

CHAPTER 3-4

UNLAWFUL SEXUAL BEHAVIOR

- 3-4:01 SEXUAL ASSAULT (MEANS OF SUFFICIENT CONSEQUENCE-OVERCOME WILL)
- 3-4:02 SEXUAL ASSAULT (INCAPABLE OF APPRAISING NATURE OF CONDUCT)
- 3-4:03 SEXUAL ASSAULT (ERRONEOUS BELIEF OF MARRIAGE)
- 3-4:04 SEXUAL ASSAULT (VICTIM UNDER FIFTEEN)
- 3-4:05 SEXUAL ASSAULT (VICTIM BETWEEN 15 AND 17 YEARS OF AGE)
- 3-4:06 SEXUAL ASSAULT (VICTIM IN CUSTODY)
- 3-4:07 SEXUAL ASSAULT (TREATMENT OR EXAMINATION)
- 3-4:08 SEXUAL ASSAULT (PHYSICALLY HELPLESS VICTIM)
- 3-4:09 UNLAWFUL SEXUAL CONTACT (LACK OF CONSENT)
- 3-4:10 UNLAWFUL SEXUAL CONTACT (INCAPABLE OF APPRAISING NATURE OF CONDUCT)
- 3-4:11 UNLAWFUL SEXUAL CONTACT (VICTIM PHYSICALLY HELPLESS)
- 3-4:12 UNLAWFUL SEXUAL CONTACT (SUBSTANTIAL IMPAIRMENT)
- 3-4:13 UNLAWFUL SEXUAL CONTACT (VICTIM IN CUSTODY)
- 3-4:14 UNLAWFUL SEXUAL CONTACT (TREATMENT OR EXAMINATION)
- 3-4:15 UNLAWFUL SEXUAL CONTACT (VICTIM UNDER EIGHTEEN-EXPOSURE OF INTIMATE PARTS)
- 3-4:16 UNLAWFUL SEXUAL CONTACT (OBSERVE OR PHOTOGRAPH INTIMATE PARTS)
- 3-4:17 SEXUAL ASSAULT (PHYSICAL FORCE OR VIOLENCE)
- 3-4:18 INTERROGATORY-SEXUAL ASSAULT (THREATS)
- 3-4:19 INTERROGATORY-SEXUAL ASSAULT (RETALIATION)
- 3-4:20 INTERROGATORY-SEXUAL ASSAULT (CAUSING SUBSTANTIAL IMPAIRMENT)

- 3-4:21 INTERROGATORY-SEXUAL ASSAULT (PHYSICALLY HELPLESS)
- 3-4:22 INTERROGATORY-SEXUAL ASSAULT (AIDED OR ABETTED)
- 3-4:23 INTERROGATORY-SEXUAL ASSAULT (SERIOUS BODILY INJURY)
- 3-4:24 INTERROGATORY-SEXUAL ASSAULT (DEADLY WEAPON)
- 3-4:25 INTERROGATORY-UNLAWFUL SEXUAL ASSAULT (FORCE OR VIOLENCE)
- 3-4:26 INTERROGATORY-UNLAWFUL SEXUAL CONTACT (THREATS)
- 3-4:27 INTERROGATORY-UNLAWFUL SEXUAL CONTACT (RETALIATION)
- 3-4:28 SEXUAL ASSAULT ON A CHILD
- 3-4:29 SEXUAL ASSAULT ON A CHILD BY ONE IN A POSITION OF TRUST
- 3-4:30 INTERROGATORY-SEXUAL ASSAULT ON A CHILD (USE OF FORCE)
- 3-4:31 INTERROGATORY-SEXUAL ASSAULT ON A CHILD (THREATS)
- 3-4:32 INTERROGATORY-SEXUAL ASSAULT (RETALIATION)
- 3-4:33 INTERROGATORY-SEXUAL ASSAULT ON A CHILD AS PART OF A PATTERN OF ABUSE
- 3-4:34 AGGRAVATED SEXUAL ASSAULT ON A CLIENT BY A PSYCHOTHERAPIST
- 3-4:35 SEXUAL ASSAULT ON A CLIENT BY A PSYCHOTHERAPIST
- 3-4:36 FAILURE TO REGISTER AS A SEX OFFENDER
- 3-4(1-3) SPECIAL RULES

The instructions in this chapter are designed to cover the crimes in §§ 18-3-401 through -412.5, C.R.S.

**3-4:01 SEXUAL ASSAULT (MEANS OF SUFFICIENT
CONSEQUENCE - OVERCOME WILL)**

The elements of the crime of sexual assault are:

1. That the defendant,
2. in the State of Colorado at or about the date and place charged,
3. knowingly, inflicted [sexual penetration] [sexual intrusion] on a person, and
4. caused submission of the person by means of sufficient consequence reasonably calculated to cause submission against the person's will.
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 sexual assault.

After considering all of the evidence, if you decided 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 sexual assault.

NOTES ON USE

Delete inapplicable bracketed material. This instruction should be used for offenses committed on or after July 1, 2000. When this instruction is used, the definitions of "knowingly", "sexual penetration" or "sexual intrusion" must be given. The "gender bias" instruction shall also be given with this instruction.

SOURCE & AUTHORITY

§18-3-402(1)(a) C.R.S.

COLJI-Crim. No. 12:05 (1993).

CLASSIFICATION OF OFFENSE

F2, if during the sexual assault, the defendant is aided by one or more people or the victim suffers serious bodily injury, if defendant is armed with a deadly weapon, simulates a deadly weapon or represents being armed with a deadly weapon and uses the weapon, article or representation to cause submission of the victim

F3, if victim's submission caused by the application of physical force or violence, threats of serious bodily injury, etc., threats of retaliation or use of intoxicant, or the victim is physically helpless and defendant knows of victim's helplessness

F4, for all other circumstances except where victim is between 15 and 17 and defendant is 10 years older in which case M1

3-4:02 SEXUAL ASSAULT (INCAPABLE OF APPRAISING NATURE OF CONDUCT)

The elements of the crime of sexual assault are:

1. That the defendant,
2. in the State of Colorado at or about the date and place charged,
3. knowingly inflicted [sexual penetration] [sexual intrusion] on a person,
4. with knowledge that the person was incapable of appraising the nature of [his] [her] conduct.
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 sexual assault.

After considering all of the evidence, if you decided 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 sexual assault.

NOTES ON USE

Delete inapplicable bracketed material. This instruction should be used for offenses committed on or after July 1, 2000. When this instruction is used, the definitions of "knowingly", "sexual penetration" or "sexual intrusion" must be given. The "gender bias" instruction shall also be given with this instruction.

People v. Pratt, 170 P.3d 802(Colo. App. 2007)(discussing the element, "incapable of appraising the nature of the victim's conduct")

SOURCE & AUTHORITY

§18-3-402(1)(b) C.R.S.

COLJI-Crim. No. 12:05 (1993).

CLASSIFICATION OF OFFENSE

F2, if during the sexual assault, the defendant is aided by one or more people or the victim suffers serious bodily injury, if defendant is armed with a deadly weapon, simulates a deadly weapon or represents being armed with a deadly weapon and uses the weapon, article or representation to cause submission of the victim

F3, if victim's submission caused by the application of physical force or violence, threats of serious bodily injury, etc., threats of retaliation or use of intoxicant, or the victim is physically helpless and defendant knows of victim's helplessness

F4, for all other circumstances except where victim is between 15 and 17 and defendant is 10 years older in which case M1

3-4:03 SEXUAL ASSAULT (ERRONEOUS BELIEF OF MARRIAGE)

The elements of the crime of sexual assault are:

1. That the defendant,

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

3. knowingly inflicted [sexual penetration] [sexual intrusion] on a person,

4. with knowledge that the person who submitted erroneously, believed the defendant to be the person's spouse.

