

Colorado District Attorneys' Council

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VOTE YES ON HB 1334

On March 2, 2009 the Colorado Supreme Court issued an opinion in Roberts v. People, 07SC430, that interpreted the theft statute differently than it had been interpreted and applied for many years. We would like to restore the status quo and return the statute to its application prior to the Roberts opinion.

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- In many cases (such as embezzlement), we can prove that large sums were stolen during a certain date range (longer than six months), but it is difficult to determine exactly when any particular sum was taken, or how much was taken on any specific day; under the statute as previously construed, we could prosecute these situations as a single theft committed over time, but Roberts eliminates our ability to prosecute them effectively at all.

- The ability to aggregate multiple misdemeanor thefts into a single felony charge (or multiple low-level felony thefts into one high-level felony charge) has been understood as permissive. Under Roberts, we must aggregate, so we cannot treat the misdemeanor thefts as misdemeanors. Nor can we now charge the thief, who steals large sums many times, with a single class-three felony spanning the whole course of his stealing; we must charge numerous class-three felonies, each sliced into six-month segments.

- If a thief commits numerous low-level felonies, at separate times against separate victims, we have always been able to prosecute separately for each felony theft. Now, under Roberts, if the thefts occur within six months, they are treated as only one theft. And if they add up to only the low-level felony amount (i.e., less than \$20,000), the crime level and the penalty is the same as it would be for just the first theft—the subsequent thefts are “freebies.”

- Until Roberts, when we charged a thief with one theft committed in January, and later learned of a different theft against a different victim committed in February, we could charge that second theft separately. Now, we must add it into the first theft charge. And if that first charge is already resolved, we may be unable to prosecute the second theft at all, leaving the victim with no redress.

