

Report of the Commodity Metals Theft Task Force
to the
Joint Judiciary Committee, for Year 2021

Enabling Statute

The Colorado General Assembly passed legislation in 2009 to address the theft of commodity metals in Colorado (CRS§ 18-13-111). The Legislature made the following findings:

- Theft of commodity metals jeopardizes the safety and welfare of the public.
- Such thefts impact every community in Colorado and
- The regulation of commodity metal purchases is a matter of statewide concern.

The General Assembly subsequently passed House Bill 11-1130 which created and outlined the responsibilities of the Commodity Metals Theft Task Force (“Task Force”). The statute primarily impacted by this legislation (CRS§ 18-13-111) describes the purchasing of commodity metals, violations, and the creation of the Task Force. The statute addresses the following key areas:

- Purchasers of commodity metals shall use the Scrap Theft Alert System, maintained by the Institute of Scrap Recycling Industries (ISRI). This system generates alerts for scrap metal thefts within the recycler’s geographic area (200 miles) to quickly identify and alert law enforcement to attempted sales of stolen items. These alerts are kept for at least 90 days and each recycler is required to maintain and produce upon demand documentation that staff have been trained and educated on use of the system.
- Sale of commodity metals under \$300 can be done with cash, but more than \$300 must be accomplished by check or money option where a picture can also be captured. The digital photographic record of the seller with the commodity metal they are selling shall be retained for 180 days.
- The Task Force is to meet on a regular basis and at least every October to discuss issues related to theft of commodity metals, including sharing relevant information on the theft of scrap metal, identifying ways in which Colorado’s laws regulating commodity metal purchases can be improved to reduce theft, and reviewing any purchasing problems or communication issues.
- The Task Force is also specifically directed to consider possible policies or practices to aid in tracking or apprehending stolen commodity metals prior to the point of sale in order to assist law enforcement personnel in theft prevention and recovery of stolen materials.
- The Task Force provides recommendations for when and how a commodity metals purchaser should be required to notify local law enforcement authorities if a purchased commodity metal is a potential match of a commodity metal reported stolen in the scrap metal theft alert system.

- The Task Force proposes a civil penalty process for egregious and repeat violators of the record-keeping requirements of this section.
- The statute encourages law enforcement to use the scrap metal theft alert system.
- Due to a 2,636% increase in reports of catalytic converter thefts from 2019 to 2021¹, this report has identified a need for the Task Force to further discussions regarding these thefts which enable critical functionality of this commodity product. The Task Force provided information to the Transportation Legislation Review Committee on October 5, 2021 identifying observable elements to the crime trend, including the ease of theft, transaction and monetary gain, along with the difficulties faced with enforcement of these thefts. The Task Force provided factual information and subject matter expertise to the Committee.
- Following the October 5, 2021 TLRC presentation, the Task Force provided stakeholder input and conversation in drafting legislation to begin curbing catalytic converter thefts, principally incorporating language under CRS §18-13-111 to contain catalytic converters. The Task Force recognizes the need for future discussion on this matter, and based on outcomes of deliberations, may provide future recommendations.
- Finally, the law requires annual reports to the House and Senate Judiciary Committees to present recommendations and progress.

Synopsis of Commodity Metal Theft

Commodity metal theft remains a problem nationwide, however timely and consistent nationwide data on metal thefts is sparse, making it difficult to analyze and quantify. In 2014, the Council of State Governments (CSG) generated a report outlining these problems. In analysis of legislation throughout the 50 states, the CSG research noticed the following trends (*italics are Colorado's provisions*).

