TITLE 18. CRIMINAL CODE
ARTICLE 8. OFFENSES - GOVERNMENTAL OPERATIONS
PART 1. OBSTRUCTION OF PUBLIC JUSTICE

18-8-101. Definitions

As used in this article, unless the context otherwise requires:

(1) "Government" has the same meaning as described in section 18-1-901 (3) (i).

(2) "Governmental function" has the same meaning as described in section 18-1-901 (3) (j).

(2.5) "Peace officer" has the same meaning as described in section 16-2.5-101, C.R.S.

(3) "Public servant" has the same meaning as described in section 18-1-901 (3) (o).

> [18-1-901. Definitions
>
> (3) (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.]

HISTORY: Source:. L. 71: R&RE, p. 453, § 1. C.R.S. 1963: § 40-8-101.L. 92: Entire section amended, p. 405, § 19, effective June 3.L. 2003: (2.5) added, p. 1628, § 63, effective August 6.

Editor's note: This title was numbered as chapter 40, C.R.S. 1963. The substantive provisions of this title were repealed and reenacted in 1971, resulting in the addition, relocation, and elimination of sections as well as subject matter. For amendments to this title prior to 1971, consult the Colorado statutory research explanatory note beginning on page vii in the front of this volume. For a detailed comparison of this title, see the comparative tables located in the back of the index.

Editor's note: This title was repealed and reenacted in 1971. For historical information concerning the repeal and reenactment, see the editor's note following the title heading.

Editor's note: Subsection (2.5) was originally enacted as subsection (4) but was renumbered on revision for ease of location.

ANNOTATION

Corporation or a corporate body is not included in the definition of "government". Bailey v. People, 200 Colo. 549, 617 P.2d 549 (1980).

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).

18-8-102. Obstructing government operations

(1) A person commits obstructing government operations if he intentionally obstructs, impairs, or hinders the performance of a governmental function by a public servant, by using or threatening to use violence, force, or physical interference or obstacle.

(2) It shall be an affirmative defense that:

(a) The obstruction, impairment, or hindrance was of unlawful action by a public servant; or

(b) The obstruction, impairment, or hindrance was of the making of an arrest; or

(c) The obstruction, impairment, or hindrance of a governmental function was by lawful activities in connection with a labor dispute with the government.

(3) Obstructing government operations is a class 3 misdemeanor.

HISTORY: Source:. L. 71: R&RE, p. 453, § 1. C.R.S. 1963: § 40-8-102.L. 73: p. 538, § 5.

18-8-104. Obstructing a peace officer, firefighter, emergency medical services provider, rescue specialist, or volunteer

(1) (a) A person commits obstructing a peace officer, firefighter, emergency medical services provider, rescue specialist, or volunteer when, by using or threatening to use violence, force, physical interference, or an obstacle, such person knowingly obstructs, impairs, or hinders the enforcement of the penal law or the preservation of the peace by a peace officer, acting under color of his or her official authority; knowingly obstructs, impairs, or hinders the prevention, control, or abatement of fire by a firefighter, acting under color of his or her official authority; knowingly obstructs, impairs, or hinders the administration of medical treatment or emergency assistance by an emergency medical service provider or rescue specialist, acting under color of his or her official authority; or knowingly obstructs, impairs, or hinders the administration of emergency care or emergency assistance by a volunteer, acting in good faith to render such care or assistance without compensation at the place of an emergency or accident.

(b) To assure that animals used in law enforcement or fire prevention activities are protected from harm, a person commits obstructing a peace officer or firefighter when, by using or threatening to use violence, force, physical interference, or an obstacle, he or she knowingly obstructs, impairs, or hinders any such animal.

(2) It is no defense to a prosecution under this section that the peace officer was acting in an illegal manner, if he was acting under color of his official authority as defined in section 18-8-103 (2).

(3) Repealed.

(4) Obstructing a peace officer, firefighter, emergency medical service provider, rescue specialist, or volunteer is a class 2 misdemeanor.

(5) For purposes of this section, unless the context otherwise requires:

(a) "Emergency medical service provider" means a member of a public or private emergency medical service agency, whether that person is a volunteer or receives compensation for services rendered as such emergency medical service provider.

(b) "Rescue specialist" means a member of a public or private rescue agency, whether that person is a volunteer or receives compensation for services rendered as such rescue specialist.

HISTORY: Source:. L. 71: R&RE, p. 454, § 1. C.R.S. 1963: § 40-8-104.L. 77: (1) amended, p. 965, § 38, effective July 1.L. 83: (3) repealed, p. 671, § 23, effective July 1.L. 90: (1) amended, p. 1611, § 2, effective July 1.L. 96: (1) and (4) amended, p. 1477, § 41, effective June 1; (1)(a) and (4) amended and (5) added, p. 956, § 1, effective July 1.

