

## CHAPTER 12

### OFFENSES RELATING TO FIREARMS AND WEAPONS

[FORMERLY CHAPTER 33 - COLJI-CRIM. (1983)]

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The instructions in this chapter are designed for use with the firearm and weapon offenses in § 18-12-101 through -216, C.R.S.

#### 12:01 POSSESSING A DANGEROUS OR ILLEGAL WEAPON

The elements of the crime of possessing a dangerous or illegal weapon are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. knowingly,
4. possessed [a dangerous weapon, to wit: (insert weapon)] [an illegal weapon, to wit (insert weapon)].

5. [without the affirmative defense in instruction number \_\_\_\_\_ .]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of possessing a dangerous or illegal weapon.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of possessing a dangerous or illegal weapon.

#### **NOTES ON USE**

Delete inapplicable bracketed material. When this instruction is used, the applicable definitions of "dangerous weapons" or "illegal weapons" must be given. Special affirmative defenses are set forth in §18-12-102(5), C.R.S.

*In Re: Ape*, 988 P.2d 172 (Colo. App. 1999), reversed on other grounds, 20 P.3d 1179 (Colo. 2001) (metallic knuckles are the same as brass knuckles and are an illegal weapon).

*People v. Vigil*, 758 P.2d 670 (Colo. 1988) (a short shotgun without a firing pin is a dangerous weapon).

*People v. Brown*, 119 P.3d 486 (Colo. App. 2005) (the offenses of possession of an illegal weapon and possession of a weapon by a previous offender merge, when the weapon is the same).

#### **SOURCE & AUTHORITY**

§18-12-102, C.R.S.

COLJI-Crim. No. 34:01 (1983).

#### **CLASSIFICATION OF OFFENSE**

M1, for illegal weapon

F5, for dangerous weapon

F4, for subsequent offenses of possession of a dangerous weapon

### **12:02 POSSESSION OF A DEFACED FIREARM**

The elements of the crime of possessing a defaced firearm are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. knowingly and unlawfully,
4. possessed a firearm,
5. on which the manufacturer's serial number or any other distinguishing number or identification mark has been removed, defaced, altered, or destroyed, except by normal wear and tear.
6. [without the affirmative defense in instruction number \_\_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of possession of a defaced firearm.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of possessing a defaced firearm.

#### **NOTES ON USE**

Delete inapplicable bracketed material. When this instruction is used, the definition of "firearm" must be given.

**SOURCE & AUTHORITY**

§18-12-103, C.R.S.

COLJI-Crim. No. 34:02 (1983).

**CLASSIFICATION OF OFFENSE**

M1

**12:03 DEFACING A FIREARM**

The elements of the crime of defacing a firearm are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. knowingly,
4. removed, defaced, covered, altered, or destroyed,
5. the manufacturer's serial number or any other distinguishing number or identification mark of a firearm.
6. [without the affirmative defense in instruction number \_\_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of defacing a firearm.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of defacing a firearm.

**NOTES ON USE**

Delete inapplicable bracketed material. When this instruction is used the definition of "firearm" must be given.

**SOURCE & AUTHORITY**

§18-12-104, C.R.S.

COLJI-Crim. No. 34:03 (1983).

**CLASSIFICATION OF OFFENSE**

M1

**12:04 CARRYING A CONCEALED WEAPON**

The elements of the crime of carrying a concealed weapon are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. knowingly and unlawfully,
4. carried a [knife] [firearm],
5. concealed on or about his person.
6. [without the affirmative defense in instruction number \_\_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of carrying a concealed weapon.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of carrying a concealed weapon.

**NOTES ON USE**

Delete inapplicable bracketed material. Special affirmative defenses are set forth in §18-12-105(2)(a) through (f), C.R.S. *A.P.E. v. People*, 20 P.3d 1179 (Colo.

2001) (possession of knife with a blade under three and one-half inches is not actionable unless proof that defendant intended to use the weapon).

When applicable, the definition of "firearm" must be given.

#### **SOURCE & AUTHORITY**

§18-12-105(1)(a), (b), C.R.S.

COLJI-Crim. No. 34:04 (1983).