Records on Transactions- the requirement for scrap metal recyclers and dealers to create and maintain records of transactions. *CRS §18-13-111 requires the metal recycler to keep a book of the date and place of each purchase, a description of the commodity metal purchased and they must present it to law enforcement upon request. This book or registry need not be kept for more than three years from the date of purchase.*

Identification of Seller - Stricter identification requirements including license and photo ID. *CRS §18-13-111 outlines that a seller of a commodity metal must present a valid form of identification which includes all of the following: Colorado driver's license, identification card, valid driver's license, military identification, valid US Passport, or alien registration card. CRS §18-13-111 requires the seller to sign an affidavit that they are the owner of the commodity metal or otherwise entitled. License plate and description of the vehicle of the commodity metal delivered.*

¹ 10/5/2021 Report from Colorado Auto Theft Prevention Authority to the Transportation Legislation Review Committee

Payment Restrictions- Restrictions on payments which may include a waiting period restrictions on the form of payment and the number of transactions in a specific time period. *CRS §18-13-111 (1.5)(a)(b) states if the transaction costs more than \$300, the owner, keeper, proprietor, collector, or dealer shall pay the seller with a check and a picture is taken of the seller. Any purchase less than \$300 can be paid in cash.*

Hold Provisions- requirements that a scrap metal recycler hold all or certain types of purchases for law enforcement for a short period of time.. *CRS §18-13-111(2) outlines that a photographic or video record of the seller and the commodity metal will be maintained for 180 days, and the owner shall permit law enforcement to inspect this record.*

Criminal Penalties- Enhanced penalties for metal theft offenses. *CRS §18-13-111 (1.3)(a)(b) outlines what the purchaser of commodity metal shall do. They should download alerts from the Institute of Scrap Recycling (ISRI); use the alerts to train employees and look for stolen items; and finally, maintain alerts for 90 days. Violations incur the following penalties:
Class 2 misdemeanor if the value of the commodity metal is less than \$500
Class 1 misdemeanor if the value of the commodity metal is greater than \$500*

Affected Businesses - In 2016, the Task Force identified fifty-five (55) metal recyclers, dismantlers and other businesses affected by the legislation. However, currently the Colorado Department of Public Health and Environment identified the following:

Manufacture Recycler Facilities = 132

Recycler End User = 6

Industrial Recycler Facility = 29

Total Businesses = 167

Initial Actions by the Commodity Metals Theft Task Force

The Task Force initially found that intrusions into and copper thefts from electric utility substations and railroad communications facilities posed a significant public safety threat.

The Task Force recommended legislation increasing penalties to felony level for such tampering and thefts, which were approved by the Colorado legislature in SB 14-049, revising CRS § 18-9- 115, Endangering Public Transportation and Utility Transmission.

Commodity Metal Theft Task Force Recommendations

The Commodity Metal Theft Task Force recommended modifications to CRS §18-13-111 to include detached catalytic converters. Recommendations were made during the drafting of SB

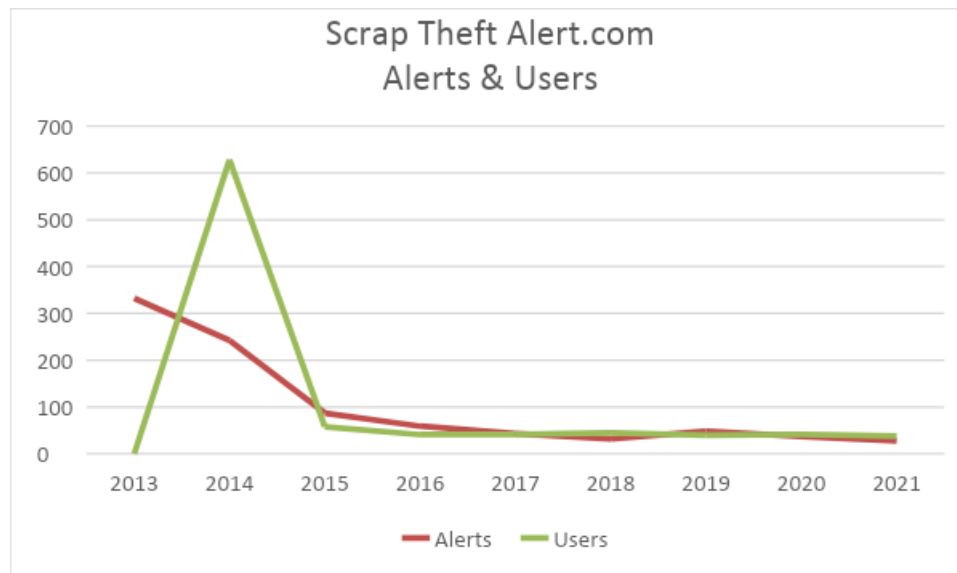
21-009 and HB 21-1217 to incorporate changes for strengthening an ability for law enforcement and industry in managing and controlling transactions of detached catalytic converters. In addition, recommendations were made to enhance education efforts with industry on the process and reporting of CRS §18-13-111, as well as enable reporting and enforcement ability with Scrap Theft Alert. Recommendations and feedback were provided regarding funding assistance to provide education, training and enforcement through a grant program (included in HB 21-1217).

