

# **Colorado Revised Statutes: Title 18: Criminal Code:** **18-1-901. Definitions.**

## ARTICLE 1. PROVISIONS APPLICABLE TO OFFENSES GENERALLY.

### PART 9. DEFINITIONS.

<http://www.lexisnexis.com/hottopics/Colorado>

(1) Definitions set forth in any section of this title apply wherever the same term is used in the same sense in another section of this title unless the definition is specifically limited or the context indicates that it is inapplicable.

(2) The terms defined in section 18-1-104 and in section 18-1-501, as well as the terms defined in subsection (3) of this section, are terms which appear in various articles of this code. Other terms which need definition but which are used only in a limited number of sections of this code are defined in the particular section or article in which the terms appear.

(3) (a) "To aid" or "to assist" includes knowingly to give or lend money or extend credit to be used for, or to make possible or available, or to further the activity thus aided or assisted.

(b) "Benefit" means any gain or advantage to the beneficiary including any gain or advantage to another person pursuant to the desire or consent of the beneficiary.

(c) "Bodily injury" means physical pain, illness, or any impairment of physical or mental condition.

(d) "Deadly physical force" means force, the intended, natural, and probable consequence of which is to produce death, and which does, in fact, produce death.

(e) "Deadly weapon" means:

(I) A firearm, whether loaded or unloaded; or (II) A knife, bludgeon, or any other weapon, device, instrument, material, or substance, whether animate or inanimate, that, in the manner it is used or intended to be used, is capable of producing death or serious bodily injury. (III) and (IV) (Deleted by amendment, L. 2013.)

(f) "Deface" means to alter the appearance of something by removing, distorting, adding to, or covering all or a part of the thing.

(g) "Dwelling" means a building which is used, intended to be used, or usually used by a person for habitation.

(h) "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.

**(I) "Government" includes the United States, any state, county, municipality, or other political unit, any branch, department, agency, or subdivision of any of the foregoing, and any corporation or other entity established by law to carry out any governmental function.**

**(j) "Governmental function" includes any activity which a public servant is legally authorized to undertake on behalf of government.**

(k) "Motor vehicle" includes any self-propelled device by which persons or property may be moved, carried, or transported from one place to another by land, water, or air, except devices operated on rails, tracks, or cables fixed to the ground or supported by pylons, towers, or other structures.

(l) Repealed.

(m) "Pecuniary benefit" means benefit in the form of money, property, commercial interests, or anything else, the primary significance of which is economic gain.

(n) "Public place" means a place to which the public or a substantial number of the public has access, and includes but is not limited to highways, transportation facilities, schools, places of amusement, parks, playgrounds, and the common areas of public and private buildings and facilities.

**(o) "Public servant" means any officer or employee of government, whether elected or appointed, and any person participating as an advisor, consultant, process server, or otherwise in performing a governmental function, but the term does not include witnesses.**

**(o.5) "Restorative justice practices" means practices that emphasize repairing the harm caused to victims and the community by offenses. Restorative justice practices include victim-offender conferences, family group conferences, circles, community conferences, and other similar victim-centered practices. Restorative justice practices are facilitated meetings attended voluntarily by the victim or victim's representatives, the victim's supporters, the offender, and the offender's supporters and may include community members. By engaging the parties to the offense in voluntary dialogue, restorative justice practices provide an opportunity for the offender to accept responsibility for the harm caused to the victim and community, promote victim healing, and enable the participants to agree on consequences to repair the harm, to the extent possible, including but not limited to apologies, community service, reparation, restoration, and counseling. Restorative justice practices may be used in addition to any other conditions, consequences, or sentence imposed by the court.**

(p) "Serious bodily injury" means bodily injury which, either at the time of the actual injury or at a later time, involves a substantial risk of death, a substantial risk of serious permanent disfigurement, a substantial risk of protracted loss or impairment of the function of any part or organ of the body, or breaks, fractures, or burns of the second or third degree.

(q) "Tamper" means to interfere with something improperly, to meddle with it, or to make unwarranted alterations in its condition.

