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C.R.S. 18-9-111



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Statutes current through Chapter 307 of the 2021 Regular Session and effective as of June 23, 2021. The inclusion of the 2021 legislation is not final. It will be final later in 2021 after reconciliation with the official statutes, produced by the Colorado Office of Legislative Legal Services.

[Colorado Revised Statutes Annotated](#) [Title 18. Criminal Code \(Arts. 1 – 26\)](#) [Article 9. Offenses Against Public Peace, Order, and Decency \(Pts. 1 – 3\)](#) [Part 1. Public Peace and Order \(§§ 18-9-101 – 18-9-125\)](#)

Notice

 This section has more than one version with varying effective dates.

18-9-111. Harassment - Kiana Arellano's law

- (1)** A person commits harassment if, with intent to harass, annoy, or alarm another person, he or she:
- (a)** Strikes, shoves, kicks, or otherwise touches a person or subjects him to physical contact; or
 - (b)** In a public place directs obscene language or makes an obscene gesture to or at another person; or
 - (c)** Follows a person in or about a public place; or
 - (d)** Repealed.
 - (e)** Directly or indirectly initiates communication with a person or directs language toward another person, anonymously or otherwise, by telephone, telephone network, data network,

text message, instant message, computer, computer network, computer system, or other interactive electronic medium in a manner intended to harass or threaten bodily injury or property damage, or makes any comment, request, suggestion, or proposal by telephone, computer, computer network, computer system, or other interactive electronic medium that is obscene; or

(f) Makes a telephone call or causes a telephone to ring repeatedly, whether or not a conversation ensues, with no purpose of legitimate conversation; or

(g) Makes repeated communications at inconvenient hours that invade the privacy of another and interfere in the use and enjoyment of another's home or private residence or other private property; or

(h) Repeatedly insults, taunts, challenges, or makes communications in offensively coarse language to, another in a manner likely to provoke a violent or disorderly response.

(1.5) As used in this section, unless the context otherwise requires, "obscene" means a patently offensive description of ultimate sexual acts or solicitation to commit ultimate sexual acts, whether or not said ultimate sexual acts are normal or perverted, actual or simulated, including masturbation, cunnilingus, fellatio, anilingus, or excretory functions.

(2) Harassment pursuant to subsection (1) of this section is a class 3 misdemeanor; except that harassment is a class 1 misdemeanor if the offender commits harassment pursuant to subsection (1) of this section with the intent to intimidate or harass another person, in whole or in part, because of that person's actual or perceived race; color; religion; ancestry; national origin; physical or mental disability, as defined in section 18-9-121 (5)(a); or sexual orientation, as defined in section 18-9-121 (5)(b).

(3) Any act prohibited by paragraph (e) of subsection (1) of this section may be deemed to have occurred or to have been committed at the place at which the telephone call, electronic mail, or other electronic communication was either made or received.

(4) to (6) Repealed.

(7) Paragraph (e) of subsection (1) of this section shall be known and may be cited as "Kiana Arellano's Law".

(8) This section is not intended to infringe upon any right guaranteed to any person by the first amendment to the United States constitution or to prevent the expression of any religious, political, or philosophical views.

History

SOURCE:

Source: **L. 71:** R&RE, p. 469, § 1. **C.R.S. 1963:** § 40-9-111. **L. 76:** (1)(e) R&RE and (1.5) added, p. 561, § § 1, 2, effective May 21. **L. 81:** (1)(e) amended, p. 981, § 6, effective May 13. **L. 90:** (1)(d) repealed, p. 926, § 11, effective March 27. **L. 92:** (2) amended and (4) to (6) added, p. 413, § 1, effective July 1. **L. 93:** (5)(a) amended and (5)(a.5) added, p. 1703, § 1, effective July 1. **L. 94:** IP(1), (1)(g), and (1)(h) amended, p. 1463, § 3, effective July 1; (4) and (5) amended, p. 2018, § 1, effective July 1; (5)(b) amended, p. 1719, § 14, effective July 1. **L. 95:** (5) amended, p. 1258, § 26, effective July 1. **L. 97:** (4)(b)(I) amended, p. 1540, § 4, effective July 1. **L. 99:** (2), (4), and (5) amended, pp. 795, 792, § § 4, 1, effective July 1. **L. 2000:** (1)(e) and (3) amended, p. 693, § 4, effective July 1. **L. 2003:** (5)(b) amended, p. 1014, § 23, effective July 1. **L. 2004:** (5)(a.7) added, p. 636, § 11, effective August 4. **L. 2009:** (1)(e) amended,(HB 09-1132), ch. 341, p. 1793, § 4, effective July 1. **L.**

