

## COLORADO

CHARTS	PENETRATION	FORCE	CAPACITY TO CONSENT	VICTIM PERPETRATOR RELATIONSHIP	OTHER SEX CRIMES
CONSENT ANALYSIS	ALCOHOL/DRUG FACILITATED SEXUAL ASSAULT	MARITAL RAPE	SAME SEX PERPETRATOR	STATUTORY RAPE	CONSTRUCTIVE FORCE

### COLO. REV. STAT. ANN. § 18-3-401 (WEST 2011). DEFINITIONS

As used in this part 4, unless the context otherwise requires:

(1) “Actor” means the person accused of a sexual offense pursuant to this part 4.

(1.5) “Consent” means cooperation in act or attitude pursuant to an exercise of free will and with knowledge of the nature of the act. A current or previous relationship shall not be sufficient to constitute consent under the provisions of this part 4. Submission under the influence of fear shall not constitute consent. Nothing in this definition shall be construed to affect the admissibility of evidence or the burden of proof in regard to the issue of consent under this part 4.

(1.7) “Diagnostic test” means a human immunodeficiency virus (HIV) screening test followed by a supplemental HIV test for confirmation in those instances when the HIV screening test is repeatedly reactive.

(2) "Intimate parts" means the external genitalia or the perineum or the anus or the buttocks or the pubes or the breast of any person.

(2.5) "Pattern of sexual abuse" means the commission of two or more incidents of sexual contact involving a child when such offenses are committed by an actor upon the same victim.

(3) "Physically helpless" means unconscious, asleep, or otherwise unable to indicate willingness to act.

(3.5) One in a "position of trust" includes, but is not limited to, any person who is a parent or acting in the place of a parent and charged with any of a parent's rights, duties, or responsibilities concerning a child, including a guardian or someone otherwise responsible for the general supervision of a child's welfare, or a person who is charged with any duty or responsibility for the health, education, welfare, or supervision of a child, including foster care, child care, family care, or institutional care, either independently or through another, no matter how brief, at the time of an unlawful act.

(4) "Sexual contact" means the knowing touching of the victim's intimate parts by the actor, or of the actor's intimate parts by the victim, or the knowing touching of the clothing covering the immediate area of the victim's or actor's intimate parts if that sexual contact is for the purposes of sexual arousal, gratification, or abuse.

(5) "Sexual intrusion" means any intrusion, however slight, by any object or any part of a person's body, except the mouth, tongue, or penis, into the genital or anal opening of another person's body if that sexual intrusion can reasonably be construed as being for the purposes of sexual arousal, gratification, or abuse.

(6) "Sexual penetration" means sexual intercourse, cunnilingus, fellatio, analingus, or anal intercourse. Emission need not be proved as an element of any sexual penetration. Any penetration, however slight, is sufficient to complete the crime.

(7) "Victim" means the person alleging to have been subjected to a criminal sexual assault.

## **COLO. REV. STAT. ANN. § 18-3-402 (WEST 2011). SEXUAL ASSAULT**

(1) Any actor who knowingly inflicts sexual intrusion or sexual penetration on a victim commits sexual assault if:

(a) The actor causes submission of the victim by means of sufficient consequence reasonably calculated to cause submission against the victim's will; or

(b) The actor knows that the victim is incapable of appraising the nature of the victim's conduct; or

(c) The actor knows that the victim submits erroneously, believing the actor to be the victim's spouse; or

(d) At the time of the commission of the act, the victim is less than fifteen years of age and the actor is at least four years older than the victim and is not the spouse of the victim; or

(e) At the time of the commission of the act, the victim is at least fifteen years of age but less than seventeen years of age and the actor is at least ten years older than the victim and is not the spouse of the victim; or

(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 to coerce the victim to submit, unless the act is incident to a lawful search; or

(g) The actor, while purporting to offer a medical service, engages in treatment or examination of a victim for other than a bona fide medical purpose or in a manner substantially inconsistent with reasonable medical practices; or

(h) The victim is physically helpless and the actor knows the victim is physically helpless and the victim has not consented.

(2) Sexual assault is a class 4 felony, except as provided in subsections (3), (3.5), (4), and (5) of this section.

(3) If committed under the circumstances of paragraph (e) of subsection (1) of this section, sexual assault 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).

(3.5) Sexual assault is a class 3 felony if committed under the circumstances described in paragraph (h) of subsection (1) of this section.

(4) Sexual assault is a class 3 felony if it is attended by any one or more of the following circumstances:

(a) The actor causes submission of the victim through the actual application of physical force or physical violence;  
or

(b) The actor causes submission of the victim by threat of imminent death, serious bodily injury, extreme pain, or kidnapping, to be inflicted on anyone, and the victim believes that the actor has the present ability to execute these threats; or

(c) The actor causes submission of the victim by threatening to retaliate in the future against the victim, or any other person, and the victim reasonably believes that the actor will execute this threat. As used in this paragraph (c), "to retaliate" includes threats of kidnapping, death, serious bodily injury, or extreme pain; 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.

(e) Deleted by Laws 2002, Ch. 322, § 2, eff. July 1, 2002.

(5)(a) Sexual assault is a class 2 felony if any one or more of the following circumstances exist:

(I) In the commission of the sexual assault, the actor is physically aided or abetted by one or more other persons;  
or

(II) The victim suffers serious bodily injury; or

(III) The actor is armed with a deadly weapon or an article used or fashioned in a manner to cause a person to reasonably believe that the article is a deadly weapon or represents verbally or otherwise that the actor is armed with a deadly weapon and uses the deadly weapon, article, or representation to cause submission of the victim.