(r) "Thing of value" includes real property, tangible and intangible personal property, contract rights, choses in action, services, confidential information, medical records information, and any rights of use or enjoyment connected therewith.

**(s) "Utility" means an enterprise which provides gas, sewer, electric, steam, water, transportation, or communication services, and includes any carrier, pipeline, transmitter, or source, whether publicly or privately owned or operated.**

## Case Notes, Annotation:

Law reviews. For article, "The Definition of 'Deadly Weapon' Under the Colorado Criminal Code", see 15 Colo. Law. 1663 (1986).

The term "serious bodily injury" is not facially unconstitutionally vague. Defendant's challenge that "serious bodily injury" included subjective undefined terms making it constitutionally infirm did not show the term was so vague that a person of ordinary intelligence must guess at its meaning and may differ as to its application. The term was also constitutional as applied to the defendant. *People v. Summitt*, 104 P.3d 232 (Colo. App. 2004), *aff'd in part and rev'd in part on other grounds*, 132 P.3d 320 (Colo. 2006).

The terms "serious bodily injury" and "bodily injury" do not suffer from an equal protection problem, because they only overlap if serious bodily injury is given an unreasonably broad interpretation. *People v. Summitt*, 104 P.3d 232 (Colo. App. 2004), *aff'd in part and rev'd in part on other grounds*, 132 P.3d 320 (Colo. 2006).

Applicability of definition "to aid". The general definition of "to aid" in subsection (3)(a) is applicable to the definition of professional gambling in § 18-10-102(8). *People v. Wheatridge Poker Club*, 194 Colo. 15, 569 P.2d 324 (1977).

Deadly weapon. A knife is a deadly weapon, as is any weapon which is likely to produce death or great bodily injury from the manner in which it is used. *Armijo v. People*, 134 Colo. 344, 304 P.2d 633 (1956).

Whether an object is a deadly weapon does not depend upon the ultimate result of the object's use. *People v. Saleh*, 45 P.3d 1272 (Colo 2002); *People v. Buell*, 2017 COA 148, -- P.3d --.

Even if a knife blade was dull, because of its size, four to five inches, the jury could have reasonably concluded that it was capable of producing serious bodily injury. *People v. Buell*, 2017 COA 148, -- P.3d --.

Ordinarily hands or fists are not means likely to produce death unless used in such manner and under such circumstances as are reasonably calculated to produce death. *Smith v. People*, 142 Colo. 523, 351 P.2d 457 (1960).

A dangerous weapon is an article of offense which in its intended or easily adaptable use is likely to produce death or serious bodily injury. *Hutton v. People*, 156 Colo. 334, 398 P.2d 973 (1965).

A simulated pistol, not per se dangerous, may become so factually because of its substance, size, and weight as a bludgeon wielded within striking distance of the person to be robbed. *Hutton v. People*, 156 Colo. 334, 398 P.2d 973 (1965).

A quart bottle of whiskey is not a bludgeon but it may satisfy the statutory test defining a deadly weapon as a "device, instrument, material, or substance, . . . which in the manner it is used . . . is

capable of producing death or serious bodily injury". *Bowers v. People*, 617 P.2d 560 (Colo. 1980) (decided prior to 1981 amendment to subsection (3)(e)).

Under the felony menacing statute an unloaded firearm is a deadly weapon. *People v. McPherson*, 200 Colo. 429, 619 P.2d 38 (1980) (decided prior to 1981 amendment to subsection (3)(e)).

A fist may be considered a deadly weapon in circumstances where the manner of its use is capable of producing death or serious bodily injury. *People v. Pennese*, 830 P.2d 1085 (Colo. App. 1991) (declining to follow *People v. Ross*, 819 P.2d 507 (Colo. App. 1991)).

Fists may be a deadly weapon if in the manner they are used or intended to be used they are capable of producing death or serious bodily injury. Defendant used his fist in a manner capable of producing death or serious bodily injury where defendant admitted striking the victim, as a result of the blow, the victim was admitted to a hospital and treated for major trauma, and the treating physician testified that the victim sustained multiple facial fractures and was at great risk of sustaining severe permanent damage. *People v. Ross*, 831 P.2d 1310 (Colo. 1992).

