

SENTENCING REFORM TASK FORCE
FINAL RECOMMENDATION PRESENTED TO THE
COLORADO COMMISSION ON CRIMINAL AND JUVENILE JUSTICE
January 27, 2023

FY23-SR #02. Amend and Append Motor Vehicle Theft Provisions [Statutory]

Recommendation FY23-SR #02

Amends, appends, deletes and replaces several provisions of statute related to motor vehicle theft. The elements for motor vehicle theft in the first degree and second degree are changed and motor vehicle theft in the third degree is created. The penalties for motor vehicle theft are no longer based on the value of the vehicle or vehicles stolen. Motor vehicle theft in the first degree is a class 3 felony, motor vehicle theft in the second degree is a class 4 felony, and motor vehicle theft in the third degree is a class 5 felony. The recommendation creates the offense "unauthorized use of a motor vehicle" and makes it a class 1 misdemeanor, or a class 5 felony for a second or subsequent offense. These revisions comprise changes to the following elements of statute:

- **§18-4-409. Aggravated motor vehicle theft.** Amend (1)(a), (2), (3), and (4); and add (6).
- **§18-4-409.5. Unauthorized use of a motor vehicle - definition.** Add the entirety of 18-4-409.5.
- **§18-17-103. Definitions.** Amend (5)(b)(II).
- **§19-1-304. Juvenile delinquency records - division of youth services critical incident information - definitions.** Amend (5.5).
- **§42-2-202. Habitual offenders - frequency and type of violations.** Amend (2)(a)(V).

[See **PROPOSED STATUTORY LANGUAGE** below.]

Discussion

There has not been a comprehensive review of sentencing laws in Colorado since 1985. Over the ensuing decades, Colorado's sentencing statutes became inconsistent and misaligned. In his June 2020 Biennial Letter,¹ Governor Polis requested a comprehensive review of our sentencing laws to ensure that our sentencing scheme is rational, just, equitable, and consistent with a data-driven analysis.

The Task Force has already conducted a thorough examination of Colorado's misdemeanor statutes, reviewing approximately 1,000 criminal offenses and conducting a comparative state-by-state review of misdemeanor sentencing ranges, which revealed that Colorado's misdemeanor sentencing range was high compared with nearly every other state.

In 2021, the Sentencing Reform Task Force helped produce Senate Bill 2021-271, a comprehensive overhaul of Colorado's misdemeanor sentencing laws that goes into effect March 2022. With overwhelming and bipartisan support, this bill was a positive step forward in sentencing reform. It adjusted the sentencing ranges for misdemeanors, eliminated redundant offenses, and reclassified some offenses. To build more certainty into the system, SB21-271 also required all county jails utilize a

¹ The "Biennial Letter" is pursuant to House Bill 2018 - 1287; see also, §16-11.3-103(7), C.R.S. Statute requires that in even-numbered years the Commission request a letter from the Governor regarding topics of study. The Governor is encouraged to consult with the Chief Justice of the Colorado Supreme Court and the Majority and Minority Leaders of the Colorado House of Representatives and the Senate. The first of these letters was received June 24, 2020 and encouraged the Commission to study, discuss, and return recommendations to the Governor on a variety of sentencing-related topics. The second Biennial Letter was received September 15, 2022, which included additional sentencing issues along with other criminal justice concerns for study.

SENTENCING REFORM TASK FORCE
FINAL RECOMMENDATION PRESENTED TO THE
COLORADO COMMISSION ON CRIMINAL AND JUVENILE JUSTICE
January 27, 2023

standard, consistent measure for determining time served and eliminate the inconsistencies that varied by county.

The Sentencing Reform Task Force is now reviewing felonies. The Sentence Structure Working Group is recommending changes to the Aggravated Motor Vehicle Theft statutes.

Auto thefts are a significant problem. Colorado leads the nation in auto thefts with an 86% statewide increase from 2019 to 2021. From 2019 to 2021, increases include a 170% increase in Broomfield, 250% in Grand County, and 60% in Boulder County. In the first quarter of 2022, Denver (#2), Aurora (#3), Westminster (#8), and Pueblo (#9) ranked in the top 10 nationwide for auto theft rates. These four cities combined accounted for 53.3% of the vehicles stolen statewide in the first quarter of 2022.