Possible Changes to Statute: Should the outcome of discussions and deliberations of the Task Force regarding the theft of catalytic converters result in a need to modify the existing Colorado Revised Statutes § 18-13-111 C.R.S, recommendations will be forwarded to the Department of Public Safety for consideration.

Education: The scope and public safety impact of scrap metal theft is a widely misunderstood crime. Therefore, the mission of the Task Force must include education of the community to the seriousness of the problem. As a result, Sheriff Brett Powell, Chief Kevin Paletta and utilities representative Barry Springer presented at the Colorado Association of the Chiefs of Police Conference, as well as the Colorado Sheriff's Association on the seriousness of the crime. The presentations illustrated the extent of the scrap metal theft in Colorado looking through the utility industry lens, which reveals that such thefts often create serious endangerment to public safety. They reiterated laws that were in effect and reviewed proposed legislation (SB 14- 049) intended to more effectively deter metals theft from our bulk electric grid and rail transport network. There is a need to elevate educational awareness with law enforcement in working local industry (e.g., utility companies) to refocus efforts on the hazards of commodity metal theft. There may be opportunity to work with the CO POST in standardizing training curriculum on the hazard of and enforcement of commodity metal theft. The theft of copper metals was emphasized due to safety concerns of individuals handling copper that may create a hazard when the copper is electrified. Training end-users for identification of metal theft, processes for reporting and tracking.

Use of National Databases:

ISRI Scrap Theft Alert - The Task Force encouraged law enforcement partners to utilize the ISRI system and begin compliance audits on the scrap metal recyclers in their area. As a result, the ISRI alert system reports there has been a significant drop of users and alerts since 2013.