In some circumstances, fists may be considered a deadly weapon based on facts at issue, and statute that specifies that a deadly weapon may be any device, material, or substance which in the manner of its use is capable of producing death or serious bodily injury. *People v. Pennese*, 830 P.2d 1085 (Colo. App. 1991).

BB gun can be a deadly weapon. Testimony that if a person hit with a BB in a vulnerable area of the body, such as the eyes, the BB could cause serious bodily injury was sufficient to prove that the BB gun was a deadly weapon. *People in Interest of J.R.*, 867 P.2d 125 (Colo. App. 1993).

The issue in evaluating whether a device is a deadly weapon is whether, in the manner it was used, the device could have caused death or serious bodily injury. The fact that in this particular case death or serious bodily injury did not occur is irrelevant. *People in Interest of J.R.*, 867 P.2d 125 (Colo. App. 1993).

To be a deadly weapon, an object must be used in connection with assaultive conduct directed toward an intended opponent or adversary. *People v. Esparza-Treto*, 282 P.3d 471 (Colo. App. 2011).

Any object, including a foot, may be a deadly weapon when used to start an unbroken, foreseeable chain of events capable of producing serious bodily injury or death. The object does not have to be the direct cause of the injury. Where defendant kicked the victim in the back, causing her to fall down a flight of stairs, it was irrelevant that her injuries were caused by the stairs rather than the defendant's foot. The defendant's foot qualified as a deadly weapon because he used it to set in motion a sequence of events causing a serious bodily injury. *People v. Saleh*, 45 P.3d 1272 (Colo. 2002).

Where there is doubt as to whether an article is a deadly weapon, the question should be left to the jury under an instruction as to what constitutes a deadly weapon. *J.D.C. v. District Court 18th Jud. Dist.*, 910 P.2d 684 (Colo. 1996).

Question of whether automobile constitutes a deadly weapon in the context of the case is a factual question to be determined by a factfinder. *J.D.C. v. District Court 18th Jud. Dist.*, 910 P.2d 684 (Colo. 1996).

The intention to cause death or serious injury is not part of the definition of a deadly weapon; rather, this section requires only that in its actual or intended use the object is capable of producing death or serious injury. *Miller v. District Court*, 193 Colo. 404, 566 P.2d 1063 (1977).

The term "intended to be used" in the deadly weapon definition refers to the defendant's, not the manufacturer's, intent. The statute does not classify a firearm as a deadly weapon per se. *Montez v. People*, 2012 CO 6, 269 P.3d 1228.

Subsection (3)(e) prescribes test to determine whether certain items constitute deadly weapons. Subsection (3)(e) expressly prescribes a test to determine whether items other than firearms, knives, and bludgeons are deadly weapons, based not on the intrinsic nature of the items but upon their use or intended use. *Bowers v. People*, 617 P.2d 560 (Colo. 1980) (decided prior to 1981 amendment to subsection (3)(e)).

A knife is not a deadly weapon per se. A knife is only a deadly weapon when it is used or intended to be used during the commission of another crime. *People ex rel. J.W.T.*, 93 P.3d 580 (Colo. App. 2004).

Certain weapons deadly as matter of law. Certain weapons are by their very design and make so lethal in nature that a trial court should rule as a matter of law that they are deadly weapons. Other instruments or things, though perhaps not deadly weapons per se, are within the meaning of statutory provisions, depending upon the nature of the instrument and the manner in which the instrument or thing is used in accomplishing the assault. *Grass v. People*, 172 Colo. 223, 471 P.2d 602 (1970).

Otherwise, nature of weapon question for jury. Whether an article used as a weapon is dangerous may be, because of its very character or the circumstances of its use, a matter of doubt, and in such case the question should be left to the jury under an instruction as to what constitutes a dangerous weapon. *Hutton v. People*, 156 Colo. 334, 398 P.2d 973 (1965).