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 sexual assault.

After considering all of the evidence, if you decided 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 sexual assault.

NOTES ON USE

Delete inapplicable bracketed material. This instruction should be used for offenses committed on or after July 1, 2000. When this instruction is used, the definitions of "sexual penetration" or "sexual intrusion" must be given. The "gender bias" instruction shall also be given with this instruction.

SOURCE & AUTHORITY

§18-3-402(1)(c) C.R.S.

COLJI-Crim. No. 12:05 (1993).

CLASSIFICATION OF OFFENSE

F2, if during the sexual assault, the defendant is aided by one or more people or the victim suffers serious bodily injury, if defendant is armed with a deadly weapon, simulates a deadly weapon or represents being armed with a

deadly weapon and uses the weapon, article or representation to cause submission of the victim

F3, if victim's submission caused by the application of physical force or violence, threats of serious bodily injury, etc., threats of retaliation or use of intoxicant, or the victim is physically helpless and defendant knows of victim's helplessness

F4, for all other circumstances except where victim is between 15 and 17 and defendant is 10 years older in which case M1

3-4:04 SEXUAL ASSAULT (VICTIM UNDER FIFTEEN)

The elements of the crime of sexual assault are:

1. That the defendant
2. in the State of Colorado, at or about the date and place charged,
3. knowingly, inflicted [sexual penetration] [sexual intrusion] on a person, and
4. the person was less than fifteen years of age,
5. the defendant was at least four years older than the person, and
6. the defendant was not the spouse of the person.
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 sexual assault.

After considering all of the evidence, if you decided 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 sexual assault.

NOTES ON USE

Delete inapplicable bracketed material. This instruction should be used for offenses committed on or after July 1, 2000. When this instruction is used, the definitions of "knowingly", "sexual penetration" or "sexual intrusion" must be given. The "gender bias" instruction shall also be given with this instruction.

SOURCE & AUTHORITY

§18-3-402(1)(d) C.R.S.

COLJI-Crim. No. 12:05 (1993).

CLASSIFICATION OF OFFENSE

F2, if during the sexual assault, the defendant is aided by one or more people or the victim suffers serious bodily injury, if defendant is armed with a deadly weapon, simulates a deadly weapon or represents being armed with a deadly weapon and uses the weapon, article or representation to cause submission of the victim

F3, if victim's submission caused by the application of physical force or violence, threats of serious bodily injury, etc., threats of retaliation or use of intoxicant, or the victim is physically helpless and defendant knows of victim's helplessness

F4, for all other circumstances except where victim is between 15 and 17 and defendant is 10 years older in which case M1

3-4:05 SEXUAL ASSAULT (VICTIM BETWEEN 15 AND 17 YEARS OF AGE)

The elements of the crime of sexual assault are:

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

3. knowingly, inflicted [sexual penetration] [sexual intrusion] on a person, and

4. at the time of the commission of the act,

5. the person was more than fifteen years of age, but less than seventeen years of age, and

6. the defendant was at least ten years older than the person, and

7. the defendant was not the spouse of the person.

8. [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 sexual assault.

After considering all of the evidence, if you decided 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 sexual assault.

NOTES ON USE

The definition of "knowingly", "sexual penetration" and/or "sexual intrusion" must be given with this instruction. This offense is a class one misdemeanor unless it is alleged that the defendant engaged in one of the aggravated behaviors as described in §18-3-402(4) or (5), C.R.S.

SOURCE & AUTHORITY

§18-3-402(1)(e), C.R.S.

COLJI-Crim. No. 12-05 (1993).

CLASSIFICATION OF OFFENSE

F2, if during the sexual assault, the defendant is aided by one or more people or the victim suffers serious bodily injury, if defendant is armed with a deadly weapon, simulates a deadly weapon or represents being armed with a deadly weapon and uses the weapon, article or representation to cause submission of the victim

F3, if victim's submission caused by the application of physical force or violence, threats of serious bodily injury, etc., threats of retaliation or use of intoxicant, or the victim is physically helpless and defendant knows of victim's helplessness

3-4:06 SEXUAL ASSAULT (VICTIM IN CUSTODY)

The elements of the crime of sexual assault are:

1. That the defendant,
2. in the State of Colorado at or about the date and place charged,
3. knowingly inflicted [sexual penetration] [sexual intrusion] on a person, and
4. the person was [in custody of law] [detained in a hospital or other institution], and
5. the defendant had supervisory or disciplinary authority over the person, and
6. used the position of authority to coerce the person to submit, and
7. the [sexual penetration] [sexual intrusion] was not incident to a lawful search.
8. [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 sexual assault.

After considering all of the evidence, if you decided 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 sexual assault.

NOTES ON USE

Delete inapplicable bracketed material. This instruction should be used for offenses committed on or after July 1, 2000. When this instruction is used, the definitions of "knowingly", "sexual penetration" or "sexual intrusion" must be given. The "gender bias" instruction shall also be given with this instruction.

SOURCE & AUTHORITY

§18-3-402(1)(f), C.R.S.

COLJI-Crim. 12:05 (1993).

CLASSIFICATION OF OFFENSE

F2, if during the sexual assault, the defendant is aided by one or more people or the victim suffers serious bodily injury, if defendant is armed with a deadly weapon, simulates a deadly weapon or represents being armed with a deadly weapon and uses the weapon, article or representation to cause submission of the victim

F3, if victim's submission caused by the application of physical force or violence, threats of serious bodily injury, etc., threats of retaliation or use of intoxicant, or the victim is physically helpless and defendant knows of victim's helplessness

3-4:07 SEXUAL ASSAULT (TREATMENT OR EXAMINATION)

The elements of the crime of sexual assault are:

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

3. while purporting to offer a medical service,
4. knowingly inflicted [sexual penetration] [sexual intrusion] on a person, and
5. the defendant engaged in treatment or examination of the person [for other than bona fide medical purposes.] [in a manner substantially inconsistent with reasonable medical practices.]
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 sexual assault.

After considering all of the evidence, if you decided 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 sexual assault.

NOTES ON USE

Delete inapplicable bracketed material. This instruction should be used for offenses committed on or after July 1, 2000. When this instruction is used, the definitions of "knowingly", "sexual penetration" or "sexual intrusion" must be given. The "gender bias" instruction shall also be given with this instruction.

SOURCE & AUTHORITY

§18-3-402(1)(g), C.R.S.

CLASSIFICATION OF OFFENSE

F2, if during the sexual assault, the defendant is aided by one or more people or the victim suffers serious bodily injury, if defendant is armed with a deadly weapon, simulates a deadly weapon or represents being armed with a deadly weapon and uses the weapon, article or representation to cause submission of the victim

F3, if victim's submission caused by the application of physical force or violence, threats of serious bodily injury, etc., threats of retaliation or use of intoxicant, or the victim is physically helpless and defendant knows of victim's helplessness

3-4:08 SEXUAL ASSAULT (PHYSICALLY HELPLESS VICTIM)

The elements of the crime of sexual assault are:

1. That the defendant,
2. in the State of Colorado at or about the date and place charged,
3. knowingly inflicted [sexual penetration] [sexual intrusion] on a person, and
4. that person was physically helpless, and
5. the defendant knew that person was physically helpless and did not consent
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 sexual assault.

After considering all of the evidence, if you decided 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 sexual assault.

NOTES ON USE

Delete inapplicable bracketed material. This instruction should be used for offenses committed on or after July 1, 2000. When this instruction is used, the definitions of "knowingly", "physically helpless", "sexual penetration" or "sexual intrusion" must be given. The "gender bias" instruction shall also be given with this instruction.