#### **CLASSIFICATION OF OFFENSE**

M2

#### **12:05 UNLAWFUL POSSESSION OF WEAPON (PUBLIC BUILDING)**

The elements of the crime of unlawful possession of weapons in a public building are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. knowingly and unlawfully,
4. without legal authority,
5. carried, brought, or had in his/her possession a [firearm] [any explosive, incendiary or dangerous device],
6. [on the property of] [within any building] in which [the chambers, galleries, or offices of the General Assembly, or either house thereof were located] [a legislative hearing or meeting was being or was about to be conducted] [the official offices of any member officer, or employee of the General Assembly were located].
7. [without the affirmative defense in instruction number \_\_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of unlawful possession of weapons in a public building.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of unlawful possession of weapons in a public building.

#### **NOTES ON USE**

Delete inapplicable bracketed material. When applicable, the definition of "firearm" and "explosive or incendiary device" must be given. Special affirmative defenses are set forth in §18-12-105(2)(a) through (f), C.R.S.

#### **SOURCE & AUTHORITY**

§18-12-105(1)(c), C.R.S.

COLJI-Crim. No. 34:05 (1983).

#### **CLASSIFICATION OF OFFENSE**

M2

### **12:06 UNLAWFUL CARRYING/POSSESSION OF WEAPON (SCHOOL, COLLEGE OR UNIVERSITY GROUNDS)**

The elements of the crime of carrying or possession of a weapon on school, college or university grounds are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. knowingly and unlawfully,
4. without legal authority,

5. carried, brought, or had in his/her possession a deadly weapon,

6. in or on the real estate and all improvements erected thereon, of any public or private elementary, middle, junior high, high school, vocational school or any public or private college, university or seminary.

7. [without the affirmative defense in instruction number \_\_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of carrying or possession of a weapon on school, college or university grounds.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of carrying or possession of a weapon on school, college or university grounds.

#### **NOTES ON USE**

Delete inapplicable bracketed material. §18-12-105.5(1) and (3)(a) through (h) set forth circumstances in which the carrying or possession of the "deadly weapon" is not an offense.

*In Re: JWT*, 93 P.3d 980 (Colo. 2004) (knife with a length of less than three and one-half inches is not a deadly weapon unless it is proven that the defendant used or intended to use the knife as a deadly weapon.

When this instruction is used, the definition of deadly weapon as defined in § 18-1-901)(3)(e), C.R.S must be given.

#### **SOURCE & AUTHORITY**

§18-12-105.5, C.R.S.

COLJI-Crim. No. 34:05.5 (1983).

**CLASSIFICATION OF OFFENSE**

F6

**12:07 PROHIBITED USE OF WEAPONS**

The elements of the crime of prohibited use of weapons are:

1. That the defendant,

2. in the State of Colorado, at or about the date and place charged,

3. [knowingly and unlawfully,

4. aimed a firearm at another person.]

-or-

3. [recklessly or with criminal negligence,

4. [discharged a firearm] [shot a bow and arrow].]

-or-

3. [knowingly,

4. set a [loaded gun] [trap] [device designed to cause an explosion upon being tripped or approached], and

5. left it unattended by a competent person immediately present.]

-or-

3. [while under the influence of [intoxicating liquor] [a controlled substance],

4. had in his possession a firearm.]

-or-

3. [knowingly

4. aimed, swung, or threw a throwing star or nunchaku at another person.]

-or-

3. [knowingly
4. possessed a throwing star or nunchaku,
5. in a public place.]

[5. or 6. without the affirmative defense in instruction number \_\_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of prohibited use of weapons.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of prohibited use of weapons.

#### **NOTES ON USE**

Delete inapplicable bracketed material. When applicable, the jury must be given an instruction on the definitions of "firearm", "under the influence", "controlled substance", "throwing stars" and "nunchakus".

*People v. Beckett*, 782 P.2d 812 (Colo. App. 1989), affirmed on other grounds, *Beckett v. People*, 800 P.2d 74 (Colo. 1990), (court's duty to provide a jury instruction defining "under the influence.")

#### **SOURCE & AUTHORITY**

§18-12-106, C.R.S.

#### **CLASSIFICATION OF OFFENSE**

M2

## 12:08 USE OF STUN GUN

The elements of the crime of use of stun gun are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. knowingly and unlawfully,
4. used a stun gun in the commission of the crime of \_\_\_\_\_ .  
(insert name of applicable crime)
5. [without the affirmative defense in instruction number \_\_\_\_\_ .]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of use of stun guns.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of use of stun guns.

