

Document: C.R.S. 18-3-404

---

**C.R.S. 18-3-404**

Copy Citation

Current through all laws passed during the 2019 Legislative Session.

**CO - Colorado Revised Statutes Annotated TITLE 18. CRIMINAL CODE ARTICLE 3. OFFENSES AGAINST THE PERSON PART 4. UNLAWFUL SEXUAL BEHAVIOR**

**18-3-404. Unlawful sexual contact**

---

(1) Any actor who knowingly subjects a victim to any sexual contact commits unlawful sexual contact if:

- (a) The actor knows that the victim does not consent; or
- (b) The actor knows that the victim is incapable of appraising the nature of the victim's conduct; or
- (c) The victim is physically helpless and the actor knows that the victim is physically helpless and the victim has not consented; or
- (d) The actor has substantially impaired the victim's power to appraise or control the victim's conduct by employing, without the victim's consent, any drug, intoxicant, or other means for the purpose of causing submission; or
- (e) Repealed.
- (f) The victim is in custody of law or detained in a hospital or other institution and the actor has supervisory or disciplinary authority over the victim and uses this position of authority, unless incident to a lawful search, to coerce the victim to submit; or
- (g) The actor engages in treatment or examination of a victim for other than bona fide medical purposes or in a manner substantially inconsistent with reasonable medical practices.

(1.5) Any person who knowingly, with or without sexual contact, induces or coerces a child by any of the means set forth in section 18-3-402 to expose intimate parts or to engage in any sexual contact, intrusion, or penetration with another person, for the purpose of the actor's own sexual gratification, commits unlawful sexual contact. For the purposes of this subsection (1.5), the term "child" means any person under the age of eighteen years.

(1.7) Repealed.

(2) (a) Unlawful sexual contact is a class 1 misdemeanor and is an extraordinary risk crime that is subject to the modified sentencing range specified in section 18-1.3-501 (3).

(b) Notwithstanding the provisions of paragraph (a) of this subsection (2), unlawful sexual contact is a class 4 felony if the actor compels the victim to submit by use of such force, intimidation, or threat as specified in section 18-3-402 (4)(a), (4)(b), or (4)(c) or if the actor engages in the conduct described in paragraph (g) of subsection (1) of this section or subsection (1.5) of this section.

(3) If a defendant is convicted of the class 4 felony of unlawful sexual contact pursuant to paragraph (b) of subsection (2) of this section, the court shall sentence the defendant in accordance with the provisions of section 18-1.3-406; except that this subsection (3) shall not apply if the actor engages in the conduct described in paragraph (g) of subsection (1) of this section.

(4) A person who is convicted on or after July 1, 2013, of unlawful sexual contact under this section, upon conviction, shall be advised by the court that the person has no right:

(a) To notification of the termination of parental rights and no standing to object to the termination of parental rights for a child conceived as a result of the commission of that offense;

(b) To allocation of parental responsibilities, including parenting time and decision-making responsibilities for a child conceived as a result of the commission of that offense;

(c) Of inheritance from a child conceived as a result of the commission of that offense; and

(d) To notification of or the right to object to the adoption of a child conceived as a result of the commission of that offense.

## History

**Source:** L. 75: Entire part R&RE, p. 629, § 1, effective July 1. L. 77: IP(1) amended, p. 962, § 17, effective July 1. L. 86: (3) added, p. 777, § 6, effective July 1. L. 89: (1.5) added and (2) and (3) amended, p. 830, § 41, effective July 1. L. 90: (1)(e) repealed, p. 1033, § 25, effective July 1. L. 91: (3) amended, p. 1912, § 21, effective June 1. L. 92: (1.5) amended and (1.7) added, p. 404, § 15, effective June 3. L. 94: (1.5) and (1.7) amended, p. 1717, § 9, effective July 1. L. 95: (3) amended, p. 1252, § 10, effective July 1. L. 96: (1.7) amended, p. 1581, § 4, effective July 1. L. 2000: IP(1), (1.5), (1.7), (2), and (3) amended, p. 700, § 20, effective July 1. L. 2002: (3) amended, p. 1513, § 190, effective October 1. L. 2004: (2) and (3) amended, p. 635, § 6, effective August 4. L. 2010: (1.7)(b) added by revision, (SB 10-128), ch. 415, pp. 2045, 2049, § 1, 12. L. 2013: (4) added, (SB 13-227), ch. 353, p. 2060, § 7, effective July 1.

