

Document: C.R.S. 18-12-109

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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)

18-12-109. Possession, use, or removal of explosives or incendiary devices - possession of components thereof - chemical, biological, and nuclear weapons - persons exempt - hoaxes.

(1) As used in this section:

(a)

(I) “Explosive or incendiary device” means:

(A) Dynamite and all other forms of high explosives, including, but not limited to, water gel, slurry, military C-4 (plastic explosives), blasting agents to include nitro-carbon-nitrate, and ammonium nitrate and fuel oil mixtures, cast primers and boosters, R.D.X., P.E.T.N., electric and nonelectric blasting caps, exploding cords commonly called detonating cord or det-cord or primacord, picric acid explosives, T.N.T. and T.N.T. mixtures, and nitroglycerin and nitroglycerin mixtures;

(B) Any explosive bomb, grenade, missile, or similar device; and

(C) Any incendiary bomb or grenade, fire bomb, or similar device, including any device, except kerosene lamps, which consists of or includes a breakable container including a flammable liquid or compound and a wick composed of any material which, when ignited, is capable of igniting such flammable liquid or compound and can be carried or thrown by one individual acting alone.

(II) “Explosive or incendiary device” shall not include rifle, pistol, or shotgun ammunition, or the components for handloading rifle, pistol, or shotgun ammunition.

(b)

(I) “Explosive or incendiary parts” means any substances or materials or combinations thereof which

have been prepared or altered for use in the creation of an explosive or incendiary device. Such substances or materials may include, but shall not be limited to, any:

(A) Timing device, clock, or watch which has been altered in such a manner as to be used as the arming device in an explosive;

(B) Pipe, end caps, or metal tubing which has been prepared for a pipe bomb;

(C) Mechanical timers, mechanical triggers, chemical time delays, electronic time delays, or commercially made or improvised items which, when used singly or in combination, may be used in the construction of a timing delay mechanism, booby trap, or activating mechanism for any explosive or incendiary device.

(II) "Explosive or incendiary parts" shall not include rifle, pistol, or shotgun ammunition, or the components for handloading rifle, pistol, or shotgun ammunition, or any signaling device customarily used in operation of railroad equipment.

(2) Any person who knowingly possesses, controls, manufactures, gives, mails, sends, or causes to be sent an explosive or incendiary device commits a class 4 felony.

(2.5) Any person who knowingly possesses, controls, manufactures, gives, mails, sends, or causes to be sent a chemical, biological, or radiological weapon commits a class 3 felony.

(3) Subsection (2) of this section shall not apply to the following persons:

(a) A peace officer while acting in his official capacity transporting or otherwise handling explosives or incendiary devices;

(b) A member of the armed forces of the United States or Colorado National Guard while acting in his official capacity;

(c) An authorized employee of the office of active and inactive mines in the division of reclamation, mining, and safety while acting within the scope of his or her employment;

(d) A person possessing a valid permit issued under the provisions of article 7 of title 9, C.R.S., or an employee of such permittee acting within the scope of his employment;

(e) A person who is exempt from the necessity of possessing a permit under the provisions of section 9-7-106 (5), C.R.S., or an employee of such exempt person acting within the scope of his employment;

(f) A person or entity authorized to use chemical, biological, or radiological materials in their lawful business operations while using the chemical, biological, or radiological materials in the course of legitimate business activities. Authorized users shall include clinical, environmental, veterinary, agricultural, public health, or radiological laboratories and entities otherwise licensed to possess radiological materials.

(4) Any person who knowingly uses or causes to be used or gives, mails, sends, or causes to be sent an explosive or incendiary device or a chemical, biological, or radiological weapon or materials in the commission of or in an attempt to commit a felony commits a class 2 felony.

(5) Any person who removes or causes to be removed or carries away any explosive or incendiary device from the premises where said explosive or incendiary device is kept by the lawful user, vendor, transporter, or manufacturer thereof, without the consent or direction of the lawful possessor, commits a class 4 felony. A person convicted of this offense shall be subjected to a mandatory minimum sentence of

two years in the department of corrections.

(5.5) Any person who removes or causes to be removed or carries away any chemical, biological, or radiological weapon from the premises where said chemical, biological, or radiological weapon is kept by the lawful user, vendor, transporter, or manufacturer thereof, without the consent or direction of the lawful possessor, commits a class 3 felony. A person convicted of this offense shall be subject to a mandatory minimum sentence of four years in the department of corrections.

(6) Any person who possesses any explosive or incendiary parts commits a class 4 felony.

(6.5) Any person who possesses any chemical weapon, biological weapon, or radiological weapon parts commits a class 3 felony.