### NOTES ON USE

Delete inapplicable bracketed material. When this instruction is used, the definition of "stun gun" must be given.

An instruction explaining the crime committed must immediately follow this instruction. In addition, because an elemental instruction of a crime other than the crime charge is given to the jury, it is necessary to also define any terms in that instruction for which there are applicable definitions.

### SOURCE & AUTHORITY

§18-12-106.5, C.R.S.

**CLASSIFICATION OF OFFENSE**

F5

**12:09 ILLEGAL DISCHARGE OF A FIREARM**

The elements of the crime of illegal discharge of a firearm are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. knowingly or recklessly,
4. discharged a firearm,
5. into a [dwelling, building, or occupied structure] [motor vehicle occupied by any person].
6. [without the affirmative defense in instruction number \_\_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of illegal discharge of a firearm.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of illegal discharge of a firearm.

**NOTES ON USE**

Delete inapplicable bracketed material. When this instruction is used, the applicable definitions of "firearm," "building," "occupied structure," "dwelling," and "motor vehicle" must be given.

§18-12-107.5(2), C.R.S. sets forth a circumstance in which the discharge of a firearm is not an offense.

*People v. Serpa*, 992 P.2d 682 (Colo. App. 1999) (there is no requirement that the bullet actually entered the living area of a dwelling, as long as it strikes part of the dwelling).

*People v. White*, 55 P.2d 220 (Colo. App. 2002) (the bullet need not enter the passenger compartment of a vehicle, as long as it strikes the occupied motor vehicle).

#### SOURCE & AUTHORITY

§18-12-107.5, C.R.S.

#### 12:10 POSSESSION OF WEAPON BY PREVIOUS OFFENDER

The elements of the crime of possession of weapon by previous offender are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. having been previously convicted of the crime of [ \_\_\_\_\_ ]  
(insert name of felony or misdemeanor crime of domestic violence or conspiracy to commit, or attempt to commit domestic violence)
4. knowingly,
5. possessed, used, or carried upon his/her person a [firearm] [dangerous weapon] [weapon] to wit: [ \_\_\_\_\_ ],  
(insert name of firearm or weapon)
6. [without the affirmative defense in instruction number \_\_\_\_\_ .]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a

reasonable doubt, you should find the defendant guilty of possession of weapons by a previous offender.

After considering all the evidence, if you decide the prosecution has failed to prove one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of possession of weapons by a previous offender.

#### **NOTES ON USE**

Delete inapplicable bracketed material. When applicable, the definition of "possession", "firearm", "weapon" and "dangerous weapon" must be given.

Additional jury findings with regard to whether the actor's previous conviction was for burglary, arson or any other felony involving the use of force or the use of a deadly weapon and the new offense occurred within a certain period of time may be required in order to determine the degree of felony and sentence for conviction.

#### **SOURCE & AUTHORITY**

§18-12-108(1), (2)(a), C.R.S.

COLJI-Crim. No. 34:07 (1993).

#### **CLASSIFICATION OF OFFENSE**

F6

F5, if dangerous weapon

### **12:11 POSSESSION OF WEAPON BY PREVIOUS OFFENDER (PRIOR ADJUDICATION)**

The elements of the crime of possession of a weapon by a previous offender are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,

3. having been previously adjudicated

4. for an act which if committed by an adult would constitute the crime of [ \_\_\_\_\_ ]  
(insert name of felony)

5. knowingly,

6. possessed, used, or carried upon his person a [firearm] [weapon] [dangerous weapon] to wit:[\_\_\_\_\_],  
(insert name of firearm or weapon)

7. [without the affirmative defense in instruction number \_\_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of possession of weapons by a previous offender.

After considering all the evidence, if you decide the prosecution has failed to prove one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of possession of weapons by a previous offender.

#### **NOTES ON USE**

Delete inapplicable bracketed material. When applicable, the definition of "possession", "firearm", "weapon" and "dangerous weapon must be given. When applicable, a definition of the specific weapon should be given.

Additional jury findings with regard to whether the weapon was a dangerous weapon or whether the actor's previous conviction was for burglary, arson or any other felony involving the use of force or the use of a deadly weapon and the new offense occurred within a certain period of time may be required in order to determine the degree of felony and sentence for conviction.