SOURCE & AUTHORITY

§18-3-402(1)(h), C.R.S.

CLASSIFICATION OF OFFENSE

F2, if during the sexual assault, the defendant is aided by one or more people or the victim suffers serious bodily injury, if defendant is armed with a deadly weapon, simulates a deadly weapon or represents being armed with a deadly weapon and uses the weapon, article or representation to cause submission of the victim

F3, if victim's submission caused by the application of physical force or violence, threats of serious bodily injury, etc., threats of retaliation or use of intoxicant, or the victim is physically helpless and defendant knows of victim's helplessness

3-4:09 UNLAWFUL SEXUAL CONTACT (LACK OF CONSENT)

The elements of the crime of unlawful sexual contact are:

1. That the defendant,
2. in the State of Colorado at or about the date and place charged,
3. knowingly subjected a person to sexual contact,
4. with knowledge that the person did not consent.
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 unlawful sexual contact.

After considering all of the evidence, if you decided 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 sexual contact.

NOTES ON USE

Delete inapplicable bracketed material. When this instruction is used, the applicable definitions of "knowingly", "sexual contact" and "intimate parts" must be given. The "gender bias" instruction shall be given with this instruction. This instruction should be used for offenses committed on or after July 1, 2000. HB00-1137 changed the title of the statute from "Third Degree Sexual Assault" to "Unlawful Sexual Contact". For offenses committed prior to July 1, 2000, the term "Sexual Assault in the Third Degree" should substitute "Unlawful Sexual Contact".

Additional jury findings with regard to the use of force, threats, or intimidation as defined in §18-3-402(4)(a), (b) or (c), C.R.S. may be required to determine the level of the offense and sentence if the defendant is so charged.

SOURCE & AUTHORITY

§18-3-404(1)(a), C.R.S.

COLJI-Crim. No. 12:07 (1993).

CLASSIFICATION OF OFFENSE

F4, if force, threats, or intimidation under § 18-3-402(4), C.R.S.

M1 otherwise

3-4:10 UNLAWFUL SEXUAL CONTACT (INCAPABLE OF APPRAISING NATURE OF CONDUCT)

The elements of the crime of unlawful sexual contact are:

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

3. knowingly subjected a person to any sexual contact,
4. with knowledge that the person was incapable of appraising the nature of [his] [her] conduct,
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 unlawful sexual contact.

After considering all of the evidence, if you decided 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 sexual contact.

NOTES ON USE

Delete inapplicable bracketed material. When this instruction is used, the applicable definitions of "knowingly", "sexual contact" and "intimate parts" must be given. The "gender bias" instruction shall be given with this instruction. This instruction should be used for offenses committed on or after July 1, 2000. HB00-1137 changed the title of the statute from "Third Degree Sexual Assault" to "Unlawful Sexual Contact". For offenses committed prior to July 1, 2000, the term "Sexual Assault in the Third Degree" should substitute "Unlawful Sexual Contact".

Additional jury findings with regard to the use of force, threats, or intimidation as defined in §18-3-402(4)(a), (b) or (c), C.R.S. may be required to determine the level of the offense and sentence if the defendant is so charged.

SOURCE & AUTHORITY

§18-3-404(1)(b), C.R.S.

COLJI-Crim. No. 12:07 (1993).

CLASSIFICATION OF OFFENSE

F4, if force, threats, or intimidation under § 18-3-402(4), C.R.S.

M1 otherwise

3-4:11 UNLAWFUL SEXUAL CONTACT (VICTIM PHYSICALLY HELPLESS)

The elements of the crime of unlawful sexual contact are:

1. That the defendant,
2. in the State of Colorado at or about the date and place charged,
3. knowingly subjected a person to any sexual contact, and
4. the person was physically helpless, and
5. the defendant knew the person was physically helpless and had not consented,
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 sexual contact.

After considering all of the evidence, if you decided 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 sexual contact.

NOTES ON USE

Delete inapplicable bracketed material. When this instruction is used, the applicable definitions of "knowingly", "sexual contact", "intimate parts" and "physically helpless" must be given. The "gender bias" instruction shall be given with this instruction. This

instruction should be used for offenses committed on or after July 1, 2000. HB00-1137 changed the title of the statute from "Third Degree Sexual Assault" to "Unlawful Sexual Contact". For offenses committed prior to July 1, 2000, the term "Sexual Assault in the Third Degree" should substitute "Unlawful Sexual Contact".

Additional jury findings with regard to the use of force, threats, or intimidation as defined in §18-3-402(4)(a), (b) or (c), C.R.S. may be required to determine the level of the offense and sentence if the defendant is so charged.

SOURCE & AUTHORITY

§18-3-404(1)(c), C.R.S.

COLJI-Crim. No. 12:07 (1993).

CLASSIFICATION OF OFFENSE

F4, if force, threats, or intimidation under § 18-3-402(4), C.R.S.

M1 otherwise

3-4:12 UNLAWFUL SEXUAL CONTACT (SUBSTANTIAL IMPAIRMENT)

The elements of the crime of unlawful sexual contact are:

1. That the defendant,
2. in the State of Colorado at or about the date and place charged,
3. knowingly subjected a person to any sexual contact, and
4. substantially impaired the person's power to appraise or control [his] [her] conduct,

5. by employing without the person's consent, any drug, intoxicant, or other means, for the purpose of causing submission

6. [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 sexual contact.

After considering all of the evidence, if you decided 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 sexual contact.

NOTES ON USE

Delete inapplicable bracketed material. When this instruction is used, the applicable definitions of "knowingly", "sexual contact" and "intimate parts" must be given. The "gender bias" instruction shall be given with this instruction. This instruction should be used for offenses committed on or after July 1, 2000. HB00-1137 changed the title of the statute from "Third Degree Sexual Assault" to "Unlawful Sexual Contact". For offenses committed prior to July 1, 2000, the term "Sexual Assault in the Third Degree" should substitute "Unlawful Sexual Contact".

Additional jury findings with regard to the use of force, threats, or intimidation as defined in §18-3-402(4)(a), (b) or (c), C.R.S. may be required to determine the level of the offense and sentence if the defendant is so charged.

SOURCE & AUTHORITY

§18-3-404(1)(d), C.R.S.

COLJI-Crim. No. 12:07 (1993).

CLASSIFICATION OF OFFENSE

F4, if force, threats, or intimidation under § 18-3-402(4), C.R.S.

M1 otherwise

3-4:13 UNLAWFUL SEXUAL CONTACT (VICTIM IN CUSTODY)

The elements of the crime of unlawful sexual contact are:

1. That the defendant,
2. in the State of Colorado at or about the date and place charged,
3. knowingly subjected a person to any sexual contact, and
4. the person was [in custody of law] [detained in a hospital or other institution], and
5. the defendant had supervisory or disciplinary authority over the person, and
6. used the position of authority to coerce the person to submit, and
7. the sexual contact was not incident to a lawful search,
8. [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 sexual assault.

After considering all of the evidence, if you decided 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 sexual assault.

NOTES ON USE

Delete inapplicable bracketed material. When this instruction is used, the applicable definitions of "knowingly", "sexual contact" and "intimate parts" must be given. The "gender bias" instruction shall be given with this instruction. This instruction should be used for offenses committed on or after July 1, 2000. HB00-1137 changed the title of the statute from "Third Degree Sexual Assault" to "Unlawful Sexual Contact". For offenses committed prior to July 1, 2000, the term "Sexual Assault in the Third Degree" should substitute "Unlawful Sexual Contact".

