

## Document: C.R.S. 18-4-204

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### C.R.S. 18-4-204

#### Copy Citation

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**Colorado Revised Statutes Annotated**    **Title 18. Criminal Code (Arts. 1 – 26)**    **Article 4. Offenses Against Property (Pts. 1 – 8)**    **Part 2. Burglary and Related Offenses (§§ 18-4-201 – 18-4-205)**

#### 18-4-204. Third degree burglary.

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**(1)** A person commits third degree burglary if with intent to commit a crime he enters or breaks into any vault, safe, cash register, coin vending machine, product dispenser, money depository, safety deposit box, coin telephone, coin box, or other apparatus or equipment whether or not coin operated.

**(2) [Editor's note: This version of subsection (2) is effective until March 1, 2022.]** Third degree burglary is a class 5 felony, but it is a class 4 felony if it is a burglary, the objective of which is the theft of a controlled substance, as defined in section 18-18-102 (5), lawfully kept in or upon the property burglarized.

**(2) [Editor's note: This version of subsection (2) is effective March 1, 2022.]** Third degree burglary is a class 2 misdemeanor, but it is a class 1 misdemeanor if it is a burglary, the objective of which is the theft of a controlled substance, as defined in section 18-18-102 (5), lawfully kept in or upon the property burglarized.

#### History

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**Source:** L. 71:R&RE, p. 427, § 1. **C.R.S. 1963:**§ 40-4-204. L. 81:(2) amended, p. 974, § 10, effective July 1; (2) amended, p. 2031, § 45, effective July 14. L. 2012:(2) amended,(HB 12-1311), ch. 281, p. 1619, § 42, effective July 1. L. 2021:(2) amended,(SB 21-271), ch. 462, p. 3176, § 203, effective

March 1, 2022.

## ▼ Annotations

### Research References & Practice Aids

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#### Hierarchy Notes:

C.R.S. Title 18

C.R.S. Title 18, Art. 4

### State Notes

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### Notes

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#### 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

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#### Annotator's note.

Since § 18-4-204 is similar to former § 40-3-5, C.R.S. 1963, and laws antecedent thereto, relevant cases construing those provisions have been included in the annotations to this section.

#### Phrase "other apparatus or equipment" not unconstitutionally vague.

The phrase is limited to containers with the same characteristics as the other items listed in the statute. The characteristics of the other listed items provide sufficient guidance for a person of common intelligence to understand what type of container constitutes "other apparatus or equipment" under the statute. *People v. Nerud*, 2015 COA 27, 360 P.3d 201.

#### Degree of theft is not material to charge of attempted burglary under this section.

*People v. Flanders*, 183 Colo. 268, 516 P.2d 418 (1973).

#### The crime of criminal mischief is not a lesser included burglary offense

because the elements are far different. While criminal mischief requires damage to property, burglary does not. *People v. Cisneros*, 193 Colo. 380, 566 P.2d 703 (1977).

**Entering a telephone booth with felonious intent constituted burglary.**

Sanchez v. People, 142 Colo. 58, 349 P.2d 561 (1960).

**Information adequate.**

Information charging defendant with attempted burglary of a coin telephone was not defective even though it did not affirmatively aver that the defendant entered the phone booth. People v. Flanders, 183 Colo. 268, 516 P.2d 418 (1973).

**“Other apparatus or equipment” must be interpreted to apply only to those things that share the characteristics of the items listed in the statute.**

Winter v. People, 126 P.3d 192 (Colo. 2006).

**Parking lot money slot box held to fall within statute.**

People v. Garcia, 784 P.2d 823 (Colo. App. 1989).

**A glass display case**

is covered by the “or other apparatus or equipment” language provided in this section and that language is not unconstitutionally vague. People v. Geyer, 942 P.2d 1297 (Colo. App. 1996).

**Gym lockers**

are covered by the “or other apparatus or equipment” language in this section when the lockers bear readily ascertainable features suggesting that they are being employed for the safekeeping of money or valuables in the same manner as those items enumerated in the statute. Signs posted around a gym warning members not to place valuables in gym lockers do not alter the lockers’ basic design and use. People v. Nerud, 2015 COA 27, 360 P.3d 201.

**An unsecured and unlocked locker that does not have the appearance of being employed for the safekeeping of valuables**

is not within the class of items contemplated by this section. The issue of whether a locker is sufficiently “vault-like” to fit within the purview of “other apparatus or equipment” must turn on the particulars of a given case. Winter v. People, 126 P.3d 192 (Colo. 2006).

**Failure to instruct the jury**

on the elements of “knowingly” and “unlawful entry” in a third degree burglary case because those elements are present in first and second degree burglary was harmless error because those elements were not contested at trial. People v. Geyer, 942 P.2d 1297 (Colo. App. 1996).

**Circumstantial evidence held sufficient to sustain conviction**

where police officers did not see defendant remove any money from slot box, but observed defendant in front of box and found eleven folded and torn dollar bills in defendant’s pocket and a piece of wire suitable for pulling bills from slots in pathway of defendant as he walked away from box. People v. Garcia, 784 P.2d 823 (Colo. App. 1989).

**The district attorney could not charge under this section for actions that violated the more specific provisions of § 12-47.1-825 under the Limited Gaming Act of 1991.**

Since the act invokes the full extent of the state’s police powers, creates a comprehensive and thorough regulatory scheme to control limited gaming, and specifically defines criminal acts related to limited gaming, the general assembly must have intended that actions violating the specified criminal acts would be chargeable only under the Limited Gaming Act or under article 20 of this title, where the criminal provisions of the limited gaming act are repeated verbatim. People v. Warner, 930 P.2d 564 (Colo. 1996).

**Applied**

in *People v. Talarico*, 192 Colo. 445, 560 P.2d 90 (1977); *People ex rel. Gallagher v. District Court*, 632 P.2d 1009 (Colo. 1981); *People v. Tate*, 657 P.2d 955 (Colo. 1983).

Colorado Revised Statutes Annotated

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