

Document: C.R.S. 18-12-107.5

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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)**

18-12-107.5. Illegal discharge of a firearm - penalty.

(1) Any person who knowingly or recklessly discharges a firearm into any dwelling or any other building or occupied structure, or into any motor vehicle occupied by any person, commits the offense of illegal discharge of a firearm.

(2) It shall not be an offense under this section if the person who discharges a firearm in violation of subsection (1) of this section is a peace officer as described in section 16-2.5-101, C.R.S., acting within the scope of such officer's authority and in the performance of such officer's duties.

(3) Illegal discharge of a firearm is a class 5 felony.

History

Source: **L. 93:**Entire section added, p. 968, § 1, effective July 1. **L. 2003:**(2) amended, p. 1616, § 15, effective August 6.

▼ Annotations

Research References & Practice Aids

Hierarchy Notes:

C.R.S. Title 18

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

State Notes

ANNOTATION

This section was intended to punish random drive-by and walk-by gunfire directed at occupied structures or vehicles from outside such premises or vehicles.

People v. Simpson, 93 P.3d 551 (Colo. App. 2003).

The plain language of this section does not require that a bullet actually end up inside a house.

The court of appeals held that firing a bullet into materials of which the house is built, in this case the shingles on the roof, violates this section. There is no requirement in the section that the bullet pierce the exterior of the building and enter the interior of the house. People v. Serpa, 992 P.2d 682 (Colo. App. 1999).

The second clause of subsection (1) does not require proof that a bullet actually entered the passenger compartment of the vehicle

and the absence of such a requirement is consistent with the general assembly's clear intention to criminalize the discharge of a firearm into an occupied vehicle irrespective of whether an occupant is endangered. People v. White, 55 P.3d 220 (Colo. App. 2002).

Illegal discharge of a firearm is not a lesser included offense of attempted first degree murder after deliberation.

Discharge of a firearm is not an element of attempted first degree murder after deliberation. People v. Beatty, 80 P.3d 847 (Colo. App. 2003).

Court erred by failing to instruct on self-defense.

Illegal discharge of a firearm is a general intent offense to the extent that it involves a defendant who acts "knowingly", and self-defense is an affirmative defense to a general intent crime. People v. Taylor, 230 P.3d 1227 (Colo. App. 2009), overruled on other grounds in People v. Pickering, 276 P.3d 553 (Colo. 2011).

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