Additional jury findings with regard to the use of force, threats, or intimidation as defined in §18-3-402(4)(a), (b) or (c), C.R.S. may be required to determine the level of the offense and sentence if the defendant is so charged.

SOURCE & AUTHORITY

§18-3-404(1)(f), C.R.S.

COLJI-Crim. No. 12:07 (1993).

CLASSIFICATION OF OFFENSE

F4, if force, threats, or intimidation under § 18-3-402(4), C.R.S.

M1 otherwise

3-4:14 UNLAWFUL SEXUAL CONTACT (TREATMENT OR EXAMINATION)

The elements of the crime of unlawful sexual contact are:

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

3. knowingly subjected a person to sexual contact, and

4. engaged in treatment or examination of the person [for other than bona fide medical purposes,] [in a manner substantially inconsistent with reasonable medical practices,]

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 sexual assault.

After considering all of the evidence, if you decided 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 sexual assault.

NOTES ON USE

Delete inapplicable bracketed material. When this instruction is used, the applicable definitions of "knowingly", "sexual contact" and "intimate parts" must be given. The "gender bias" instruction shall be given with this instruction. This instruction should be used for offenses committed on or after July 1, 2000. HB00-1137 changed the title of the statute from "Third Degree Sexual Assault" to "Unlawful Sexual Contact". For offenses committed prior to July 1, 2000, the term "Sexual Assault in the Third Degree" should substitute "Unlawful Sexual Contact".

Additional jury findings with regard to the use of force, threats, or intimidation as defined in §18-3-402(4)(a), (b) or (c), C.R.S. may be required to determine the level of the offense and sentence if the defendant is so charged.

SOURCE & AUTHORITY

§18-3-404(1)(g), C.R.S.

COLJI-Crim. No. 12:07 (1993).

CLASSIFICATION OF OFFENSE

F4

**3-4:15 UNLAWFUL SEXUAL CONTACT (VICTIM UNDER
EIGHTEEN - EXPOSURE OF INTIMATE PARTS)**

The elements of the crime of unlawful sexual contact are:

1. That the defendant,
2. in the State of Colorado at or about the date and place charged,
3. knowingly induced or coerced a child under eighteen years of age, by (insert means of coercion or inducement as set forth in 18-3-402) [to expose the child's intimate parts,] [to engage in sexual contact, sexual intrusion, or sexual penetration with another person,]
4. for the purpose of the defendant's own sexual gratification.
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 unlawful sexual contact.

After considering all of the evidence, if you decided 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 sexual contact.

NOTES ON USE

Delete inapplicable bracketed material. When this instruction is used, the applicable definitions of "knowingly", "sexual contact", "intimate parts", "sexual penetration" or "sexual intrusion" should be given when appropriate. The "gender bias" instruction shall be given

with this instruction. This instruction should be used for offenses committed on or after July 1, 2000. For offenses committed prior to July 1, 2000, the term "Sexual Assault in the Third Degree" should be substituted for "Unlawful Sexual Contact".

SOURCE & AUTHORITY

§18-3-404(1.5), C.R.S.

COLJI-Crim. No. 12:08.7 (1993).

CLASSIFICATION OF OFFENSE

F4

3-4:16 UNLAWFUL SEXUAL CONTACT (OBSERVE OR PHOTOGRAPH INTIMATE PARTS)

The elements of the crime of unlawful sexual contact are:

1. That the defendant,
2. in the State of Colorado at or about the date and place charged,
3. knowingly observed or photographed another person's intimate parts,
4. without the person's consent,
5. for the purpose of the defendant's sexual gratification, and
6. the observation or photography occurs in a situation where the person observed or photographed had a reasonable expectation of privacy.
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 sexual contact (observe or photograph intimate parts).

After considering all of the evidence, if you decided 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 sexual contact (observe or photograph intimate parts).

NOTES ON USE

Delete inapplicable bracketed material. When this instruction is used, the applicable definitions of "knowingly", "photograph" and "intimate parts" should be given. The "gender bias" instruction shall be given with this instruction. This instruction should be used for offenses committed on or after July 1, 2000. HB00-1137 changed the title of the statute from "Third Degree Sexual Assault" to "Unlawful Sexual Contact". For offenses committed prior to July 1, 2000, the term "Sexual Assault in the Third Degree" should substitute "Unlawful Sexual Contact".

Additional jury findings with regard to the use of force, threats, or intimidation as defined in §18-3-402(4)(a), (b) or (c), C.R.S. may be required to determine the level of the offense and sentence if the defendant is so charged.

SOURCE & AUTHORITY

§18-3-404(1.7), C.R.S.

COLJI-Crim. No. 12:08.5 (1993).

CLASSIFICATION OF OFFENSE

F4, if force, threats, or intimidation under § 18-3-402(4), C.R.S.

M1 otherwise

3-4:17 INTERROGATORY - SEXUAL ASSAULT (PHYSICAL FORCE OR VIOLENCE)

If you find the defendant not guilty of sexual assault, you should disregard this instruction and fill out the verdict form reflecting your not guilty verdict. If, however, you find the defendant guilty of sexual assault, you should fill out the verdict form reflecting your guilty verdict and then answer the following question:

Did the defendant cause submission of the person through the actual application of physical force or physical violence? (Yes or No.)

It is the prosecution's burden to prove this element beyond a reasonable doubt.

After considering all the evidence, if you decide the prosecution has proven this element beyond a reasonable doubt, you should indicate "Yes" on the verdict form that has been provided. This finding must be unanimous.

After considering all the evidence, if you do not unanimously find the prosecution has proven [this element] [any one or more of these elements] beyond a reasonable doubt, you should indicate "No" on the verdict form that has been provided.

SOURCE & AUTHORITY

§18-3-402(4)(a), C.R.S.

People v. Holwuttle, 155 P.3d 447 (Colo. App. 2006)(definitions of physical force and violence)

People v. Santana-Medrano, 165 P.3d 804 (Colo. App.2006)(knowingly not required for physical force or violence interrogatory because it is supplied by finding that the defendant knowingly caused the victim to submit by means of sufficient consequence.)

3-4:18 INTERROGATORY - SEXUAL ASSAULT (THREATS)

If you find the defendant not guilty of sexual assault, you should disregard this instruction and fill out

the verdict form reflecting your not guilty verdict. If, however, you find the defendant guilty of sexual assault, you should fill out the verdict form reflecting your guilty verdict and then answer the following questions:

1. Did the defendant cause submission of the person by threat of imminent death, serious bodily injury, extreme pain, or kidnapping to be inflicted on anyone, and

2. did the person submitting believe the defendant had the present ability to execute the threat(s)?

It is the prosecution's burden to prove these elements beyond a reasonable doubt.

After considering all the evidence, if you decide the prosecution has proven both these elements beyond a reasonable doubt, you should indicate "Yes" on the verdict form that has been provided. This finding must be unanimous.

After considering all the evidence, if you do not unanimously find the prosecution has proven [this element] [any one or more of these elements] beyond a reasonable doubt, you should indicate "No" on the verdict form that has been provided.

NOTES ON USE

When this instruction is used, the applicable definitions of "serious bodily injury" and "kidnapping" should be given.

SOURCE & AUTHORITY

§18-3-402(4)(b), C.R.S.

3-4:19 INTERROGATORY - SEXUAL ASSAULT (RETALIATION)

If you find the defendant not guilty of sexual assault, you should disregard this instruction and fill out the verdict form reflecting your not guilty verdict. If, however, you find the defendant guilty of sexual assault, you should fill out the verdict form reflecting your guilty verdict and then answer the following questions:

1. Did the defendant cause submission of the person by threatening to retaliate in the future against any person, and

2. Did the person submitting reasonably believe that the defendant would execute (this)(these) threat(s)?

It is the prosecution's burden to prove these elements beyond a reasonable doubt.