The trial court did not err in generally instructing the jury that a shoe was not in and of itself a deadly or dangerous weapon, and that in determining whether an instrument, not inherently deadly or dangerous, assumes the characteristics of a deadly weapon the jury should consider the nature of the instrument or thing, the manner of its use, the location on the body of the injuries inflicted, and the extent of such injuries. *Grass v. People*, 172 Colo. 223, 471 P.2d 602 (1970).

Defendant not entitled to instruction on physical force other than deadly force when there was no evidence that defendant's use of force was anything other than deadly physical force. *People v. Opana*, 2017 CO 56, 395 P.3d 757.

There is an intent element in the consideration of "deadly" physical force. Since defendant's testimony created a dispute about whether he intended to produce death by use of force, defendant is entitled to self-defense instructions related to both ordinary physical force and deadly physical force. *People v. Vasquez*, 148 P.3d 326 (Colo. App. 2006).

Because deadly force requires death, courts should not instruct the jury on deadly physical force if the victim did not die. *People v. Tardif*, 2017 COA 136, -- P.3d --.

"Dwelling" construed. The statutory definition of "dwelling" in this section comprehends an entire building. There is no room to exclude from the meaning of "dwelling" those parts of a residence that are not "usually used by a person for habitation". *People v. Jiminez*, 651 P.2d 395 (Colo. 1982).

A garage attached to a residence is part of a "dwelling" within the meaning of § 18-4-203 (2), burglary of a dwelling. *People v. Jiminez*, 651 P.2d 395 (Colo. 1982).

"Dwelling" encompasses the entire residential structure, including an attached garage, within the meaning of § 18-4-502, first degree criminal trespass. *People v. Hanna*, 981 P.2d 627 (Colo. App. 1998).

"[C]apable or intended to be capable" modifies only "other instrument or device" and, therefore, under subsection (3)(h), a pistol, no matter what its condition, no matter what a defendant's intent may be with respect to it, is a per se firearm. *People v. O'Neal*, 228 P.3d 211 (Colo. App. 2009).

Because subsection (3)(h) was enacted prior to § 2-4-214, the court must look to the rules of statutory construction in effect when subsection (3)(h) was enacted in 1971 and, therefore, it is appropriate to rely upon the last antecedent rule. *People v. O'Neal*, 228 P.3d 211 (Colo. App. 2009).

Under subsection (3)(h), handguns, automatics, revolvers, pistols, rifles, and shotguns qualify as per se firearms, without need of any further inquiry into whether they are capable or intended to be capable of discharging bullets, cartridges, or other explosive charges. *People v. O'Neal*, 228 P.3d 211 (Colo. App. 2009).

General definition of "government" in subsection (3)(i) is limited by subsection (1). *Bailey v. People*, 200 Colo. 549, 617 P.2d 549 (1980).

Government includes urban renewal effort. The general definition of "government" in subsection (3)(i) includes corporations such as the Colorado Springs urban renewal effort. *Bailey v. People*, 200 Colo. 549, 617 P.2d 549 (1980).

The method of transportation a person uses on a highway does not alter the fact that a person is on a highway, and therefore in a "public place". *People v. Naranjo*, 2015 COA 56, 405 P.3d 279, rev'd on other grounds, 2017 CO 87, 401 P.3d 534.

Employee of the Colorado Springs urban renewal effort is not a "public servant" performing a "governmental function" on behalf of a "government" as defined in this section. *Bailey v. People*, 200 Colo. 549, 617 P.2d 549 (1980).

And defendant cannot be convicted of bribing effort's employee. A defendant cannot be convicted of the bribery of a public servant under § 18-8-302 where the alleged public servant was an employee of the Colorado Springs urban renewal effort. *Bailey v. People*, 200 Colo. 549, 617 P.2d 549 (1980).

A police officer is a public servant as defined in subsection (3)(o). *People v. Sena*, 2016 COA 161, 395 P.3d 1148.