Many factors drive auto thefts, including but not limited to, financial stress, substance abuse, mental health disorders, lack of behavioral health treatment, homelessness, a desire to commit other crimes with and/or profit from stolen cars, crimes of opportunity with unlocked car doors and open garages, low arrest clearance rates, and minimal consequences.

In his 2022 Biennial Letter to the Commission, Governor Polis directed, in part, "...the Commission examine changes to auto theft sentencing, so that the repeat offenders and the most egregious perpetrators cannot easily return to communities to further inflict harm on the people of Colorado. Auto theft is a devastating property crime for those affected, who often lose their only way to get to work or get to the store. In addition, it is frequently a precursor crime that is often used in the furtherance of violence and other crimes. Enhancing the penalties associated with auto theft, regardless of the value of the vehicle stolen, has the potential to make us safer and improve the quality of life in Colorado.

"The Commission should especially revisit the criminal classification of auto theft as it relates to the monetary value of a stolen vehicle. The Commission should also examine updating the language to elevate the severity of the crime based on the number of prior offenses, specifically targeting prolific auto thieves. This is a top priority of mine, and even if the Commission does not come forward with recommendations this year, I will look to work with the legislature to enact reforms in this area in the upcoming session."

With this mandate, the Sentencing Reform Task Force reviewed data related to auto thefts from 2018 – 2022. The Task Force had previously voiced strong support for removing the value thresholds for auto thefts. This recommendation builds off that foundation. The Sentence Structure Working Group worked with multiple stakeholders to gather feedback on the Motor Vehicle Theft proposal. Through the work of the Sentence Structure Working Group, there is strong consensus for sentencing reform that would remove the value thresholds, change the elements to allow for more effective prosecutions (without raising the level of penalty), narrowing the aggravators, and create a new misdemeanor offense.

SENTENCING REFORM TASK FORCE
FINAL RECOMMENDATION PRESENTED TO THE
COLORADO COMMISSION ON CRIMINAL AND JUVENILE JUSTICE
January 27, 2023

PROPOSED STATUTORY LANGUAGE

§18-4-409. Aggravated motor vehicle theft

Amend (1)(a), (2), (3), and (4); and add (6).

§18-4-409. Aggravated Motor vehicle theft

- (1) (a) "Motor vehicle" means ~~all vehicles of whatever description propelled by any power other than muscular, except vehicles running on rails~~ **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.**
- (2) A person commits ~~aggravated~~ motor vehicle theft in the first degree if ~~he or she~~ **THE PERSON** knowingly obtains, ~~or~~ **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**
- ~~(a) Retains possession or control of the motor vehicle for more than twenty-four hours~~ **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; or**
- ~~(b) Attempts to alter or disguise or alters or disguises the appearance of the motor vehicle; or~~
- ~~(c) Attempts to alter or remove or alters or removes the vehicle identification number; or~~
- ~~(d) Uses the motor vehicle in the commission of a crime other than a traffic offense; or~~
- ~~(e) Causes five hundred dollars or more property damage, including but not limited to property damage to the motor vehicle involved, in the course of obtaining control over or in the exercise of control of the motor vehicle; or~~
- ~~(f) Causes bodily injury to another person while he or she is in the exercise of control of the motor vehicle; or~~
- ~~(g) Removes the motor vehicle from this state for a period of time in excess of twelve hours; or~~
- ~~(h) Unlawfully attaches or otherwise displays in or upon the motor vehicle license plates other than those officially issued for the motor vehicle.~~
- (3) ~~Aggravated motor vehicle theft in the first degree is a~~ **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) Class 5 felony if the value of the motor vehicle or motor vehicles involved is less than twenty thousand dollars~~ **THE PERSON RETAINS POSSESSION OR CONTROL OF THE MOTOR VEHICLE FOR MORE THAN TWENTY-FOUR HOURS;**
- ~~(a.5) Class 4 felony if the value of the motor vehicle or motor vehicles involved is twenty thousand dollars or more but less than one hundred thousand dollars;~~
- ~~(b) Class 3 felony if the value of the motor vehicle or motor vehicles involved is more than one hundred thousand dollars or if the defendant has twice previously been convicted or adjudicated of charges separately brought and tried either in this state or elsewhere of an offense involving theft of a motor vehicle under the laws of this state, any other state, the~~