After considering all the evidence, if you decide the prosecution has proven both these elements beyond a reasonable doubt, you should indicate "Yes" on the verdict form that has been provided. This finding must be unanimous.

After considering all the evidence, if you do not unanimously find the prosecution has proven [this element] [any one or more of these elements] beyond a reasonable doubt, you should indicate "No" on the verdict form that has been provided.

NOTES ON USE

When this instruction is used the applicable definitions of "retaliate", "serious bodily injury" and the elements of "kidnapping" should be given.

SOURCE & AUTHORITY

§18-3-402(4)(c), C.R.S.

3-4:20 INTERROGATORY - SEXUAL ASSAULT (CAUSING SUBSTANTIAL IMPAIRMENT)

If you find the defendant not guilty of sexual assault, you should disregard this instruction and fill out the verdict form reflecting your not guilty verdict. If, however, you find the defendant guilty of sexual assault, you should fill out the verdict form reflecting your guilty verdict and then answer the following question:

Did the defendant substantially impair the person's power to appraise or control the person's conduct by employing, without the person's consent, any drug,

intoxicant, or other means for the purpose of causing submission? (Yes or No)

It is the prosecution's burden to prove this element beyond a reasonable doubt.

After considering all the evidence, if you decide the prosecution has proven this element beyond a reasonable doubt, you should indicate "Yes" on the verdict form that has been provided. This finding must be unanimous.

After considering all the evidence, if you do not unanimously find the prosecution has proven [this element] [any one or more of these elements] beyond a reasonable doubt, you should indicate "No" on the verdict form that has been provided.

SOURCE & AUTHORITY

§18-3-402(4)(d), C.R.S.

3-4:21 INTERROGATORY - SEXUAL ASSAULT (PHYSICALLY HELPLESS)

If you find the defendant not guilty of sexual assault, you should disregard this instruction and fill out the verdict form reflecting your not guilty verdict. If, however, you find the defendant guilty of sexual assault, you should fill out the verdict form reflecting your guilty verdict and then answer the following questions:

1. Was the person physically helpless, and
2. did the defendant know that the person was physically helpless and did not consent?

It is the prosecution's burden to prove these elements beyond a reasonable doubt.

After considering all the evidence, if you decide the prosecution has proven these elements beyond a reasonable doubt, you should indicate "Yes" on the verdict form that has been provided. This finding must be unanimous.

After considering all the evidence, if you do not unanimously find the prosecution has proven [this element] [any one or more of these elements] beyond a reasonable doubt, you should indicate "No" on the verdict form that has been provided.

NOTES ON USE

When this instruction is used, the definitions of "consent" and "physically helpless" must be given. See §§18-3-401(1.5) and (3), C.R.S. This instruction should be used for offenses committed on or after July 1, 2000, but only for offenses before July 1, 2002.

SOURCE & AUTHORITY

§18-3-402(4)(e), C.R.S.

3-4:22 INTERROGATORY - SEXUAL ASSAULT (AIDED OR ABETTED)

If you find the defendant not guilty of sexual assault, you should disregard this instruction and fill out the verdict form reflecting your not guilty verdict. If, however, you find the defendant guilty of sexual assault, you should fill out the verdict form reflecting your guilty verdict and then answer the following question:

Was the defendant aided or abetted by one or more persons in the commission of the sexual assault? (Yes or No)

It is the prosecution's burden to prove this element beyond a reasonable doubt.

After considering all the evidence, if you decide the prosecution has proven this element beyond a reasonable doubt, you should indicate "Yes" on the verdict form that has been provided. This finding must be unanimous.

After considering all the evidence, if you do not unanimously find the prosecution has proven [this element]

[any one or more of these elements] beyond a reasonable doubt, you should indicate "No" on the verdict form that has been provided.

NOTES ON USE

This instruction should be used for offenses committed on or after July 1, 2000.

SOURCE & AUTHORITY

§18-3-402(5)(a)(I), C.R.S.

3-4:23 INTERROGATORY - SEXUAL ASSAULT (SERIOUS BODILY INJURY)

If you find the defendant not guilty of sexual assault, you should disregard this instruction and fill out the verdict form reflecting your not guilty verdict. If, however, you find the defendant guilty of sexual assault, you should fill out the verdict form reflecting your guilty verdict and then answer the following question:

Did the person suffer "serious bodily injury" resulting from the commission of the sexual assault? (Yes or No)

It is the prosecution's burden to prove this element beyond a reasonable doubt.

After considering all the evidence, if you decide the prosecution has proven this element beyond a reasonable doubt, you should indicate "Yes" on the verdict form that has been provided. This finding must be unanimous.

After considering all the evidence, if you do not unanimously find the prosecution has proven [this element] [any one or more of these elements] beyond a reasonable doubt, you should indicate "No" on the verdict form that has been provided.

NOTES ON USE

When this instruction is used, the definition of "serious bodily injury" must be given. This instruction should be used for offenses committed on or after July 1, 2000.

SOURCE & AUTHORITY

§18-3-402(5)(a)(II), C.R.S.

3-4:24 INTERROGATORY - SEXUAL ASSAULT (DEADLY WEAPON)

If you find the defendant not guilty of sexual assault, you should disregard this instruction and fill out the verdict form reflecting your not guilty verdict. If, however, you find the defendant guilty of sexual assault, you should fill out the verdict form reflecting your guilty verdict and then answer the following questions:

1. Was the defendant armed with a deadly weapon, or an article used or fashioned in a manner to cause a reasonable person to believe the article is a deadly weapon, or did the defendant represent, verbally or otherwise, that he/she was armed with a deadly weapon, and

2. Did the defendant use the deadly weapon, article or representation to cause submission of the person?

It is the prosecution's burden to prove these elements beyond a reasonable doubt.

After considering all the evidence, if you decide the prosecution has proven both these elements beyond a reasonable doubt, you should indicate "Yes" on the verdict form that has been provided. This finding must be unanimous.

After considering all the evidence, if you do not unanimously find the prosecution has proven [this element] [any one or more of these elements] beyond a reasonable doubt, you should indicate "No" on the verdict form that has been provided.

NOTES ON USE

When this instruction is used, the definition of "deadly weapon" must be given. This instruction should be used for offenses committed on or after July 1, 2000.

SOURCE & AUTHORITY

§18-3-402(5)(a)(III), C.R.S.

3-4:25 INTERROGATORY - UNLAWFUL SEXUAL CONTACT (FORCE OR VIOLENCE)

If you find the defendant not guilty of unlawful sexual contact, you should disregard this instruction and fill out the verdict form reflecting your not guilty verdict. If, however, you find the defendant guilty of unlawful sexual contact, you should fill out the verdict form reflecting your guilty verdict and then answer the following question:

Did the defendant cause submission of the person through the actual application of physical force or physical violence? (Yes or No)

It is the prosecution's burden to prove this element beyond a reasonable doubt.

After considering all the evidence, if you decide the prosecution has proven this element beyond a reasonable doubt, you should indicate "Yes" on the verdict form that has been provided. This finding must be unanimous.

After considering all the evidence, if you do not unanimously find the prosecution has proven [this element] [any one or more of these elements] beyond a reasonable doubt, you should indicate "No" on the verdict form that has been provided.

SOURCE & AUTHORITY

§18-3-404(2), C.R.S.