2010: (4), (5), and (6) repealed,(HB 10-1233), ch. 88, p. 295, § 2, effective August 11. **L.**
2015: (1)(e) amended, and (7) and (8) added,(HB 15-1072), ch. 120, p. 364, § 1, effective
July 1. **L.** **2017:** (2) amended,(HB 17-1188), ch. 185, p. 677, § 1, effective August 9.; **L.**
2021: (SB280), ch. 372, § 1, effective June 28, 2021.

▼ Annotations

State Notes

Notes

Editor's note:

(1) Amendments to subsection (5) in House Bill 94-1045 and House Bill 94-1126 were harmonized.

(2) Subsections (4), (5), and (6) were relocated to part 6 of article 3 of this title in 2010.

Cross references:For provisions concerning harassment by debt collectors or collection agencies, see § 5-16-106.

ANNOTATION

Gravamen of this offenseis the thrusting of an offensive and unwanted communication on one who is unable to ignore it. *People v. Weeks*, 197 Colo. 175, 591 P.2d 91.

Defendant's spitting on the tenant constituted "physical contact" within the meaning of subsection (1)(a).*People v. Peay*, 5 P.3d 398 (Colo. App. 2000).

Subsection (1)(d) held unconstitutionally vague.This subsection violates the due process clause because it contains no limiting standards to define what conduct is prohibited and, conversely, what conduct is permitted. *People v. Norman*, 703 P.2d 1261 (Colo. 1985).

Former subsection (1)(e) was facially overbroad and therefore unconstitutional.*Bolles v. People*, 189 Colo. 394, 541 P.2d 80 (1975).

Subsection (1)(e) held not to be unconstitutionally vaguebecause the statute defined the offense with particularized standards to limit the scope of the offense and the presence in the statute of the words "annoy" and "alarm", by themselves, were not sufficient to render the statute unconstitutionally vague. *People v. McBurney*, 750 P.2d 916 (Colo. 1988).

A true threat is a statement that, considered in context and under the totality of the circumstances, an intended or foreseeable recipient would reasonably perceive as a serious expression of intent to commit an act of unlawful violence.

In determining whether a statement is a true threat, a reviewing court must examine the words used, but it must also consider the context in which the statement was made. Particularly, if the alleged threat is communicated online, the contextual

factors courts should consider include, but are not limited to, (1) the statement's role in a broader exchange, if any, including surrounding events; (2) the medium or platform through which the statement was communicated, including any distinctive conventions or architectural features; (3) the manner in which the statement was conveyed; (4) the relationship between the speaker and recipient; and (5) the subjective reaction of the statement's intended or foreseeable recipient. *People in Interest of R.D.*, 2020 CO 44, 464 P.3d 717.

Subsection (1)(g) is facially overbroad and unconstitutionally vague and there are no limiting constructions that will render it constitutional. *People v. Smith*, 862 P.2d 939 (Colo. 1993).

A defendant lacks standing to challenge the constitutionality of a statute as facially overbroad when the defendant's alleged speech is precisely the type of activity which the telephone harassment statute was designed to regulate. *People v. McBurney*, 750 P.2d 916 (Colo. 1988).