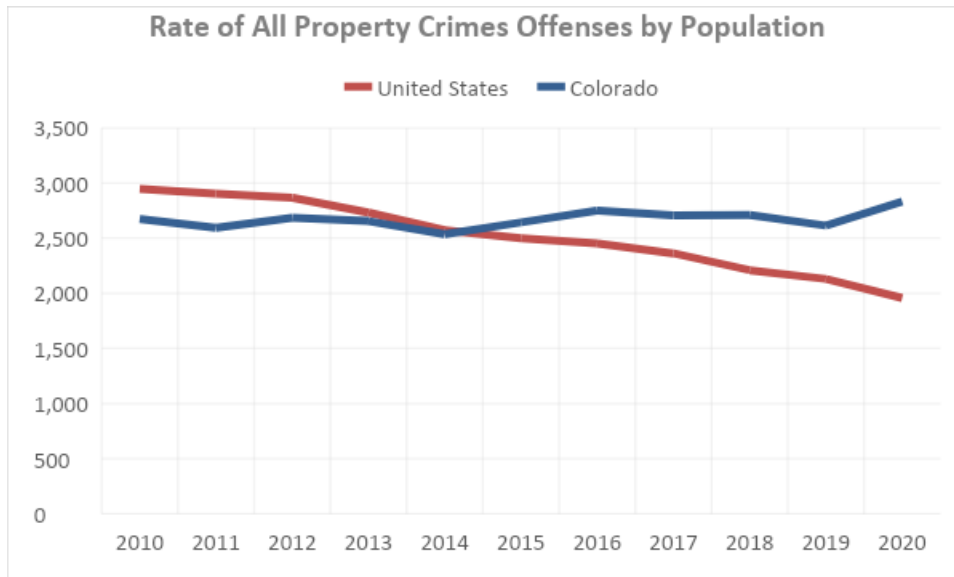


Source: <https://www.scraptheftalert.com/Home/Home.aspx>

As the economy improves and commodity metal prices change, the Task Force will continue to emphasize that the recycler industry and law enforcement community should continue to work in tandem to benefit from the ISRI metal theft alert system to its fullest extent. Based on the above proficiencies, there are likely two assumptions:

- 1) Illegitimate commodity metal purchases are not demonstrated to be problematic in Colorado, or
- 2) The existing use of the Scrap Theft Alert is not an efficient method of identifying illegitimate commodity metal exchanges.

An important consideration in answering the first assumption, is the fact that property theft reported in 2018 for Colorado (Rate of 2,671 per 100,000 residents) was substantially higher than reported at the national level (US Rate of 2,199 per 100,000 residents (<https://crime-data-explorer.fr.cloud.gov/explorer/state/colorado/crime>)). In addition, property crime investigators have anecdotally reported that property thieves attempt to transact commodity metals such as stolen vehicles, copper, etc. as a means of acquiring financial gain.



Source: FBI Crime Data Explorer, <https://crime-data-explorer.fr.cloud.gov/explorer/state/colorado/crime>

Business Use - One of the principal concerns on the use of the Scrap Theft Alert is the number of businesses not utilizing the system. The number of users reporting information into the system has not exceeded 60 since 2014. Of significant concern is the minimal use of reported users being 15 in 2020, yet there appear to be 170 registered recycling businesses, as reported by the Colorado Department of Public Health and Environment. Considering this to be true, only 8% of the businesses reported as users in the ISRI Scrap Theft Alert system.

Law Enforcement Use - There is an apparent minimal and decreasing use of the Scrap Theft Alert website. Considering the number of users in 2019 was 40, the users were not identified as being law enforcement versus industry. It appears most of the users are likely industry based, where law enforcement users may be minimal at best. Additionally, in 2019 there were 48 alerts, which does not give clear evidence that all or most of the 240+ law enforcement agencies in Colorado are using the Scrap Theft Alert website. Lastly, the Scrap Theft Alert website reports only 3 ‘success’ stories on the use of the system for Colorado: 7/28/14, 8/20/15 and 5/26/16. With all this being said, it is highly probable that law enforcement has minimal use or benefit from the Scrap Theft Alert website.

Consistency in Data - Understanding that Scrap Theft Alert does not contain the vehicle identification numbers, owner applied numbers and product identification numbers of articles

and vehicles reported stolen in the Colorado Crime Information Center, the Scrap Theft Alert is simply reactive to catching alerts entered by businesses and law enforcement. The alerts generated by Scrap Theft Alert are significantly dependent upon the key identifiers being entered by the industry which can then be matched with consistent query parameters by law enforcement. As ISRI isn't linked to National Motor Vehicle Titling System (NMVTIS), DRIVES, MVVS or CCIC, it is highly likely that vehicles with unique identifiers, (e.g., stolen vehicle identification numbers), can be overlooked for commodity metal exchange. This may be a centerpiece of why Colorado has great difficulty in identifying the number and frequency of stolen vehicles exchanged for commodity metal. Lastly, although C.R.S. 42-4-2201 to 2204 addresses the use of the Colorado motor vehicle verification system, it only affirms the status of the Colorado VIN at the time of the query - where the stolen vehicle may not be active in CCIC at the time of the query or if stolen vehicles outside Colorado are brought to the state for exchange.