Editor's note: Amendments to subsections (1) and (4) in House Bill 96-208 and Senate Bill 96-68 were harmonized.

ANNOTATION

Interference with peace officer is a matter of both local and statewide concern. City County of Denver v. Howard, 622 P.2d 568 (Colo. 1981).

And Denver ordinance does not conflict with section. Denver revised municipal code 846.1-2 (interfering with a police officer) does not conflict with this section. City County of Denver v. Howard, 622 P.2d 568 (Colo. 1981).

If violation of municipal ordinance may result in fine or imprisonment, then the ordinance is penal in nature within the meaning of this section. People v. Shockley, 41 Colo. App. 515, 591 P.2d 589 (1978).

Term "enforcement" as used in subsection (1) encompasses those activities which a peace officer is under a duty to perform in order to give effect to a penal law. People v. Shockley, 41 Colo. App. 515, 591 P.2d 589 (1978).

Obstruction of booking process is violation of this section. People v. Shockley, 41 Colo. App. 515, 591 P.2d 589 (1978).

While mere verbal opposition alone may not suffice to merit a conclusion of interference or obstruction, a combination of statements and acts, viewed in the totality of the circumstances, can form the crime of obstruction. Dempsey v. People, 117 P.3d 800 (Colo. 2005).

Obstruction of a peace officer under this section is a lesser included offense of second degree assault under § 18-3-203 (1)(c) and (1)(f) since all of the elements contained in the definition of obstruction of a peace officer would be necessarily established by the proof of the elements of second degree assault under § 18-3-203 (1)(c). People v. Stafford, 890 P.2d 244 (Colo. App. 1994).

Trial court's failure to instruct the jury that obstruction of a peace officer under this section was a lesser included offense of second degree assault under § 18-3-203 (1)(c) was error requiring a new trial where defendant acknowledged the officers sustained bodily injury but there was no admission that he intended to act in a manner that would cause the injury. People v. Stafford, 890 P.2d 244 (Colo. App. 1994).

Trial court's failure to instruct the jury that obstruction of a peace officer under this section was a lesser included offense of second degree assault under § 18-3-203 (1)(f) was error requiring a new trial where defendant testified that the only action he volitionally took after the first officer entered the cell was to raise his arms. People v. Stafford, 890 P.2d 244 (Colo. App. 1994).

Self-defense is an available defense against a charge under this section when a defendant reasonably believes that unreasonable or excessive force is being used by a peace officer. People v. Barrus, 232 P.3d 264 (Colo. App. 2009).

Defendant may not respond to an unreasonable search or seizure by a threat of violence against the officer and then rely on the exclusionary rule to suppress evidence pertaining to the criminal act of obstructing a peace officer and resisting arrest. People v. Brown, 217 P.3d 1252 (Colo. 2009).

Cross references: For impeding any public official in the lawful performance of his duties or activities, see § 18-9-110.

18-8-105. Accessory to crime

(1) A person is an accessory to crime if, with intent to hinder, delay, or prevent the discovery, detection, apprehension, prosecution, conviction, or punishment of another for the commission of a crime, he renders assistance to such person.

(2) "Render assistance" means to:

(a) Harbor or conceal the other; or

(a.5) Harbor or conceal the victim or a witness to the crime; or

(b) Warn such person of impending discovery or apprehension; except that this does not apply to a warning given in an effort to bring such person into compliance with the law; or

(c) Provide such person with money, transportation, weapon, disguise, or other thing to be used in avoiding discovery or apprehension; or

(d) By force, intimidation, or deception, obstruct anyone in the performance of any act which might aid in the discovery, detection, apprehension, prosecution, conviction, or punishment of such person; or

(e) Conceal, destroy, or alter any physical or testimonial evidence that might aid in the discovery, detection, apprehension, prosecution, conviction, or punishment of such person.

(3) Being an accessory to crime is a class 4 felony if the offender knows that the person being assisted has committed, or has been convicted of, or is charged by pending information, indictment, or complaint with a crime, and if that crime is designated by this code as a class 1 or class 2 felony.

(4) Being an accessory to crime is a class 5 felony if the offender knows that the person being assisted is suspected of or wanted for a crime, and if that crime is designated by this code as a class 1 or class 2 felony.

(5) Being an accessory to crime is a class 5 felony if the offender knows that the person being assisted has committed, or has been convicted of, or is charged by pending information, indictment, or complaint with a crime, or is suspected of or wanted for a crime, and if that crime is designated by this code as a felony other than a class 1 or class 2 felony; except that being an accessory to a class 6 felony is a class 6 felony.

(6) Being an accessory to crime is a class 1 petty offense if the offender knows that the person being assisted has committed, or has been convicted of, or is charged by pending information, indictment, or complaint with a crime, or is suspected of or wanted for a crime, and if that crime is designated by this code as a misdemeanor of any class.