SENTENCING REFORM TASK FORCE
FINAL RECOMMENDATION PRESENTED TO THE
COLORADO COMMISSION ON CRIMINAL AND JUVENILE JUSTICE
January 27, 2023

~~United States, or any territory subject to the jurisdiction of the United States~~ 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 ONE THOUSAND DOLLARS OR MORE 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 TRESPASS TO 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 aggravated motor vehicle theft in the second degree if he or she knowingly obtains or exercises control over the motor vehicle of another without authorization or by threat or deception and if none of the aggravating factors in subsection (2) of this section are present. Aggravated motor vehicle theft in the second degree is a~~ A PERSON COMMITS MOTOR VEHICLE THEFT IN THE THIRD DEGREE IF THE PERSON KNOWINGLY:
- (a) ~~Class 5 felony if the value of the motor vehicle or motor vehicles involved is twenty thousand dollars or more~~ 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) ~~Class 6 felony if the value of the motor vehicle or motor vehicles involved is two thousand dollars or more but less than twenty thousand dollars~~ 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.
 - (c) ~~Class 1 misdemeanor if the value of the motor vehicle or motor vehicles involved is less than two thousand dollars.~~
- (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.

SENTENCING REFORM TASK FORCE
FINAL RECOMMENDATION PRESENTED TO THE
COLORADO COMMISSION ON CRIMINAL AND JUVENILE JUSTICE
January 27, 2023

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

Add the entirety of 18-4-409.5.

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 (1)(a).**

§18-17-103. Definitions

Amend (5)(b)(II).

18-17-103. Definitions. As used in this article 17, 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), 18-4-409 (~~aggravated~~ (motor vehicle theft), **18-4-409.5 (UNAUTHORIZED USE OF A MOTOR VEHICLE)**, and 18-4-501 (criminal mischief);**

§19-1-304. Juvenile delinquency records - division of youth services critical incident information - definitions.

Amend (5.5).

- (5.5) Whenever a petition is filed in juvenile court alleging a class 1, class 2, class 3, or class 4 felony; a level 1, level 2, or level 3 drug felony; an offense involving unlawful sexual behavior as defined in section 16-22-102 (9); a crime of violence as described in section 18-1.3-406; a burglary offense as described in part 2 of article 4 of title 18; felony menacing, in violation of section 18-3-206; harassment, in violation of section 18-9-111; fourth degree arson, in violation of section 18-4-105; ~~aggravated~~ motor vehicle theft, in violation of section 18-4-409; hazing, in violation of section 18-**

SENTENCING REFORM TASK FORCE
FINAL RECOMMENDATION PRESENTED TO THE
COLORADO COMMISSION ON CRIMINAL AND JUVENILE JUSTICE
January 27, 2023

9-124; or possession of a handgun by a juvenile, in violation of section 18-12-108.5, or when a petition is filed in juvenile court in which the alleged victim of the crime is a student or staff person in the same school as the juvenile or in which it is alleged that the juvenile possessed a deadly weapon during the commission of the alleged crime, the prosecuting attorney, within three working days after the petition is filed, shall make good faith reasonable efforts to notify the principal of the school in which the juvenile is enrolled and shall provide such principal with the arrest and criminal records information, as defined in section 24-72-302 (1). In the event the prosecuting attorney, in good faith, is not able to either identify the school that the juvenile attends or contact the principal of the juvenile's school, then the prosecuting attorney shall contact the superintendent of the juvenile's school district.

§42-2-202. Habitual offenders - frequency and type of violations.

Amend (2)(a)(V).

(2) (a) An habitual offender is a person having three or more convictions of any of the following separate and distinct offenses arising out of separate acts committed within a period of seven years:

(V) Vehicular assault or vehicular homicide, or manslaughter or criminally negligent homicide which results from the operation of a motor vehicle, or ~~aggravated~~ motor vehicle theft, as such offenses are described in title 18; C.R.S.;