTOR VEHICLE BY THE DEPARTMENT OF REVENUE.

(2) A PERSON COMMITS MOTOR VEHICLE THEFT IN THE FIRST DEGREE IF THE PERSON KNOWINGLY OBTAINS, EXERCISES CONTROL OVER, RECEIVES, OR RETAINS THE MOTOR VEHICLE OF ANOTHER

PERSON; AND THE PERSON KNOWS OR REASONABLY SHOULD HAVE KNOWN THAT THE ACT WAS WITHOUT AUTHORIZATION OR WAS BY THREAT OR DECEPTION; AND THE PERSON HAS TWO PRIOR CONVICTIONS OR ADJUDICATIONS OF CHARGES SEPARATELY BROUGHT AND TRIED FOR AN OFFENSE INVOLVING MOTOR VEHICLE THEFT OR UNAUTHORIZED USE OF A MOTOR VEHICLE IN THIS STATE, A MUNICIPALITY, ANOTHER STATE, THE UNITED STATES, OR ANY TERRITORY SUBJECT TO THE JURISDICTION OF THE UNITED STATES.

(3) A PERSON COMMITS MOTOR VEHICLE THEFT IN THE SECOND DEGREE IF THE PERSON KNOWINGLY OBTAINS, EXERCISES CONTROL OVER, RECEIVES, OR RETAINS THE MOTOR VEHICLE OF ANOTHER PERSON; AND THE PERSON KNOWS OR SHOULD REASONABLY HAVE KNOWN THAT THE ACT WAS WITHOUT AUTHORIZATION OR WAS BY THREAT OR DECEPTION; AND:

(a) THE PERSON RETAINS POSSESSION OR CONTROL OF THE MOTOR VEHICLE FOR MORE THAN TWENTY-FOUR HOURS;

(b) THE PERSON ATTEMPTS TO ALTER OR DISGUISE OR ALTERS OR DISGUISES THE APPEARANCE OF THE MOTOR VEHICLE;

(c) THE PERSON ATTEMPTS TO ALTER OR REMOVE OR ALTERS OR REMOVES THE VEHICLE IDENTIFICATION NUMBER;

(d) THE PERSON REMOVES THE MOTOR VEHICLE FROM THIS STATE;

(e) THE PERSON UNLAWFULLY ATTACHES OR DISPLAYS A LICENSE PLATE IN OR UPON THE MOTOR VEHICLE OTHER THAN THOSE PLATES OFFICIALLY ISSUED FOR THE MOTOR VEHICLE;

(f) THE PERSON OR A PARTICIPANT CAUSES PROPERTY DAMAGE, INCLUDING PROPERTY DAMAGE TO THE MOTOR VEHICLE INVOLVED, IN THE COURSE OF OBTAINING CONTROL OVER, IN THE EXERCISE OF CONTROL OF, IN THE COURSE OF RECEIVING, OR IN THE COURSE OF RETAINING THE MOTOR VEHICLE;

(g) THE PERSON CAUSES BODILY INJURY TO ANOTHER PERSON OTHER THAN TO A PARTICIPANT WHILE IN THE EXERCISE OF CONTROL OF THE MOTOR VEHICLE;

(h) THE PERSON USES OR ATTEMPTS TO USE THE MOTOR VEHICLE IN THE COMMISSION OF A CRIME OTHER THAN:

(I) A TRAFFIC OFFENSE EXCEPT ELUDING A POLICE OFFICER AS DESCRIBED IN SECTION 42-4-1413; OR

(II) A FIRST OR SECOND DEGREE CRIMINAL TRESPASS OF THE MOTOR VEHICLE; OR

(i) AT THE TIME OF THE ACT, THE MOTOR VEHICLE DISPLAYED A LICENSE PLATE OR PLACARD INDICATING THE MOTOR VEHICLE BELONGS TO A PERSON WITH A DISABILITY.

(4) A PERSON COMMITS MOTOR VEHICLE THEFT IN THE THIRD DEGREE IF THE PERSON KNOWINGLY:

(a) OBTAINS OR EXERCISES CONTROL OVER THE MOTOR VEHICLE OF ANOTHER PERSON; AND THE PERSON KNOWS OR SHOULD REASONABLY HAVE KNOWN THAT THE ACT WAS WITHOUT AUTHORIZATION OR WAS BY THREAT OR DECEPTION; OR

(b) RECEIVES OR RETAINS THE MOTOR VEHICLE FROM ANOTHER PERSON WHO IS NOT THE OWNER OF THE MOTOR VEHICLE; THE PERSON EXERCISES CONTROL OVER THE MOTOR VEHICLE; AND THE PERSON KNOWS OR SHOULD REASONABLY HAVE KNOWN THAT THE ACT WAS WITHOUT AUTHORIZATION OF THE OWNER.