#### **SOURCE & AUTHORITY**

§18-12-108(3) and (4)(a), C.R.S.

**CLASSIFICATION OF OFFENSE**

F6

F5, if dangerous weapon

**12:12 INTERROGATORY (PRIOR CONVICTION OF BURGLARY,  
ARSON OR FELONY INVOLVING THE USE OF FORCE  
OR THE USE OF A DEADLY WEAPON)  
POSSESSION OF A WEAPON BY A PREVIOUS OFFENDER**

If you find the defendant not guilty of possession of a weapon by a previous offender, you should disregard this instruction and fill out the verdict form reflecting your not guilty verdict. If, however, you find the defendant guilty of possession of a weapon by a previous offender, you should fill out the verdict form reflecting your guilty verdict and then answer the following questions:

1. [Was the defendant previously convicted of [the crime of [burglary] [arson] [\_\_\_\_\_] on \_\_\_\_\_]

(insert name of felony

(date)

involving the use of force or  
the use of a deadly weapon)

-or-

[an act which if committed by an adult would constitute the crime of [burglary] [arson] [\_\_\_\_\_] on \_\_\_\_\_]?

(insert name of felony

(date)

involving the use of force or  
the use of a deadly weapon)

If your answer to the above question is no, so indicate on the special verdict form. If your answer is yes, then answer the following question:

Did the commission of possession of weapon by previous offender occur within ten years after the [previous conviction] [release from confinement imposed as a result of the conviction] [release from supervision imposed as a result of the conviction] [previous adjudication] [release from confinement imposed as a result of the previous adjudication] [release from supervision imposed as a result of the previous adjudication]? (yes or no) Record your answer on the special verdict form.

It is the prosecution's burden to prove beyond a reasonable doubt that (1) the defendant was previously convicted of the crime of [burglary] [arson] [insert name of felony involving the use of force or the use of a deadly weapon] and (2) that the commission of possession of weapon by previous offender occurred within ten years after the [previous conviction] [release from confinement imposed as a result of the conviction] [release from supervision imposed as a result of the conviction] [previous adjudication] [release from confinement imposed as a result of the previous adjudication] [release from supervision imposed as a result of the previous adjudication]. After considering all the evidence, you should indicate on the verdict form that is provided whether you find that the prosecution has proven that(1) the defendant was previously convicted of the crime of [burglary] [arson] [insert name of felony involving the use of force or the use of a deadly weapon] and (2) that the commission of possession of weapon by previous offender occurred within ten years after the [previous conviction] [release from confinement imposed as a result of the conviction] [release from supervision imposed as a result of the conviction] [previous adjudication] [release from confinement imposed as a result of the previous adjudication] [release from supervision imposed as a result of the previous adjudication].

Your verdict must be unanimous.

#### **NOTES ON USE**

Delete inapplicable bracketed material. This interrogatory should be used only when there is sufficient evidence to support an allegation that (1) the defendant was previously convicted of the crime of [burglary] [arson] [insert name of felony involving the use of force or the use of a deadly weapon] and (2) that the commission of

possession of weapon by previous offender occurred within ten years after the [previous conviction] [release from confinement imposed as a result of the conviction] [release from supervision imposed as a result of the conviction] [previous adjudication] [release from confinement imposed as a result of the previous adjudication] [release from supervision imposed as a result of the previous adjudication].

The felonies referred are burglary, arson, or a felony involving the use of force or violence or the use of a deadly weapon. "Involve" has been defined to mean "to require as a necessary accompaniment". *People v. Blue*, 190 Colo. 95, 544 P.2d 385 (1975).

#### **SOURCE & AUTHORITY**

§18-12-108(1),(2)(c),(3) and 4(c), C.R.S.

#### **CLASSIFICATION OF OFFENSE**

F5

#### **12:13 POSSESSION OF HANDGUN BY A JUVENILE**

The elements of the crime of possession of handguns by a juvenile are:

1. That the defendant,
2. before attaining the age of eighteen years,
3. in the State of Colorado, at or about the date and place charged,  
knowingly,
4. possessed a handgun.
5. [without the affirmative defense in instruction number \_\_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a

reasonable doubt, you should find the defendant guilty of possession of handguns by a juvenile.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of possession of handguns by a juvenile.

