

COMPREHENSIVE SENTENCING TASK FORCE
Consolidation Working Group

RECOMMENDATION PRESENTED TO THE CCJ
July 13, 2012

FY13-CS #2 Modify and consolidate Colorado Revised Statute 18-4-401 to increase clarity and reduce duplication.

Recommendation FY13-CS#2

Consolidate theft, theft by receiving, theft of rental property, and fuel piracy. Repeal newspaper theft as an isolated offense.

Recommendation

Revise CRS 18-4-401 as follows:

(1) A person commits theft when he knowingly obtains, **retains**, or exercises control over anything of value of another without authorization, or by threat or deception, or obtains control **over stolen property knowing or believing the property 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 benefit; or

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

(e) If the thing of value was for hire or **lease, knowingly fails to return** the thing of value within 72 hours of the time of the agreed return.

(1.5) 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.

(2) Theft is:

(a) (Deleted by amendment, L. 2007, p. 1690, § 3, effective July 1, 2007.)

(b) A class 2 misdemeanor if the value of the thing involved is less than five hundred 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 if the value of the thing involved is one thousand dollars or more but less than twenty thousand dollars;

(d) A class 3 felony if the value of the thing involved is twenty thousand dollars or more.

(3) and (3.1) Repealed.

(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 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.

(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 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.

(5) 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.

(6) 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.

(7) Repealed.

(8) A municipality shall have concurrent power to prohibit theft, by ordinance, where the value of the thing involved is less than one thousand dollars.

(9) (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