This section and § 18-3-207, which classifies criminal extortion as a felony, address separate and distinct crimes and the classification of such offenses have a rational basis in fact and are reasonably related to legitimate government interests. *People v. Czernyanski*, 786 P.2d 1100 (Colo. 1990).

No equal protection violation for convictions for felony stalking and misdemeanor harassment by computer because the statutory provisions proscribe different although related criminal conduct. *People v. Chase*, 2013 COA 27, 411 P.3d 740.

Subsection (1)(h) is not unconstitutionally vague on its face. *People ex rel. VanMeveren v. County Court*, 191 Colo. 201, 551 P.2d 716 (1976).

The limited scope of the statute brings it within permissible limitations on free expression. *People ex rel. VanMeveren v. County Court*, 191 Colo. 201, 551 P.2d 716 (1976).

When asserted as a defense to a charge of harassment, self-defense is an element-negating traverse rather than an affirmative defense. A person who acts in self-defense cannot simultaneously act with the intent to harass, annoy, or alarm. *Roberts v. People*, 2017 CO 76, 399 P.3d 702.

What subsection (1)(h) prohibits. Subsection (1)(h) prohibits (1) "fighting words", as heretofore defined, addressed to another person, (2) consisting of insults, taunts, or challenges, (3) repeatedly made, and (4) with intent to harass, annoy, or alarm another person. *People ex rel. VanMeveren v. County Court*, 191 Colo. 201, 551 P.2d 716 (1976).

Subsection (1)(h) requires an objective determination: Whether the words when directed to an average person would tend to induce an immediate breach of the peace. *People ex rel. VanMeveren v. County Court*, 191 Colo. 201, 551 P.2d 716 (1976).

“Annoy” in this section means “to irritate with a nettling or exasperating effect”. *Bolles v. People*, 189 Colo. 394, 541 P.2d 80 (1975).

“Alarm” in this section means “to arouse to a sense of danger; to put on the alert; to strike with fear; fill with anxiety as to threaten danger or harm”. *Bolles v. People*, 189 Colo. 394, 541 P.2d 80 (1975).

“Repeatedly” is a word of such common understanding that its meaning is not vague. It simply means in the context of subsection (1)(h) that the defendant uses insulting, taunting, or challenging language more than one time. *People ex rel. VanMeveren v. County Court*, 191 Colo. 201, 551 P.2d 716 (1976).

Use of “obscene” in subsection (1)(e). Although subsection (1)(e) uses the word “obscene” to describe the speech which is prohibited, that subsection is clearly not designed to regulate the purveyance of “obscenity” as that word is used in *Miller v. California* (413 U.S. 15, 93 S. Ct. 2607, 37 L. Ed. 2d 419, reh’g denied, 414 U.S. 881, 94 S. Ct. 26, 38 L. Ed. 2d 128 (1973)). Whatever the requirements of *Miller v. California* may be in a prosecution for alleged violations of law prohibiting published obscenity, those requirements are inapposite when the question is whether the state may prohibit unwanted verbal assaults on a person within the privacy of his own home. *People v. Weeks*, 197 Colo. 175, 591 P.2d 91 (1979).

Evidence sufficient to establish the conviction under subsection (1)(c). Although the evidence could be viewed in two ways, there was sufficient evidence to support the jury’s inferences that the defendant did follow the victim in a public place. *People v. Cross*, 114 P.3d 1 (Colo. App. 2004), rev’d on other grounds, 127 P.3d 71 (Colo. 2006).

Insufficient evidence to establish beyond a reasonable doubt that defendant followed victim where victim testified that defendant saw her when he was walking toward her on the street and that defendant was in the same store and approached her at the clothes rack where she was standing, and especially where there was no evidence that defendant approached the clothes rack with the intent to harass, annoy, or alarm the victim. *People v. Serra*, 2015 COA 130, 361 P.3d 1122.

Applied in

Verner v. Colo., 533 F. Supp. 1109 (D. Colo. 1982); *Derosier v. Balltrip*, 149 F. Supp. 3d 1286 (D. Colo. 2016).



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