

Document: C.R.S. 18-12-106


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Colorado Revised Statutes Annotated **Title 18. Criminal Code (Arts. 1 – 26)** **Article 12. Offenses Relating to Firearms and Weapons (Pts. 1 – 5)** **Part 1. Firearms and Weapons - General (§§ 18-12-101 – 18-12-114)**

Notice

 This section has more than one version with varying effective dates.

18-12-106. Prohibited use of weapons - definitions.

(1) [Editor's note: This version of this section is effective March 1, 2022.] A person commits a class 1 misdemeanor if:

- (a)** He knowingly and unlawfully aims a firearm at another person; or
- (b)** Recklessly or with criminal negligence he discharges a firearm or shoots a bow and arrow; or
- (c)** He knowingly sets a loaded gun, trap, or device designed to cause an explosion upon being tripped or approached, and leaves it unattended by a competent person immediately present; or
- (d)** The person has in his or her possession a firearm while the person is under the influence of intoxicating liquor or of a controlled substance, as defined in section 18-18-102 (5). Possession of a permit issued under section 18-12-105.1, as it existed prior to its repeal, or possession of a permit or a temporary emergency permit issued pursuant to part 2 of this article is no defense to a violation of this subsection (1).

(2)

(a) A person commits a class 2 misdemeanor if the person knowingly aims, swings, or throws a throwing

star or nunchaku as defined in this subsection (2)(b) at another person, or the person knowingly possesses a throwing star or nunchaku in a public place except for the purpose of presenting an

authorized public demonstration or exhibition or pursuant to instruction in conjunction with an organized school or class. When transporting throwing stars or nunchaku for a public demonstration or exhibition or for a school or class, they shall be transported in a closed, nonaccessible container.

(b) For purposes of this subsection (2), “nunchaku” means an instrument consisting of two sticks, clubs, bars, or rods to be used as handles, connected by a rope, cord, wire, or chain, which is in the design of a weapon used in connection with the practice of a system of self-defense, and “throwing star” means a disk having sharp radiating points or any disk-shaped bladed object which is hand-held and thrown and which is in the design of a weapon used in connection with the practice of a system of self-defense.

History

Source: L. 71:R&RE, p. 482, § 1.**C.R.S. 1963:**§ 40-12-106. L. 77:(1)(a) and (1)(c) amended, p. 971, § 63, effective July 1. L. 81:(1)(d) amended, p. 738, § 25, effective July 1. L. 82:(1)(d) amended, p. 623, § 18, effective April 2. L. 84:(1)(e) added, p. 539, § 17, effective July 1. L. 2003:(1)(d) amended, p. 649, § 5, effective May 17. L. 2012:(1)(d) amended,(HB 12-1311), ch. 281, p. 1620, § 48, effective July 1. L. 2021:Entire section amended,(SB 21-271), ch. 462, p. 3209, § 345, effective March 1, 2022.

▼ Annotations

Research References & Practice Aids

Hierarchy Notes:

C.R.S. Title 18

C.R.S. Title 18, Art. 12

State Notes

Notes

Editor's note:

Section 803(2) of chapter 462 (SB 21-271), Session Laws of Colorado 2021, provides that the act changing this section applies to offenses committed on or after March 1, 2022.

ANNOTATION

This section is neither unconstitutionally overbroad nor unconstitutionally vague.

People v. Garcia, 197 Colo. 550, 595 P.2d 228 (1979).

Right to bear arms is not absolute,

and it can be restricted by the state's valid exercise of its police power. People v. Garcia, 197 Colo. 550, 595 P.2d 228 (1979).

Common sense definition of "possession",

as it is used in subsection (1)(d) is the actual or physical control of a firearm. People v. Garcia, 197 Colo. 550, 595 P.2d 228 (1979).

Failure to define "under the influence of intoxicating liquor", if error, was harmless,

where defendant, charged with violation of this section, testified that he was too drunk to drive. People v. Beckett, 782 P.2d 812 (Colo. App. 1989), *aff'd*, 800 P.2d 74 (Colo. 1990).

Trial court did not err in rejecting defendant's jury instructions and expert testimony

regarding blood alcohol content inferences and presumptions that are not incorporated under the prohibited possession of a firearm statute. People v. Koper, 2018 COA 137, ___ P.3d ___.

Possession of a firearm while intoxicated is a strict liability offense,

therefore, the trial court did not err in refusing to instruct the jury that "knowingly" was an element of the offense. People v. Wilson, 972 P.2d 701 (Colo. App. 1998).

Self-defense is not a valid defense to the crime of prohibited use of weapons.

People v. Beckett, 782 P.2d 812 (Colo. App. 1989), *aff'd*, 800 P.2d 74 (Colo. 1990).

Applied

in People v. McPherson, 200 Colo. 429, 619 P.2d 38 (1980).

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