Best Evidence and Leads - The physical tracking of records may be the 'best evidence' for law enforcement to gather for case prosecution. However, today's technology enhancements should be sought to streamline and elevate processes that would alleviate industry burden and, at the same time, provide for criminal predicate and evidentiary rules required for law enforcement to warrant criminal charges. In short, could ISRI or other systems such as NMVTIS provide timely notifications of alerts to law enforcement to expedite the investigative processes. In the event the alert is not given, then the burden of keeping the buyer records could be alleviated or shortened. With technology advancements, this may also minimize the need for the number of business audits, thus reducing the associated personnel costs to private and public organizations. The Department of Public Safety should consider ways to enhance the use of technology to investigate and track alerts.

The Need for Training - There is an apparent need to increase training and education to law enforcement, as well as industry practices. This training should involve two focal groups: A) Industry practitioners and B) Property crime law enforcement investigators. This training should involve standards and best practices on the use of ISRI Scrap Theft Alert, Colorado Motor Vehicle Verification System, the National Motor Vehicle Titling Information System, along with statutory requirements including compliance audits.

The Need for Tracking Effectiveness - In an attempt to identify the level of efficient government and industry, tracking of alerts and responses within the NMVTIS and ISRI Scrap Theft Alert should be reported and reviewed by the Task Force. The tracking of these reports and information will provide a stronger ability for the Task Force to identify areas of concern, proposed plans for strengthening the processes and otherwise reporting efficiencies to the Department of Public Safety.

The Task Force plans to reach out to the Colorado Association of Chiefs of Police, County Sheriffs of Colorado and the Colorado District Attorney's Council to present at their annual and mid-year conferences to continue to drive awareness and use of ISRI theft reports.

Compliance Audits: Compliance audits develop greater understanding of the depth of the problem, and identify threats in specific areas. The Task Force will continue to educate recyclers on the statutes and proper processing of scrap metal.

Compliance audits are more effective when utilized in conjunction with other interventions. Imposing fines, documenting soft dollar costs to replace the material/services, and adding an element for aggravated sentencing for repeat offenders will strengthen compliance and deter theft. These are topics to be addressed in the future, but the first step is determining the compliance rate within the state to obtain a baseline.

The Task Force recommends that the Department of Public Safety consider establishing a statewide pilot program to audit every metal recycler, metal buyer and wholesale scrap re-seller in Colorado over the next fiscal year. This audit data will produce two crucial data points that will impact the state's ability to further reduce commodity metal theft:

1. The location, function and type of metal buying/selling/recycling businesses in Colorado and the total number of operations in Colorado.
2. The level of compliance with existing statutory requirements for such operations.

With these two data points, The Task Force can then make informed recommendations to the General Assembly on how to best address metal theft in Colorado.

The Task Force estimates \$81,200 would provide audits of 55 metal recyclers, buyers and/or sellers in Colorado by law enforcement agencies at the state, county and local levels through grants awarded by the oversight agency. Funding could be for one year. The following is for informational use and should not be considered as a request for funding. Any funding changes will be considered by the Department of Public Safety as part of the annual budget process.

	Officers	Hours	Cost/hr	Cost/Insp.	# Insp.	Inspection cost	Re-inspect cost	Total cost
<i>First quarter inspections</i>	2	2	\$60	\$240	55	\$13,200		
<i>35% reinspection</i>	2	2	\$60	\$240	20		\$4,800	
<i>Second quarter inspections</i>	2	2	\$60	\$240	55	\$13,200		
<i>35% reinspection</i>	2	2	\$60	\$240	20		\$4,800	
<i>Third quarter inspections</i>	2	2	\$60	\$240	55	\$13,200		
<i>35% reinspection</i>	2	2	\$60	\$240	20		\$4,800	
<i>Fourth quarter inspections</i>	2	2	\$60	\$240	55	\$13,200		
<i>35% reinspection</i>	2	2	\$60	\$240	20		\$4,800	
						\$52,800	\$19,200	\$72,000
<i>Training</i>								\$4,200
<i>Administration</i>								\$5,000
<i>Total cost</i>								\$81,200

Funding could be appropriated to an agency/entity that could administratively manage the grant through memorandums of understanding with actively involved law enforcement agencies. This agency/entity could utilize the audit procedures developed by the Task Force and provide quarterly reports on the number of grants issued, list of recyclers audited and the level of compliance found. The reports could also document time, personnel, and cost for each inspection.