(7) Any person who manufactures or possesses or who gives, mails, sends, or causes to be sent any false, facsimile, or hoax explosive or incendiary device or chemical, biological, or radiological weapon to another person or places any such purported explosive or incendiary device or chemical, biological, or radiological weapon in or upon any real or personal property commits a class 5 felony.

(8) Any person possessing a valid permit issued under the provisions of article 7 of title 9, C.R.S., or an employee of such permittee acting within the scope of his employment, who knowingly dispenses, distributes, or sells explosive or incendiary devices to a person who is not authorized to possess or control such explosive or incendiary device commits a class 4 felony.

History

Source: **L. 74:**Entire section added, p. 256, § 1, effective March 21. **L. 77:**(4) amended, p. 971, § 64, effective July 1; entire section R&RE, p. 992, § 1, effective July 1. **L. 81:**(1)(a)(I)(A) and (7) amended, p. 977, § 21, effective July 1. **L. 84:**(8) added, p. 539, § 18, effective July 1. **L. 92:**(3)(c) amended, p. 1970, § 72, effective July 1. **L. 2001:**(2) amended, p. 857, § 1, effective July 1. **L. 2002:**(2.5), (3)(f), (5.5), and (6.5) added and (4) and (7) amended, pp. 1195, 1196, §§ 1, 2, effective June 3. **L. 2003:**(5) and (5.5) amended, p. 1428, § 11, effective April 29; (5.5) amended, p. 1433, § 26, effective July 1. **L. 2006:**(3)(c) amended, p. 213, § 3, effective August 7.

▼ 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:

Amendments to subsection (5.5) by section 11 of House Bill 03-1236 and section 26 of House Bill 03-1236 were harmonized.

ANNOTATION

This section is not unconstitutionally vague or overbroad.

The prohibition of the possession of incendiary devices is reasonably related to the legitimate governmental interest of preventing harm to the public and such prohibition is within the state's police power. As a result, defendant's argument that the statute is unconstitutionally overbroad is without merit. The defendant's vagueness argument also fails because the statute provides reasonable notice of the prohibited conduct. *People v. Rowerdink*, 756 P.2d 986 (Colo. 1988).

1977 amendments harmonized.

Two 1977 amendments were not irreconcilable and revisor of statute properly harmonized the amendments by adding "knowingly" and "or attempts to commit" in subsection (4); and defendant, who would not have been convicted under the language of either amendment as passed by the legislature, was properly convicted under the harmonized language. *People v. Owens*, 670 P.2d 1233 (Colo. 1983).

The existence of a wick is not only material, but essential,

to a charge under this section. *People v. Brown*, 194 Colo. 553, 574 P.2d 92 (1978).

Incendiary device without a wick may be prosecuted

despite any apparent language to the contrary in *People v. Brown*, (194 Colo. 553, 574 P.2d 92 (1978)). *People v. Owens*, 670 P.2d 1233 (Colo. 1983).

The prosecution's inability to produce the wick remnant does not require suppression of testimony regarding its existence where

a good faith effort was made to preserve it pursuant to standard fire department procedures and the investigator who observed the wick remnant is available for examination. *People v. Brown*, 194 Colo. 553, 574 P.2d 92 (1978).

"Explosive or incendiary" includes items which in themselves are not explosive or incendiary,

but which have been prepared or altered for use in the creation of an explosive or incendiary device. *People v. Lovato*, 630 P.2d 597 (Colo. 1981).

Blasting cap within ambit of "other forms of high explosives".

The material in a blasting cap is classified as a high explosive and, thus, falls within the ambit of "other forms of high explosives" which are expressly included in this section's definition of explosive or incendiary devices. *People v. Lovato*, 630 P.2d 597 (Colo. 1981).

Phrase "including any device" defined.

The phrase "which consists of or includes a breakable container including a flammable liquid or compound and a wick" is not a limitation on all devices proscribed by this section, but instead defines the phrase "including any device". The statute thus proscribes the use of any incendiary bomb or grenade, including one with a wick and a breakable container. *People v. Owens*, 670 P.2d 1233 (Colo. 1983).

Proscribed conduct unlike fourth degree arson.

This section does not deny equal protection by proscribing the same conduct as the fourth degree arson statute yet carrying a substantially greater penalty; the elements of each offense and the mental states required are different. *People v. Owens*, 670 P.2d 1233 (Colo. 1983).

Applied

in *Miller v. District Court*, 193 Colo. 404, 566 P.2d 1063 (1977); *People v. Stoppel*, 637 P.2d 384 (Colo. 1981).

Colorado Revised Statutes Annotated

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