### ▼ Annotations

#### Notes

**Editor's note:** (1) This section is similar to former § § 18-3-403, **18-3-404**, and 18-3-410 as they existed prior to 1975.

(2) Subsection (1.7)(b) provided for the repeal of subsection (1.7), effective July 1, 2012. (See L. 2010, pp. 2045, 2049.)

**Cross references:** For the legislative declaration contained in the 2002 act amending subsection (3), see section 1 of chapter 318, Session Laws of Colorado 2002.

#### Case Notes

##### RECENT ANNOTATIONS

**Subsection (1)(g) governs conduct by doctors and others who are, or hold themselves out to be, health treatment providers of any kind** and who examine, treat, or purport to examine or treat victims. *McCoy v. People*, 2019 CO 44, 442 P.3d 379.

**"[A]nother person" is to be viewed from the perspective of the victim.** Consequently, the perpetrator is "another person" in relation to the victim, as used in subsection (1.5). *People v. McEntee*, 2019 COA 139, -- P.3d -- [published September 5, 2019].

##### ANNOTATION

**Law reviews.** For comment, "Expert Testimony on Rape Trauma Syndrome in Colorado: Broadening Admissibility to Address the Question of Consent in Sexual Assault Prosecutions", see 61 U. Colo. L. Rev. 833 (1990). For comment, "Warning Bell: The Inherent Difficulties of Responding to Student-on-Student Sexual Harassment in Colorado Middle Schools", see 76 U. Colo. L. Rev. 813 (2005).

**Where assault established by evidence, intent to commit rape no defense.** Where all the elements of the crime charged (attempt to commit third degree sexual assault) were established by the evidence, the fact that the defendant's actions might also be construed as evincing an intent to commit rape did not constitute a defense to the charge. *People v. DeLeon*, 44 Colo. App. 146, 613 P.2d 639 (1980).

**No violation of equal protection of the laws under the Colorado Constitution** is created even though subsection (1)(e) and the offense described in § 18-3-405 (2)(b) contain some similar elements. The offenses also contain elements which make them distinguishable. The fact that a single act may give rise to more than one criminal violation does not, by itself, create an equal protection problem. *People v. Madril*, 746 P.2d 1329 (Colo. 1987).

**Subsection (1)(g) is not limited to conduct that occurs within a physician-patient relationship or to conduct that occurs during medical treatment or medical examination, nor is subsection (1)(g) unconstitutionally facially overbroad or vague.** *People v. McCoy*, 2015 COA 76M, -- P.3d --.

**The general assembly determined that persons who commit unlawful sexual contact with force must be sentenced to at least the midpoint of the sentencing range.** *People v. Holwuttler*, 155 P.3d 447 (Colo. App. 2006).

**It was proper for the court to include the definition of "consent" from § 18-1-505 (3)(d) in its instruction for unlawful sexual contact.** *People v. Holwuttler*, 155 P.3d 447 (Colo. App. 2006).

**"Touching" means to perceive or experience through the tactile sense.** A defendant can perceive and experience the clothing covering a victim's vaginal area through tactile sense even though there is a sheet between the defendant's hand and the victim's clothing. *People v. Pifer*, 2014 COA 93, 350 P.3d 936.

**Defendant's prior conviction of assault did not bar his subsequent conviction of sexual assault, as offenses had distinct elements that were not subsumed by each other.** *People v. Williams*, 736 P.2d 1229 (Colo. App. 1986).

**Attempted third degree sexual assault is a lesser included offense of attempted first degree sexual assault.** *People v. Staggs*, 740 P.2d 21 (Colo. App. 1987).

**The court's failure to give a straightforward negative response to the jurors' question concerning the definition of "sexual penetration" was harmless error.** Because third degree sexual assault may be committed without proof of sexual penetration, defendant's conviction of that crime could not have been affected by the lack of response to the jurors' inquiry. *People v. Fell*, 832 P.2d 1015 (Colo. App. 1991).

**A difference in the description of third degree sexual assault between the charging document and the jury instructions was not unconstitutional.** The defendant received adequate notice that he could potentially have to defend against allegations that he subjected the victim to sexual contact in the course of attempting to induce her to expose intimate parts. *People v. Madden*, 111 P.3d 452 (Colo. 2005).