Difference between "serious bodily injury" and "bodily injury". At least one difference between "serious bodily injury" and "bodily injury" is that of degree. *People v. Benjamin*, 197 Colo. 188, 591 P.2d 89 (1979).

Serious bodily injury. "Substantial risk" applies only to death, and not to permanent disfigurement or protracted loss or impairment of any part or organ of the body. *People v. Sheldon*, 198 Colo. 519, 602 P.2d 869 (1979).

"Fractures" carries its common and ordinary meaning of "the breaking of hard tissue (as a bone, tooth, or cartilage)". Thus, fractures include fractured cartilage under the definition of serious bodily injury. *People v. Jaramillo*, 183 P.3d 665 (Colo. App. 2008).

Any break or fracture is sufficient to establish "serious bodily injury". The term "of the second or third degree" refers only to burns and not to breaks or fractures. *People v. Daniels*, 240 P.3d 409 (Colo. App. 2009).

"Protracted loss or impairment of the function of any part or organ of the body" is applied in *People v. Brown*, 677 P.2d 406 (Colo. App. 1983).

Determination that injury falls within the meaning of "serious bodily injury" must be made at the time of injury, not at the time of trial. *People v. Thompson*, 748 P.2d 793 (Colo. 1988).

Whether injury at the time it occurred involved a substantial risk of protracted loss or impairment of the function of any part or organ of the body is a question for the jury. *People v. Thompson*, 748 P.2d 793 (Colo. 1988).

The fact that a victim healed well and made a good recovery is not relevant to the determination that he suffered a serious bodily injury. *People v. Rodriguez*, 888 P.2d 278 (Colo. App. 1994).

Evidence sufficient to prove "serious bodily injury". Gunshot wounds to the leg that involve substantial risk of disfigurement and infection and require surgery satisfy "serious bodily injury". *People v. Whittiker*, 181 P.3d 264 (Colo. App. 2006).

Criminal code's definition of "bodily injury" not applicable to term as used in automobile insurance policy. *Lampton v. United Servs. Auto. Ass'n*, 835 P.2d 532 (Colo. App. 1992).

An apartment lease is a "thing of value" for purposes of this section and § 18-5-902. An apartment lease is both a "contract right" and a "right of use" of "real property". *People v. Molina*, 2017 CO 7, 388 P.3d 894.

When defendant used the last name and social security number of another person to obtain a lease, she committed identity theft. *People v. Molina*, 2017 CO 7, 388 P.3d 894.

Applied in

*People v. Rice*, 37 Colo. App. 346, 551 P.2d 1081 (1976), rev'd on other grounds, 193 Colo. 270, 565 P.2d 940 (1977); *People v. Dominguez*, 193 Colo. 468, 568 P.2d 54 (1977); *People v. Hines*, 194 Colo. 331, 572 P.2d 467 (1977); *People v. Walters*, 39 Colo. App. 119, 568 P.2d 61 (1977); *People v.*

Marshall, 196 Colo. 381, 586 P.2d 41 (1978); People v. Scott, 41 Colo. App. 66, 583 P.2d 939 (1978); People v. Bailey, 41 Colo. App. 252, 595 P.2d 252 (1978); People v. Brake, 196 Colo. 575, 588 P.2d 869 (1979); City County of Denver v. Waits, 197 Colo. 563, 595 P.2d 248 (1979); People v. Myers, 198 Colo. 295, 599 P.2d 891 (1979); People v. Noble, 635 P.2d 203 (Colo. 1981); People v. Swanson, 638 P.2d 45 (Colo. 1981); People v. Thatcher, 638 P.2d 760 (Colo. 1981); Stroup v. People, 656 P.2d 680 (Colo. 1982); People v. Castro, 657 P.2d 932 (Colo. 1983); People v. Reed, 695 P.2d 806 (Colo. App. 1985), cert. denied, 701 P.2d 603 (Colo. 1985); People v. Manley, 707 P.2d 1021 (Colo. App. 1985); People v. Tyler, 728 P.2d 314 (Colo. 1986).