#### **NOTES ON USE**

Delete inapplicable bracketed material. Sections 18-12-108.5(2)(a) through (c) set forth circumstances in which the possession of handguns by a juvenile is not an offense.

The definition of "handgun" must be given with this instruction.

*People ex rel L.M.*, 17 P.3d 829 (Colo. App. 2000) (parental consent is an affirmative defense, not an element that the prosecution has to disprove).

#### **SOURCE & AUTHORITY**

§18-12-108.5, C.R.S.

#### **CLASSIFICATION OF OFFENSE**

M2

F5, if subsequent offense

### **12:14 UNLAWFULLY PROVIDING OR PERMITTING A JUVENILE TO POSSESS A HANDGUN**

The elements of the crime of unlawfully providing or permitting a juvenile to possess a handgun are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,

3. intentionally, knowingly, or recklessly
4. [provided a handgun to any person under the age of eighteen who could not legally possess a handgun]

-or-

[failed to make reasonable efforts to prevent illegal possession of a firearm by a person under the age of eighteen

5. knowing the person under the age of eighteen could not legally possess a handgun.]

[5 or 6. without the affirmative defense in instruction number \_\_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of unlawfully providing or permitting a juvenile to possess a handgun.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of unlawfully providing or permitting a juvenile to possess a handgun.

#### **NOTES ON USE**

Delete inapplicable bracketed material. The definition of "handgun" must be given with this instruction.

#### **SOURCE & AUTHORITY**

§18-12-108.7 (1)(a), C.R.S.

#### **CLASSIFICATION OF OFFENSE**

F4

**12:15 UNLAWFULLY PROVIDING OR PERMITTING A JUVENILE TO POSSESS A HANDGUN - SUBSTANTIAL RISK OF FELONY**

The elements of the crime of unlawfully providing or permitting a juvenile to possess a handgun are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. intentionally, knowingly, or recklessly
4. [provided a handgun to any person under the age of eighteen
5. aware of a substantial risk that the juvenile would use the handgun to commit a felony offense]

-or-

4. [failed to make reasonable efforts to prevent the commission of an offense
5. while aware of a substantial risk that the juvenile would use the handgun to commit a felony offense.]
6. [without the affirmative defense in instruction number \_\_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of unlawfully providing or permitting a juvenile to possess a handgun.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of unlawfully providing or permitting a juvenile to possess a handgun.

**NOTES ON USE**

Delete inapplicable bracketed material. The definition of "handgun" must be given with this statute.

**SOURCE & AUTHORITY**

§18-12-108.7 (2)(a), C.R.S.

**CLASSIFICATION OF OFFENSE**

F4

**12:16 UNLAWFULLY PROVIDING OR PERMITTING A JUVENILE  
TO POSSESS A FIREARM OTHER THAN A HANDGUN**

The elements of the crime of unlawfully providing or permitting a juvenile to possess a handgun are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. knowingly
4. sold, rented or transferred ownership of or allowed unsupervised possession of
5. a firearm other than a handgun
6. to any juvenile
7. with or without remuneration
8. without the consent of the juvenile's parent or guardian.
9. [without the affirmative defense in instruction number \_\_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of unlawfully providing or permitting a juvenile to possess a firearm.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the

defendant not guilty of unlawfully providing or permitting a juvenile to possess a firearm.

#### NOTES ON USE

Delete inapplicable bracketed material. The definition of "handgun" and "firearm" must be given with this instruction.

#### SOURCE & AUTHORITY

§18-12-108.7 (3), C.R.S.

#### CLASSIFICATION OF OFFENSE

F4

#### 12:17 POSSESSION OR CONTROL OF EXPLOSIVE OR INCENDIARY DEVICE

The elements of the crime of possession or control of explosive or incendiary device are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. knowingly,
4. [possessed] [controlled] [manufactured] [gave][mailed][sent] [caused to be sent] any explosive or incendiary device.
5. [without the affirmative defense in instruction number \_\_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of [possessing] [controlling] [manufacturing] [giving] [mailing] [sending] [causing to be sent] explosive or incendiary device.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of [possessing] [controlling] [manufacturing] [giving] [mailing] [sending] [causing to be sent] an explosive or incendiary device.

#### NOTES ON USE

Delete inapplicable bracketed material. When this instruction is used, the applicable definition of "explosive or incendiary device" must be given.