**To be used as a ground for discipline in an attorney disciplinary proceeding** sexual assault in the third degree need only be proved by clear and convincing evidence. *In re Egbune*, 971 P.2d 1065 (Colo. 1999).

**Notwithstanding the entry of attorney's "Alford" plea in sexual assault proceedings,** for purpose of disciplinary proceeding the attorney was held to have actually committed the acts necessary to accomplish third degree sexual assault and therefore the attorney knowingly had sexual contact with a former client and with a current client without either woman's consent. *People v. Bertagnolli*, 922 P.2d 935 (Colo. 1996).

**Unlawful sexual contact is a lesser included offense of sexual assault based on sexual intrusion.** Proof of sexual intrusion requires proof of sexual contact with a person's intimate parts satisfying the strict elements test, and unlawful sexual contact involves less serious injury than sexual intrusion and lesser culpability than sexual assault. *People v. Loyas*, 259 P.3d 505 (Colo. App. 2010), overruled in *Page v. People*, 2017 CO 88, 402 P.3d 468, as annotated below.

**Unlawful sexual contact is a lesser included offense of sexual assault.** When a defendant is convicted of both offenses based on the same conduct, the conviction for unlawful sexual contact merges into the conviction for sexual assault. Establishing the elements of sexual assault by means of penetration necessarily establishes the elements of unlawful sexual contact. The elements of unlawful sexual contact are a subset of the elements of sexual assault by means of penetration. *Page v. People*, 2017 CO 88, 402 P.3d 468 (overruling *Loyas v. People*, 259 P.3d 505 (Colo. App. 2010), to the extent it held otherwise).

**Evidence of coercion sufficient to sustain conviction.** Using bribes and other manipulation to get juveniles to engage in sexual conduct satisfied the coercion element. *People v. Walker*, 321 P.3d 528 (Colo. App. 2011), aff'd on other grounds, 2014 CO 6, 318 P.3d 479, cert. denied, -- U.S. --, 135 S. Ct. 112, 190 L. Ed. 2d 88 (2014).

**Evidence of sexual gratification sufficient to sustain conviction.** Testimony regarding defendant's demeanor during photo sessions, defendant's verbal directions during photo sessions, and defendant's possession of photos and videos all support the sexual gratification element. *People v. Walker*, 321 P.3d 528 (Colo. App. 2011), aff'd on other grounds, 2014 CO 6, 318 P.3d 479, cert. denied, -- U.S. --, 135 S. Ct. 112, 190 L. Ed. 2d 88 (2014).

**A conviction under subsection (1) of this section constitutes a forcible sex offense and therefore is a crime of violence under § 2L1.2 of the United States sentencing guidelines.** *United States v. Romero-Hernandez*, 505 F.3d 1082 (10th Cir. 2007), cert. denied, 553 U.S. 1066, 128 S. Ct. 2500, 171 L. Ed. 2d 790 (2008); *United States v. Reyes-Alfonso*, 653 F.3d 1137 (10th Cir. 2011), cert. denied, 565 U.S. 1085, 132 S. Ct. 828, 181 L. Ed. 2d 536 (2011).

A sex offense may be committed by means that do not involve physical force, yet the offense may still be forcible. When an offense involves sexual contact with another person, it is necessarily forcible when that person does not consent. The use of disparities in situational power, influence, or control meet the definition of force. *United States v. Romero-Hernandez*, 505 F.3d 1082 (10th Cir. 2007), cert. denied, 553 U.S. 1066, 128 S. Ct. 2500, 171 L. Ed. 2d 790 (2008).

**Applied** in *People in Interest of M.M.*, 43 Colo. App. 65, 599 P.2d 968 (1979); *People v. Opson*, 632 P.2d 602 (Colo. App. 1980); *People v. Johnson*, 653 P.2d 737 (Colo. 1982).

COLORADO REVISED STATUTES

**Content Type:** Statutes and Legislation

**Terms:** 18-3-404

**Narrow By:** custom: custom Sources: CO - Colorado Revised Statutes Annotated

**Date and Time:** Jul 09, 2020 05:50:09 p.m. EDT



[About LexisNexis®](#)

[Privacy Policy](#)

[Cookie Policy](#)

[Terms & Conditions](#)

[Sign Out](#)

Copyright © 2020 LexisNexis. All rights reserved.