**3-4:26 INTERROGATORY - UNLAWFUL SEXUAL CONTACT
(THREATS)**

If you find the defendant not guilty of unlawful sexual contact, you should disregard this instruction and fill out the verdict form reflecting your not guilty verdict. If, however, you find the defendant guilty of unlawful sexual contact, you should fill out the verdict form reflecting your guilty verdict and then answer the following questions:

1. Did the defendant cause submission of the person by threat of imminent death, serious bodily injury, extreme pain, or kidnapping to be inflicted on anyone, and

2. Did the person submitting believe the defendant had the present ability to execute the threat(s)?

It is the prosecution's burden to prove these elements beyond a reasonable doubt.

After considering all the evidence, if you decide the prosecution has proven both these elements beyond a reasonable doubt, you should indicate "Yes" on the verdict form that has been provided. This finding must be unanimous.

After considering all the evidence, if you do not unanimously find the prosecution has proven [this element] [any one or more of these elements] beyond a reasonable doubt, you should indicate "No" on the verdict form that has been provided.

NOTES ON USE

When this instruction is used the applicable definitions of "serious bodily injury" and "kidnapping" should be given.

SOURCE & AUTHORITY

§18-3-404(2), C.R.S.

**3-4:27 INTERROGATORY - UNLAWFUL SEXUAL CONTACT
(RETALIATION)**

If you find the defendant not guilty of unlawful sexual contact, you should disregard this instruction and fill out the verdict form reflecting your not guilty verdict. If, however, you find the defendant guilty of unlawful sexual contact, you should fill out the verdict form reflecting your guilty verdict and then answer the following questions:

1. Did the defendant cause submission of the person by threatening to retaliate in the future against any person, and

2. Did the person submitting reasonably believe that the defendant would execute (this)(these) threat(s)?

It is the prosecution's burden to prove these elements beyond a reasonable doubt.

After considering all the evidence, if you decide the prosecution has proven both these elements beyond a reasonable doubt, you should indicate "Yes" on the verdict form that has been provided. This finding must be unanimous.

After considering all the evidence, if you do not unanimously find the prosecution has proven [this element] [any one or more of these elements] beyond a reasonable doubt, you should indicate "No" on the verdict form that has been provided.

NOTES ON USE

When this instruction is used the applicable definitions of "retaliate", "serious bodily injury" and the elements of "kidnapping" should be given.

SOURCE & AUTHORITY

§18-3-404(2), C.R.S.

3-4:28 SEXUAL ASSAULT ON A CHILD

The elements of the crime of Sexual Assault on a Child are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. knowingly subjected another person that was not [his][her] spouse to any sexual contact, and
4. that person was less than fifteen years of age, and
5. the defendant was four years older than the person,
6. [without the affirmative defense in instruction number _____.]

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

After considering all of 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 Sexual Assault on a Child.

NOTES ON USE

Delete inapplicable bracketed material. Definitions of "knowingly", "sexual contact" and "intimate parts" must be given. Additional interrogatories may be necessary if it is alleged that force or threats were used or that there was a pattern of abuse. The sexual assault on a child statute only requires one culpable mental state because it is a general intent crime, although sexual contact requires that the touching be done for a specific purpose. *People v. Vigil*, 127 P.3d 916 (Colo. 2006); *Woellhaf v. People*, 105 P.2d 209 (Colo. 2005) (merged all sexual contact into one unit of prosecution to avoid double jeopardy prohibition)

SOURCE & AUTHORITY

§18-3-405, C.R.S.

COLJI-Crim. No. 12:09 (1983).

CLASSIFICATION OF OFFENSE

F3, where use of force threats or pattern of abuse

F4, otherwise

3-4:29 SEXUAL ASSAULT ON A CHILD BY ONE IN A POSITION OF TRUST

The elements of the crime of Sexual Assault on a Child by One in a Position of Trust are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. knowingly subjected another person that was not [his][her] spouse to any sexual contact, and
4. that person was less than [fifteen years of age][eighteen years of age], and
5. the defendant was in a position of trust with respect to the victim,
6. [without the affirmative defense in instruction number _____.]

After considering all of the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of Sexual Assault on a Child by One in a Position of Trust.

After considering all of 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 Sexual Assault on a Child by One in a Position of Trust.

NOTES ON USE

Delete inapplicable bracketed material. Definitions of "knowingly", "sexual contact", "intimate parts" and "position of trust" must be given. When the offense charged involves allegations of a pattern of sexual abuse, COLJI-Crim. No. 3-4:33 should also be given.

When the offense is charged for a victim between fifteen years of age and eighteen years of age the affirmative defense in §18-1-503.5, C.R.S. may apply.

The sexual assault on a child statute only requires one culpable mental state because it is a general intent crime, even though sexual contact requires that the touching be done for a specific purpose. *People v. Vigil*, 127 P.3d 916 (Colo. 2006);

Woellhaf v. People, 105 P.2d 209 (Colo. 2005) (merged all sexual contact into one unit of prosecution to avoid double jeopardy prohibition);

People v. Johnson, 167 P.3d 207 (Colo. App. 2007) (position of trust must coincide with the unlawful act, behavior after the trust position terminates not covered by statute).

SOURCE & AUTHORITY

§18-3-405.3, C.R.S.

COLJI-Crim. No. 12:11 and 12:11.1 (1993).

CLASSIFICATION OF OFFENSE

F3, if victim less than 15 or the defendant is convicted of a pattern of sexual abuse.

F4, if victim 15 to 18

**3-4:30 INTERROGATORY - SEXUAL ASSAULT ON A CHILD
(USE OF FORCE)**

If you find the defendant not guilty of sexual assault on a child, you should disregard this instruction and fill out the verdict form reflecting your not guilty verdict. If, however, you find the defendant guilty of sexual assault on a child, you should fill out the verdict form reflecting your guilty verdict, and then answer the following question:

Did the defendant apply force against the child in order to accomplish or facilitate the sexual contact? (Yes or No)

It is the prosecution's burden to prove this element beyond a reasonable doubt.

After considering all the evidence, if you decide the prosecution has proven this element beyond a reasonable doubt, you should indicate "Yes" on the verdict form that has been provided. This finding must be unanimous.

After considering all the evidence, if you do not unanimously find the prosecution has proven [this element] [any one or more of these elements] beyond a reasonable doubt, you should indicate "No" on the verdict form that has been provided.

NOTES ON USE

This instruction should be given when the defendant is charged with sexual assault on a child and it is alleged force was used to accomplish the sexual contact.

SOURCE & AUTHORITY

§18-3-405(2)(a), C.R.S.

**3-4:31 INTERROGATORY - SEXUAL ASSAULT ON A CHILD
(THREATS)**

If you find the defendant not guilty of sexual assault on a child, you should disregard this instruction and fill out the verdict form reflecting your not guilty verdict. If, however, you find the defendant guilty of sexual assault on a child, you should fill out the verdict form reflecting your guilty verdict, then answer the following questions:

1. Did the defendant accomplish or facilitate the sexual contact by threat of imminent death, serious bodily injury, extreme pain, or kidnapping to be inflicted on anyone? (Yes or No)

2. Did the child believe the defendant had the present ability to execute the threat(s)? (Yes or No)

It is the prosecution's burden to prove these two elements beyond a reasonable doubt.

After considering all the evidence, if you decide the prosecution has proven both elements beyond a reasonable doubt, you should indicate "Yes" on the verdict form that has been provided. This finding must be unanimous.

After considering all the evidence, if you do not unanimously find the prosecution has proven [this element] [any one or more of these elements] beyond a reasonable doubt, you should indicate "No" on the verdict form that has been provided.

NOTES ON USE

This instruction should be used when the defendant is charged with Sexual Assault on a Child and it is also alleged the defendant used the threats of imminent death, serious bodily injury, extreme pain, or kidnapping to accomplish the sexual contact. When this instruction is used the applicable definitions of "serious bodily injury" and the elements of "kidnapping" should be given.