§18-12-109(3)(a) through (e), C.R.S. sets forth circumstances in which the possession or control of an explosive or incendiary device is not an offense. The committee has treated each of the circumstances as affirmative defenses, but recognizes that such circumstances may be requisite negative elements of the offense.

#### SOURCE & AUTHORITY

§18-12-109(2), C.R.S.

COLJI-Crim. No. 34:09 (1983).

*People v. Rowerdink*, 756 P.2d 986 (Colo. 1988) (statute constitutional)

#### CLASSIFICATION OF OFFENSE

F4

#### 12:18 POSSESSION OR CONTROL OF A CHEMICAL, BIOLOGICAL, OR RADIOLOGICAL WEAPON

The elements of the crime of possession or control of a chemical, biological or radiological weapon are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,

3. knowingly,

4. [possessed] [controlled] [manufactured] [gave] [mailed] [sent] [caused to be sent] any chemical, biological or radiological weapon.

5. [without the affirmative defense in instruction number \_\_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of [possessing] [controlling] [manufacturing] [giving] [mailing] [sending] [causing to be sent] a chemical, biological or radiological weapon.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of [possessing] [controlling] [manufacturing] [giving] [mailing] [sending] [causing to be sent] a chemical, biological or radiological weapon.

#### **NOTES ON USE**

Delete inapplicable bracketed material.

#### **SOURCE & AUTHORITY**

§18-12-109(2.5), C.R.S.

#### **CLASSIFICATION OF OFFENSE**

F3

### **12:19 USE OF EXPLOSIVE OR INCENDIARY DEVICE OR CHEMICAL, BIOLOGICAL OR RADIOLOGICAL WEAPON OR MATERIALS IN COMMISSION OF A FELONY**

The elements of the crime of using [an explosive or incendiary device] [a chemical, biological or radiological weapon or materials] in the commission of a felony are:

1. That the defendant,

2. in the State of Colorado, at or about the date and place charged,

3. knowingly,

4. [used] [caused to be used][gave] [mailed][sent] [caused to be sent] an explosive or incendiary device or a chemical, biological or radiological weapon or materials,

5. [in the commission of] [in an attempt to commit] a felony,

6. [without the affirmative defense in instruction number \_\_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of using [an explosive or incendiary device] [a chemical, biological or radiological weapon or materials] in the commission of a felony.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of using [an explosive or incendiary device] [a chemical, biological or radiological weapon or materials] in the commission of a felony.

#### **NOTES ON USE**

Delete inapplicable bracketed material. When applicable, the definition of "explosive or incendiary device" must be given.

#### **SOURCE & AUTHORITY**

§18-12-109(4), C.R.S.

#### **CLASSIFICATION OF OFFENSE**

F2

## **12:20 UNLAWFUL REMOVAL OF AN EXPLOSIVE OR INCENDIARY DEVICE**

The elements of the crime of unlawful removal of an explosive or incendiary device are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. knowingly,
4. [removed] [caused to be removed] [carried away] any explosive or incendiary device from the place where that device was kept by the lawful user, vendor, transporter or manufacturer,
5. without the consent or direction of the lawful possessor.
6. [without the affirmative defense in instruction number \_\_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of unlawful removal of an explosive or incendiary device.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of unlawful removal of an explosive or incendiary device.

### **NOTES ON USE**

Delete inapplicable bracketed material. When this instruction is used, the applicable definition of "explosive or incendiary device" must be given.

The statute fails to prescribe a mens rea for the offense. In the committee's opinion, the offense necessarily requires at least general intent. For this reason, "knowingly" has been used as the mens rea for this instruction. See § 18-1-503(2), C.R.S. (in the absence of

specific designation in the statute, a mens rea may nevertheless be required if the prohibited conduct necessarily involves such a mental state).

#### **SOURCE & AUTHORITY**

§18-12-109(5), C.R.S.

#### **CLASSIFICATION OF OFFENSE**

F4

### **12:21 UNLAWFUL REMOVAL OF CHEMICAL, BIOLOGICAL OR RADIOLOGICAL WEAPON**

The elements of the crime of unlawful removal of a chemical, biological or radiological weapon are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. knowingly,
4. [removed] [caused to be removed] [carried away] any chemical, biological or radiological weapon from the place where that weapon was kept by the lawful user, vendor, transporter or manufacturer,
5. without the consent or direction of the lawful possessor.
6. [without the affirmative defense in instruction number \_\_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of unlawful removal of a chemical, biological or radiological weapon.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the

elements beyond a reasonable doubt, you should find the defendant not guilty of unlawful removal of a chemical, biological or radiological weapon.