This funding could be acquired either through General Fund appropriations or through state or federal grant requests. State grant opportunities may include the Colorado Automobile Theft Prevention Authority and/or the Division of Criminal Justice. Based on limitations of the General Fund, the alternative of requesting grant funds may necessitate statutory revision to allow the Task Force to apply for grant monies and/or donations. Lastly, should appropriation occur to support this initiative, revision to the existing statute may be needed for creation or residence of a Task Force cash fund. The discussion above is for informational use and should not be considered as a request for funding. Any funding changes will be considered by the Department of Public Safety as part of the annual budget process.

In its annual report to the General Assembly the Task Force will report on the status of the audit program and the levels of compliance noted. The Task Force may also offer policy or legislative recommendations to the General Assembly based on the data collected.

Model Ordinance for Local Government: Today in Colorado, a wide variety of local ordinances dealing with commodity metal regulation exist. To accomplish the findings of the state legislation, the Task Force recommends that local governments review their existing ordinances pertaining to commodity metals and align such ordinances with the requirements set forth in CRS 18-13-111 as amended.

Major Policy Points: Metal recyclers are focused on metal recycling to create new metal stock from which new products can be made. Regulation of the metal recycling industry should be focused on the purchase of commodity metals that have the potential of being stolen and resold for profit.

Classification of Recycler: Any ordinance should create a new category for metal recyclers distinct from pawn shop operations and waste material processors. Commodity metal is defined as:

- “Commodity metal” means copper, copper alloy, including brass or bronze and aluminum. Commodity metal does not include precious metals such as gold, silver or platinum.” (CRS-18- 13-111 (8) (b.5).)

Data Reporting & Capture: Local governments should utilize the record keeping and transaction process defined in state law, which states: the information required is specific, must be kept for three (3) years and must be made available to local enforcement officers upon request. For cash transactions above \$300, recyclers must record pictures of sellers, copies of ID’s, photos of material purchased and photos of the vehicle used to transport the material, to include license plate numbers. Copies of all theft alerts for commodity metals on the industry system posted by law enforcement agencies must be retained for 90 days.

Purchases of Commodity Metal: All sales must be recorded with all information required on sellers, the commodity being sold and the vehicle used to transport the material. All purchases for more than \$300 must be paid by check, unless paid by means of a process that records a picture of the seller at the point of sale. The sale of any commodity metal as defined, requires that all reporting, record keeping, access to information and necessary operational systems be in use by metal recyclers who purchase commodity metals.

Enforcement of these requirements should carry a penalty for non-compliance. State utilizes Class 1 or 2 misdemeanor charges for violations based on the value of the metal purchased.

Conclusion

The Commodity Metal Theft Task Force concludes that:

- Education is key to raising awareness of the metals theft problem by recyclers, law enforcement, district attorneys and Colorado cities and counties regarding past efforts and existing resources available to help local metal theft prevention efforts such as the ISRI metals theft hotline;
- Uniform performance audits of metal recyclers to determine the level of compliance would enforce a level playing on all metal recyclers and most effectively ensure compliance with situational awareness measures and mandated record keeping that are critical to apprehension and successful prosecution of offenders; and

- Codifying key provisions of state statute within local ordinances is necessary to improve consistency of oversight of the scrap metal industry statewide.

Thank you for your attention and consideration of these matters.

Very Respectfully,

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