SOURCE & AUTHORITY

§18-3-405(2)(b), C.R.S.

3-4:32 INTERROGATORY - SEXUAL ASSAULT (RETALIATION)

If you find the defendant not guilty of sexual assault on a child, you should disregard this instruction and fill out the verdict form reflecting your not guilty verdict. If, however, you find the defendant guilty of sexual assault on a child, you should fill out the verdict form reflecting your guilty verdict, and then answer the following questions:

1. Did the defendant accomplish or facilitate the sexual contact by threatening to retaliate in the future against any person? (yes or no)

2. Did the child reasonably believe that the defendant would execute (this)(these) threat(s)? (yes or no)

It is the prosecution's burden to prove these element beyond a reasonable doubt.

After considering all the evidence, if you decide the prosecution has proven these elements beyond a reasonable doubt, you should indicate "Yes" on the verdict form that has been provided. This finding must be unanimous.

After considering all the evidence, if you do not unanimously find the prosecution has proven [this element] [any one or more of these elements] beyond a reasonable doubt, you should indicate "No" on the verdict form that has been provided.

NOTES ON USE

This instruction should be used when the defendant is charged with Sexual Assault on a Child and it is also alleged the defendant threatened to retaliate in the future to accomplish or facilitate the sexual contact. When this instruction is used the applicable definitions of "retaliate", "serious bodily injury" and "kidnapping" should be given.

SOURCE & AUTHORITY

§18-3-405(2)(c), C.R.S.

**3-4:33 INTERROGATORY - SEXUAL ASSAULT ON A
CHILD AS PART OF A PATTERN OF ABUSE**

If you find the defendant not guilty of Sexual Assault on a Child, as defined in count _____, you should disregard this instruction and fill out the verdict form reflecting your not guilty verdict. If, however, you find the defendant guilty of Sexual Assault on a Child, as defined in count _____, you should fill out the verdict form reflecting your guilty verdict, and then answer the following question:

Did the defendant commit Sexual Assault on a Child as a part of a pattern of sexual abuse? (yes or no)

In order to find that the defendant committed sexual assault on a child as part of a pattern of abuse, you must unanimously find that the prosecution has proven beyond a reasonable doubt the following elements:

1. The defendant committed at least one other act of sexual contact upon the same child named in count _____ .

2. This other act of sexual contact satisfied all of the elements of sexual assault on a child as defined in count _____, to wit:

a. That the defendant,

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

c. knowingly subjected (name of victim) that was not [his][her] spouse to any sexual contact, as defined in instruction _____, and

d. that person was less than fifteen years of age, and

e. the defendant was four years older than the person,

f. [without the affirmative defense in instruction number _____.]

3. This other act of sexual contact took place within ten years of the sexual assault charged in count _____ .

4. This other act of sexual contact took place prior to the sexual assault charged in count _____ .

You must unanimously agree that the prosecution has proven beyond a reasonable doubt:

a. that all of the other acts of sexual contact described by the evidence occurred, and that all of these acts satisfy the elements above; or

b. that at least one other act of sexual contact occurred, and that this other act satisfies all of the elements above. You must unanimously agree upon the same act.

After considering all the evidence, if you decide the prosecution has proven all of these elements beyond a reasonable doubt, you should indicate "Yes" on the verdict form that has been provided. This finding must be unanimous.

After considering all the evidence, if you do not unanimously find the prosecution has proven [this element] [any one or more of these elements] beyond a reasonable doubt, you should indicate "No" on the verdict form that has been provided.

NOTES ON USE

This instruction should be used when the defendant is alleged to have committed sexual assault on a child as part of a pattern of abuse.

For predicate offenses committed between July 1, 1995 and July 1, 2002, include the fourth element ("prior to") of this interrogatory. For predicate offenses committed before July 1, 1995 or after July 1, 2002, the fourth element should be omitted.

Delete inapplicable bracketed material.

SOURCE & AUTHORITY

§§18-3-405(2)(d); 18-3-405.3(2)(b); 18-3-401(2.5),
C.R.S.

People v. Longoria, 862 P.2d 266 (Colo. 1993); *Thomas v. People*, 803 P.2d 144 (Colo. 1990); *People v. Honeysette*, 53 P.3d 714 (Colo. App. 2002); *People v. Brown*, 70 P.3d 489 (Colo. 2002); *People v. Gholston*, 26 P.3d 1 (Colo. App. 2000); *People v. Hansen*, 920 P.2d 831 (Colo. App. 1995).

3-4:34 AGGRAVATED SEXUAL ASSAULT ON A CLIENT BY A PSYCHOTHERAPIST

The elements of aggravated sexual assault on a client by a psychotherapist are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. knowingly
4. inflicted sexual intrusion or sexual penetration on another person,
5. at a time when the defendant was a psychotherapist,
6. and the victim was the defendant's client.
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 aggravated sexual assault on a client by a psychotherapist.

After considering all the evidence, if you decide the prosecution has not proven any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of aggravated sexual assault on a client by a psychotherapist.

NOTES ON USE

Applicable definitions of "knowingly", "sexual intrusion", "sexual penetration", "client", "psychotherapist" and "psychotherapy" must be given with this instruction.

Consent is not a defense to any form of sexual assault on a client by a psychotherapist committed on or after July 1, 1989.

This new instruction, and new Instruction 12:13, supersede the former. First, simple and aggravated sexual assault on a client by a psychotherapist are not included in the same instruction. Second, there is no separate instruction for the offense when committed by means of therapeutic deception, set forth in subsections 1(a)(II) and 2(a)(II); the committee deems the element to be superfluous.

§18-3-405.5, C.R.S. defining this offense, withstood constitutional challenge in *Ferguson v. People*, 824 P.2d 803 (Colo. 1992).

SOURCE & AUTHORITY

§18-3-405.5(1)(a)(I), C.R.S.

COLJI-Crim. No. 12:12 (1993).

CLASSIFICATION OF OFFENSE

F4

3-4:35 SEXUAL ASSAULT ON A CLIENT BY A PSYCHOTHERAPIST

The elements of sexual assault on a client by a psychotherapist are:

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

3. knowingly
4. inflicted sexual contact on another person,
5. at a time when the defendant was a psychotherapist,
6. and the victim was the defendant's client.
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 sexual assault on a client by a psychotherapist.

After considering all the evidence, if you decide the prosecution has not proven any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of sexual assault on a client by a psychotherapist.

NOTES ON USE

Applicable definitions of "knowingly", "sexual contact", "client", "psychotherapist" and "psychotherapy" must be given with this instruction.

Consent is not a defense to any form of sexual assault on a client by a psychotherapist committed on or after July 1, 1989. The sexual assault on a child statute only requires one culpable mental state because it is a general intent crime even though sexual contact requires that the touching be done for a specific purpose. *People v. Vigil*, 127 P.3d 916 (Colo. 2006).

§18-3-405.5, C.R.S. defining this offense, withstood constitutional challenge in *Ferguson v. People*, 824 P.2d 803 (Colo. 1992).

SOURCE & AUTHORITY

§18-3-405.5(2)(a)(I), C.R.S.

CLASSIFICATION OF OFFENSE

M1

3-4:36 FAILURE TO REGISTER AS A SEX OFFENDER

The elements of the crime of failure to register as a sex 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 a felony [misdemeanor] unlawful sexual behavior or the other offense, the underlying factual basis of which includes felony [misdemeanor] unlawful sexual behavior or having received a disposition or was adjudicated for an offense that would constitute felony [misdemeanor] unlawful sexual behavior if committed by an adult, or for another offense, the underlying factual basis of which involves felony [misdemeanor] unlawful sexual behavior]

- or -

[having been convicted of a felony [misdemeanor] sex offense in another state or jurisdiction, including but not limited to a military or federal jurisdiction]

4. [knowingly failed to register pursuant to article 22 of title 16, C.R.S.]