#### **NOTES ON USE**

Delete inapplicable bracketed material. The statute fails to prescribe a mens rea for the offense. In the committee's opinion, the offense necessarily requires at least general intent. For this reason, "knowingly" has been used as the mens rea for this instruction. See § 18-1-503(2), C.R.S. (in the absence of specific designation in the statute, a mens rea may nevertheless be required if the prohibited conduct necessarily involves such a mental state).

#### **SOURCE & AUTHORITY**

§18-12-109(5.5), C.R.S.

#### **CLASSIFICATION OF OFFENSE**

F3

### **12:22 POSSESSION OF EXPLOSIVE OR INCENDIARY PARTS**

The elements of the crime of possession of explosive or incendiary parts are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. knowingly,
4. possessed any explosive or incendiary parts.
5. [without the affirmative defense in instruction number \_\_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of possession of explosive or incendiary parts.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of possession of explosive or incendiary parts.

#### **NOTES ON USE**

Delete inapplicable bracketed material. When this instruction is used, the applicable definition of "explosive or incendiary parts" must be given.

§18-12-109(6), C.R.S. does not designate a mens rea for possession of explosive or incendiary parts, while § 18-12-109(2), C.R.S. prescribes a mens rea for possession or control of explosive or incendiary devices. In the committee's opinion, the crime necessarily requires at least general intent. For this reason, "knowingly" has been used as the mens rea for this instruction. See §18-1-503(2), C.R.S. (in the absence of specific designation in the statute, a mens rea may nevertheless be required if the prohibited conduct necessarily involves such a mental state).

#### **SOURCE & AUTHORITY**

§18-12-109(6), C.R.S.

#### **CLASSIFICATION OF OFFENSE**

F3

### **12:23 POSSESSION OF A CHEMICAL, BIOLOGICAL OR RADIOLOGICAL WEAPON**

The elements of the crime of possession of a chemical, biological or radiological weapon are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,

3. knowingly,
4. possessed any a chemical, biological or radiological weapon.
5. [without the affirmative defense in instruction number \_\_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of possession of explosive or incendiary parts.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of possession of explosive or incendiary parts.

#### **NOTES ON USE**

Delete inapplicable bracketed material. §18-12-109(6.5), C.R.S. does not designate a mens rea for possession of a chemical, biological or radiological weapon. In the committee's opinion, the crime necessarily requires at least general intent. For this reason, "knowingly" has been used as the mens rea for this instruction. See §18-1-503(2), C.R.S. (in the absence of specific designation in the statute, a mens rea may nevertheless be required if the prohibited conduct necessarily involves such a mental state).

#### **SOURCE & AUTHORITY**

§18-12-109(6.5), C.R.S.

#### **CLASSIFICATION OF OFFENSE**

F3

**12:24 HOAX EXPLOSIVE OR INCENDIARY DEVICE OR  
CHEMICAL, BIOLOGICAL OR RADIOLOGICAL WEAPON**

The elements of the crime of a hoax [explosive or incendiary device] [chemical, biological or radiological weapon] are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. knowingly,
4. [[gave] [mailed] [sent] [caused to be sent] [manufactured] [possessed] any false, facsimile, or hoax [explosive or incendiary device] [chemical, biological or radiological weapon],
5. to another person.]

-or-

4. [placed a false, facsimile, or hoax [explosive or incendiary device] [chemical, biological or radiological weapon],
5. in or upon any real or personal property.]
6. [without the affirmative defense in instruction number \_\_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of hoax [explosive or incendiary device] [chemical, biological or radiological weapon].

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of [hoax explosive or incendiary device] [chemical, biological or radiological weapon].

## NOTES ON USE

Delete inapplicable bracketed material. When this instruction is used, the applicable definitions of "explosive or incendiary devices must be given.