(5) CONSISTENT WITH SECTION 18-1-202, IF THE THEFT OF A MOTOR VEHICLE OCCURS IN ONE JURISDICTION AND THE MOTOR VEHICLE IS RECOVERED IN ANOTHER JURISDICTION, THE OFFENDER MAY BE TRIED IN THE JURISDICTION WHERE THE THEFT OCCURRED, IN ANY JURISDICTION THROUGH WHICH THE MOTOR VEHICLE WAS OPERATED OR TRANSPORTED, OR IN THE JURISDICTION IN WHICH THE MOTOR VEHICLE WAS RECOVERED.

- (6)(a) MOTOR VEHICLE THEFT IN THE FIRST DEGREE IS A CLASS 3 FELONY.
- (b) MOTOR VEHICLE THEFT IN THE SECOND DEGREE IS A CLASS 4 FELONY.
- (c) MOTOR VEHICLE THEFT IN THE THIRD DEGREE IS A CLASS 5 FELONY.
- (7) A PERSON WHOSE CONDUCT IS LIMITED TO THE ELEMENTS OF THIS SECTION IS NOT SUBJECT TO PROSECUTION PURSUANT TO SECTION 18-4-401.
- (8) NOTWITHSTANDING ANY OTHER PROVISION OF THIS TITLE 18, ANY PERSON CONVICTED OF A VIOLATION OF THIS SECTION SHALL BE SENTENCED TO:
 - (a) A MINIMUM OF SIXTY DAYS IMPRISONMENT IF THE DEFENDANT HAS NOT BEEN PREVIOUSLY CONVICTED FOR A VIOLATION OF THIS SECTION OR SECTION 18-4-409.5; OR
 - (b) A MINIMUM OF ONE HUNDRED TWENTY DAYS IMPRISONMENT IF THE DEFENDANT HAS BEEN PREVIOUSLY CONVICTED FOR A VIOLATION OF THIS SECTION OR SECTION 18-4-409.5. THE COURT SHALL NOT SET ASIDE OR SUSPEND THIS MINIMUM SENTENCE, NOR SHALL THE OFFENDER BE ELIGIBLE FOR PAROLE, EARLY RELEASE, OR ALTERNATIVE SENTENCING DURING THE MINIMUM ONE HUNDRED TWENTY DAYS OF IMPRISONMENT.

SECTION 3. In Colorado revised statutes, **repeal and reenact** 18-4-409.5 as follows:

18-4-409.5. Unauthorized use of a motor vehicle – definition.

- (1) A PERSON COMMITS UNAUTHORIZED USE OF A MOTOR VEHICLE IF THE PERSON OBTAINS OR EXERCISES CONTROL OVER THE MOTOR VEHICLE OF ANOTHER PERSON WITHOUT AUTHORIZATION OF THE OWNER AND:
 - (a) THE PERSON DOES NOT COMMIT A CRIMINAL OFFENSE OTHER THAN A MISDEMEANOR TRAFFIC OFFENSE EXCEPT ELUDING A POLICE OFFICER AS DESCRIBED IN SECTION 42-4-1413 IN THE COURSE OF OBTAINING CONTROL OVER OR IN THE EXERCISE OF CONTROL OF A MOTOR VEHICLE; AND
 - (b) THE MOTOR VEHICLE IS RETURNED TO THE OWNER OR RECOVERED BY LAW ENFORCEMENT WITHIN TWENTY-FOUR HOURS AFTER BEING REPORTED AS MISSING OR STOLEN BY THE OWNER, WITH NO DAMAGE TO THE MOTOR VEHICLE.
- (2) UNAUTHORIZED USE OF A MOTOR VEHICLE IS A CLASS 1 MISDEMEANOR; EXCEPT THAT A SECOND OR SUBSEQUENT OFFENSE FOR A VIOLATION OF THIS SECTION IS A CLASS 5 FELONY.
- (3) AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE REQUIRES, “MOTOR VEHICLE” HAS THE SAME MEANING AS DEFINED IN SECTION 18-4-409.
- (4) NOTWITHSTANDING ANY OTHER PROVISION OF THIS TITLE 18, ANY PERSON CONVICTED OF A VIOLATION OF THIS SECTION IF THE VEHICLE WAS RECOVERED BY LAW ENFORCEMENT SHALL BE SENTENCED TO:
 - (a) A MINIMUM OF SIXTY DAYS IMPRISONMENT IF THE DEFENDANT HAS NOT BEEN PREVIOUSLY CONVICTED FOR A VIOLATION OF THIS SECTION OR SECTION 18-4-409; OR
 - (b) A MINIMUM OF ONE HUNDRED TWENTY DAYS IMPRISONMENT IF THE DEFENDANT HAS BEEN PREVIOUSLY CONVICTED FOR A VIOLATION OF THIS SECTION OR SECTION 18-4-409. THE COURT SHALL NOT SET ASIDE OR SUSPEND THIS MINIMUM SENTENCE, NOR SHALL THE OFFENDER BE ELIGIBLE FOR PAROLE, EARLY RELEASE, OR ALTERNATIVE SENTENCING DURING THE MINIMUM ONE HUNDRED TWENTY DAYS OF IMPRISONMENT.