- or -

[knowingly submitted a registration form containing false information or submitted of an incomplete registration form]

[knowingly failed to provide information or knowingly provided false information to a probation department employee, to a community corrections administrator or his or her designee, or to a judge or

magistrate when receiving notice pursuant to section 16-22-106(1), (2), or (3), C.R.S., of the duty to register]

- or -

[after having been sentenced to a county jail, or otherwise incarcerated, or committed, due to conviction of or disposition or adjudication for an offense specified in section 16-22-103, C.R.S., knowingly failed to provide notice of the address where the person intended to reside upon release as required in sections 16-22-106 and 16-22-107, C.R.S.]

[knowingly filed false information to a sheriff or his or her designee, department of corrections personnel, or department of human services personnel concerning the address where the person intended to reside upon release from the county jail, the department of corrections, or the department of human services.]

[knowingly failed when registering to provide the person's current name and any former names]

[knowingly failed to register with the local law enforcement agency in each jurisdiction in which the person resided upon changing an address, establishing an additional residence, or legally changing names]

[knowingly failed to provide the person's correct date of birth, to sit for or otherwise provide a current photograph or image, to provide a current set of fingerprints, or to provide the person's correct address]

[knowingly failed to complete a cancellation of registration form and file the form with the local law enforcement agency of the jurisdiction in which the person no longer resided.]

or

[after having been convicted of a child sex crime

[knowingly failed to register all email addresses, instant messaging identities, or chat room identities prior to using the address or identity]

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 the crime of failure to register as a sex offender.

After considering all the evidence, if you decide the prosecution has not proven any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of the crime of failure to register as a sex offender.

NOTES ON USE

Delete inapplicable bracketed material.

When this instruction is used, the definition of "knowingly" must be given. The culpable mental state knowingly applies to this statute. *People v. Lopez*, 140 P.3d 106 (Colo. App. 2005), cert. granted (Colo. 2006). Providing false information shall include, but is not limited to, providing false information as described in §16-22-107(4)(b), C.R.S.

The definition of "child sex crime" includes the following offenses: SEXUAL ASSAULT ON A CHILD, AS DESCRIBED IN SECTION 18-3-405, C.R.S.; SEXUAL ASSAULT ON A CHILD BY ONE IN A POSITION OF TRUST, AS DESCRIBED IN SECTION 18-3-405.3, C.R.S.; UNLAWFUL SEXUAL CONTACT, AS DESCRIBED IN SECTION 18-3-404 (1.5), C.R.S.; ENTICEMENT OF A CHILD, AS DESCRIBED IN SECTION 18-3-305, C.R.S.; AGGRAVATED INCEST, AS DESCRIBED IN SECTION 18-6-302 (1)(b), C.R.S.; TRAFFICKING IN CHILDREN, AS DESCRIBED IN SECTION 18-6-402, C.R.S.; SEXUAL EXPLOITATION OF CHILDREN, AS DESCRIBED IN SECTION 18-6-403, C.R.S.; PROCUREMENT OF A CHILD FOR SEXUAL EXPLOITATION, AS DESCRIBED IN SECTION 18-6-404, C.R.S.; SOLICITING FOR CHILD PROSTITUTION, AS DESCRIBED IN SECTION 18-7-402, C.R.S.; PANDERING OF A CHILD, AS DESCRIBED IN SECTION 18-7-403, C.R.S.; PROCUREMENT OF A CHILD, AS DESCRIBED IN SECTION 18-7-403.5, C.R.S.; KEEPING A PLACE OF CHILD PROSTITUTION, AS DESCRIBED IN SECTION 18-7-404, C.R.S.; PIMPING OF A CHILD, AS DESCRIBED IN SECTION 18-7-405, C.R.S.; INDUCEMENT OF CHILD PROSTITUTION, AS DESCRIBED IN SECTION 18-7-405.5, C.R.S.; PATRONIZING A PROSTITUTED CHILD, AS DESCRIBED IN SECTION 18-7-406, C.R.S.; INTERNET LURING OF A CHILD, AS

DESCRIBED IN SECTION 18-3-306, C.R.S.; INTERNET SEXUAL EXPLOITATION OF A CHILD, AS DESCRIBED IN SECTION 18-3-405.4, C.R.S.; WHOLESale PROMOTION OF OBSCENITY TO A MINOR, AS DESCRIBED IN SECTION 18-7-102 (1.5), C.R.S.; PROMOTION OF OBSCENITY TO A MINOR, AS DESCRIBED IN SECTION 18-7-102 (2.5), C.R.S.;SEXUAL ASSAULT, AS DESCRIBED IN SECTION 18-3-402 (1) (d) AND (1) (e),C.R.S.; SEXUAL ASSAULT IN THE SECOND DEGREE AS IT EXISTED PRIOR TO JULY 1, 2000, AS DESCRIBED IN SECTION 18-3-403 (1) (e) AND (1) (e.5), C.R.S.;OR CRIMINAL ATTEMPT, CONSPIRACY, OR SOLICITATION TO COMMIT ANY OF THE ACTS SPECIFIED ABOVE.

SOURCE & AUTHORITY

§18-3-412.5, C.R.S

COLJI-Crim. No.12:11.6 (1993)

CLASSIFICATION OF OFFENSE

F6, for prior felons; subsequent conviction F5

M1, for prior misdemeanor conviction.

SPECIAL RULES

3-4(1) CRIMINALITY OF CONDUCT-AGE NO DEFENSE

If the victim was below the age of fifteen, it is no defense to the charge of [_____] that the defendant [did not know the child's age] [reasonably believed the child to be fifteen years of age or older].

NOTES ON USE

This rule is applicable to any of the sexual offenses committed on a child. See also Instruction H:42 on the affirmative defense relating to age.

SOURCE & AUTHORITY

§18-1-503.5, C.R.S.

3-4(2) Series of Acts in a Single Count

In order to convict the defendant of [the crime charged] [the crime of _____ , as set forth in instruction no. _____], you must either unanimously agree that the defendant committed the same act or acts, or that the defendant committed all of the acts described.

NOTES ON USE

This instruction is to be given in all cases in which the defendant is charged with a series of acts in a single count. *Thomas v. People*, 803 P.2d 144 (Colo. 1990). To eliminate this instruction, the prosecution may elect a specific act. *Melina v. People*, 161 P.3d 635 (Colo. 2007); *Woertman v. People*, 804 P.2d 188 (Colo. 1991). See also *Woellhaf v. People*, 105 P.3d 209 (Colo. 2005); *Quintano v. People*, 105 P.3d 585 (Colo. 2005)(factors to determine proper units of prosecution).

3-4(3) GENDER BIAS

You are not to allow bias or prejudice, including gender bias, or any kind or prejudice based upon gender, to influence your decisions in this case.

NOTES ON USE

The committee added the language "bias or prejudice, including" to reduce emphasis upon gender bias where other forms of bias, e.g., age, religion, race, national origin, sexual preference, may be also be at issue. This instruction is to be given with instructions on First, second and Third Degree Sexual Assault, Sexual Assault on a Child, and in cases or attempt or conspiracy to commit one of the foregoing. The legislation does not require this instruction to be given in cases of Sexual Assault on a Client by a Psychotherapist, Second Degree Kidnapping, Assault in the First Degree, or other offenses which may have a sexual assault as an element.

SOURCE & AUTHORITY

§18-3-408, C.R.S.