The statute fails to prescribe a mens rea for the offense. In the committee's opinion, the offense necessarily requires at least general intent. For this reason, "knowingly" has been used as the mens rea for this instruction. See §18-1-503(2), C.R.S. (in the absence of specific designation in the statute, a mens rea may nevertheless be required if the prohibited conduct necessarily involves such a mental state).

## SOURCE & AUTHORITY

§18-12-109(7), C.R.S.

## CLASSIFICATION OF OFFENSE

F5

## 12:25 UNLAWFUL DISPENSING, DISTRIBUTION OR SALE OF EXPLOSIVE OR INCENDIARY DEVICE

The elements of the crime of unlawful dispensing, distribution or sale of explosive or incendiary device are:

1. That the defendant,
2. [possessing a valid permit for an explosive or incendiary device] [being an employee of a person who possessed a valid permit for an explosive or incendiary device and acting within the scope of his employment]
3. in the State of Colorado, at or about the date and place charged,
4. knowingly,
5. dispensed, distributed, or sold explosive or incendiary devices,

6. to a person who was not authorized to possess or control such explosive or incendiary device.

7. [without the affirmative defense in instruction number \_\_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of unlawful dispensing, distribution or sale of explosive or incendiary devices.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of unlawful dispensing, distribution, or sale of explosive or incendiary devices.

#### **NOTES ON USE**

Delete inapplicable bracketed material. When this instruction is used, the applicable definitions of "explosive or incendiary device" must be given.

The statute fails to prescribe a mens rea for the offense. In the committee's opinion, the offense necessarily requires at least general intent. For this reason, "knowingly" has been used as the mens rea for this instruction. See § 18-1-503(2), C.R.S. (in the absence of specific designation in the statute, a mens rea may nevertheless be required if the prohibited conduct necessarily involves such a mental state).

Permits for explosive devices are governed by §§9-7-101, et. seq., C.R.S.

#### **SOURCE & AUTHORITY**

§18-12-109(8), C.R.S.

#### **CLASSIFICATION OF OFFENSE**

F4

## 12:26 UNLAWFUL PURCHASE OF FIREARMS

The elements of the crime of unlawful purchase of firearms are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. knowingly,
4. purchased or otherwise obtained a firearm
5. on behalf of or for transfer to
6. a person who the transferor knew or should have known was ineligible to legally possess a firearm.
7. [without the affirmative defense in instruction number \_\_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of unlawful purchase of firearms.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of unlawful purchase of firearms.

### NOTES ON USE

Delete inapplicable bracketed material. When this instruction is used, the definition of "firearm" must be given.

### SOURCE & AUTHORITY

§18-12-111, C.R.S.

**CLASSIFICATION OF OFFENSE**

F4

**12:27 FALSE OR MISLEADING STATEMENT-CONCEALED  
HANDGUN PERMIT APPLICATION**

The elements of the crime of making false or misleading statements on a concealed handgun permit application are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. knowingly and intentionally,
4. [made a false or misleading statement on a permit application],

-or-

[deliberately omitted any material information requested on a permit application],

[5. without the affirmative defense in instruction number \_\_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of making false or misleading statements on a concealed handgun permit application.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of making false or misleading statements on a concealed handgun permit application.

**NOTES ON USE**

Delete inapplicable bracketed material. When this instruction is used, the definition of "permit" must be given.

## SOURCE & AUTHORITY

§18-12-205(2)(a), C.R.S. and §18-8-503, C.R.S.

## CLASSIFICATION OF OFFENSE

M1

## DEFINITIONS

### 12(1) EXPLOSIVE OR INCENDIARY DEVICE

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.

## **12(2) FIREARM**

"FIREARM" means any handgun, automatic, revolver, pistol, rifle, shotgun, or other instrument or device capable or intended to be capable of discharging bullets, cartridges, or other explosive charges. § 18-1-901(3)(h), C.R.S.

## **12(3) PERMIT**

"PERMIT" means a permit to carry a concealed handgun issued pursuant to the provisions of § 18-12-201 et. seq., except "permit" does not include a temporary emergency permit issued pursuant to § 18-12-209, C.R.S.

## **SPECIAL RULES**

### **12(4) POSSESSION OF A PERMIT-NO DEFENSE**

Possession of a permit to carry a weapon issued by the chief of police of a city, the mayor of a town, or the sheriff of a county is no defense to the crime of prohibited use of weapons. [§18-12-106(d), C.R.S.]