(b)(I) If a defendant is convicted of sexual assault pursuant to this subsection (5), the court shall sentence the defendant in accordance with section 18-1.3-401(8)(e). A person convicted solely of sexual assault pursuant to this subsection (5) shall not be sentenced under the crime of violence provisions of section 18-1.3-406(2). Any sentence for a conviction under this subsection (5) shall be consecutive to any sentence for a conviction for a crime of violence under section 18-1.3-406.

(II) The provisions of this paragraph (b) shall apply to offenses committed prior to November 1, 1998.

(6) Any person convicted of felony sexual assault committed on or after November 1, 1998, under any of the circumstances described in this section shall be sentenced in accordance with the provisions of part 10 of article 1.3 of this title.

## **COLO. REV. STAT. ANN. § 18-3-404 (WEST 2011). 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 by Laws 1990, H.B.90-1133, § 25, eff. July 1, 1990.

(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) (a) Any person who knowingly observes or takes a photograph of another person's intimate parts without that person's consent, in a situation where the person observed has a reasonable expectation of privacy, for the purpose of the observer's own sexual gratification, commits unlawful sexual contact. For purposes of this subsection (1.7), "photograph" includes any photograph, motion picture, videotape, print, negative, slide, or other mechanically, electronically, or chemically reproduced visual material.

(b) This subsection (1.7) is repealed, effective July 1, 2012.

(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.

**COLO. REV. STAT. ANN. § 18-3-405.3 (WEST 2011). SEXUAL ASSAULT ON A CHILD IN A POSITION OF TRUST**

(1) Any actor who knowingly subjects another not his or her spouse to any sexual contact commits sexual assault on a child by one in a position of trust if the victim is a child less than eighteen years of age and the actor committing the offense is one in a position of trust with respect to the victim.

(2) Sexual assault on a child by one in a position of trust is a class 3 felony if:

(a) The victim is less than fifteen years of age; or

(b) The actor commits the offense as a part of a pattern of sexual abuse as described in subsection (1) of this section. No specific date or time need be alleged for the pattern of sexual abuse; except that the acts constituting the pattern of sexual abuse whether charged in the information or indictment or committed prior to or at any time after the offense charged in the information or indictment, shall be subject to the provisions of section 16-5-401(1)(a), C.R.S., concerning sex offenses against children. The offense charged in the information or indictment shall constitute one of the incidents of sexual contact involving a child necessary to form a pattern of sexual abuse as defined in section 18-3-401(2.5).

(3) Sexual assault on a child by one in a position of trust is a class 4 felony if the victim is fifteen years of age or older but less than eighteen years of age and the offense is not committed as part of a pattern of sexual abuse, as described in paragraph (b) of subsection (2) of this section.

(4) If a defendant is convicted of the class 3 felony of sexual assault on a child 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.

**COLO. REV. STAT. ANN. § 18-3-409 (WEST 2011). MARITAL DEFENSE**

Any marital relationship, whether established statutorily, putatively, or by common law, between an actor and a victim shall not be a defense to any offense under this part 4 unless such defense is specifically set forth in the applicable statutory section by having the elements of the offense specifically exclude a spouse.

**COLO. REV. STAT. ANN. § 18-7-301 (WEST 2011). PUBLIC INDECENCY**

(1) Any person who performs any of the following in a public place or where the conduct may reasonably be expected to be viewed by members of the public commits public indecency:

(a) An act of sexual intercourse; or

(b) Deleted by Laws 2010, Ch. 359, § 1, eff. Aug. 11, 2010.

(c) A lewd exposure of an intimate part as defined by section 18-3-401(2) of the body, not including the genitals, done with intent to arouse or to satisfy the sexual desire of any person; or

(d) A lewd fondling or caress of the body of another person; or

(e) A knowing exposure of the person's genitals to the view of a person under circumstances in which such conduct is likely to cause affront or alarm to the other person.

(2)(a) Except as otherwise provided in paragraph (b) of this subsection (2), public indecency is a class 1 petty offense.

(b) Public indecency as described in paragraph (e) of subsection (1) of this section is a class 1 misdemeanor if the violation is committed subsequent to a conviction for a violation of paragraph (e) of subsection (1) of this section or for a violation of a comparable offense in any other state or in the United States, or for a violation of a comparable municipal ordinance.

(3) Deleted by Laws 2010, Ch. 359, § 1, eff. Aug. 11, 2010.

### **COLO. REV. STAT. ANN. § 18-7-302 (WEST 2011). INDECENT EXPOSURE**

(1) A person commits indecent exposure:

(a) If he or she knowingly exposes his or her genitals to the view of any person under circumstances in which such conduct is likely to cause affront or alarm to the other person with the intent to arouse or to satisfy the sexual desire of any person;

(b) If he or she knowingly performs an act of masturbation in a manner which exposes the act to the view of any person under circumstances in which such conduct is likely to cause affront or alarm to the other person.

(2)(a) Deleted by Laws 2003, Ch. 199, § 31, eff. July 1, 2003.

(b) Indecent exposure is a class 1 misdemeanor.

(3) Deleted by Laws 2002, Ch. 322, § 21, eff. July 1, 2002.

(4) Indecent exposure is a class 6 felony if the violation is committed subsequent to two prior convictions of a violation of this section or of a violation of a comparable offense in any other state or in the United States, or of a violation of a comparable municipal ordinance.

(5) For purposes of this section, "masturbation" means the real or simulated touching, rubbing, or otherwise stimulating of a person's own genitals or pubic area for the purpose of sexual gratification or arousal of the person, regardless of whether the genitals or pubic area is exposed or covered.

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