HISTORY: Source: L. 71: R&RE, p. 454, § 1. C.R.S. 1963: § 40-8-105.L. 91: (5) amended, p. 406, § 13, effective June 6.L. 97: (2)(a.5) added and (2)(e) amended, p. 1547, § 20, effective July 1.

ANNOTATION

Law reviews. For article, "One Year Review of Criminal Law and Procedure", see 35 Dicta 26 (1958). For article, "Incriminating Evidence: What to do With a Hot Potato", see 11 Colo. Law. 880 (1982).

Annotator's note. Since § 18-8-105 is similar to former § § 40-1-12 and 40-1-13, C.R.S. 1963, and laws antecedent thereto, relevant cases construing those provisions have been included in the annotations to this section.

Common-law rule. At common law the accused must have rendered some assistance to a felon, and that assistance must have been such as to shelter him to some extent from prosecution, such as concealing him in his house. Howard v. People, 97 Colo. 550, 51 P.2d 594 (1935).

The common-law rule that a person cannot be prosecuted as an accessory after the fact until after the principal has been convicted does not apply. Howard v. People, 97 Colo. 550, 51 P.2d 594 (1935).

Since the early days of the English common law, it has been generally held that any assistance whatever given to one known to be a felon in order to hinder his being apprehended, or tried, or suffering punishment makes the assistor an accessory after the fact. Self v. People, 167 Colo. 292, 448 P.2d 619 (1968).

Constitutionality. Former section held not unconstitutionally vague since it gave fair warning of the conduct forbidden, and men of common intelligence can readily apprehend the statute's meaning and application. This is the accepted test in this jurisdiction. Self v. People, 167 Colo. 292, 448 P.2d 619 (1968).

This section does not violate a defendant's constitutional privilege against self-incrimination. An accessory after the fact, by definition, does not assent to the commission of the principal's crime. And this section does not impose liability upon defendant for his failure to reveal his complicity, but rather for his affirmative acts which constituted the interdicted conduct. Self v. People, 167 Colo. 292, 448 P.2d 619 (1968).

This section gives fair warning of the conduct forbidden. Men of common intelligence can readily comprehend the statute's meaning and application. People v. Young, 192 Colo. 65, 555 P.2d 1160 (1976).

The word "might" must be construed to mean a reasonable probability that the forbidden result would obtain and thus the statute is not unconstitutionally vague. People v. Pratt, 759 P.2d 676 (Colo. 1988).

Neither is this section unconstitutionally overbroad. People v. Pratt, 759 P.2d 676 (Colo. 1988).

Any assistance whatever given to one known to be a felon, including the harboring and protection of the wrongdoer, constitutes "rendering assistance" within the meaning of this section. People v. Sandoval, 791 P.2d 1211 (Colo. App. 1990).

Although the mere failure to inform public authorities of one's knowledge of a felon may not be sufficient to establish that an accused is an accessory to the crime, the offense can be established by proving the defendant was of personal help to, or aided, the offender in avoiding arrest and prosecution. People v. Sandoval, 791 P.2d 1211 (Colo. App. 1990).

The act of an accessory providing a felon with a secret hiding place in order that he would avoid detection and arrest constituted giving shelter or refuge and thus violated the statutory prohibition against harboring and/or concealing. People v. Sandoval, 791 P.2d 1211 (Colo. App. 1990).

The act of harboring or concealing a wanted person, coupled with the requisite intent under this section, forms the basis of the criminal offense. People v. Sandoval, 791 P.2d 1211 (Colo. App. 1990).

For factors supporting the conclusion that accessory was harboring and/or concealing a felon, see People v. Sandoval, 791 P.2d 1211 (Colo. App. 1990).

Section applicable to noncriminal-code crimes. There is nothing in the statutory context of this section indicating a legislative intent to prohibit the application of its provisions on being an accessory to crime to noncriminal-code crimes. Barreras v. People, 636 P.2d 686 (Colo. 1981).

The relevant standard for knowledge in regard to the accessory statute is whether defendant knew the principal had committed a crime. People v. Young, 192 Colo. 65, 555 P.2d 1160 (1976).

Knowledge that a theft has occurred is knowledge sufficient to sustain a conviction of accessory to theft of auto parts. Barreras v. People, 636 P.2d 686 (Colo. 1981).

It is not necessary for the defendant to have known that the crime committed was a particular class. People v. Young, 192 Colo. 65, 555 P.2d 1160 (1976).

When such classification is relevant. The statutory classification of the crime committed by the principal (class one or two felony) is only relevant in determining the degree of the accessory charge (class four or five felony or class one petty offense). People v. Young, 192 Colo. 65, 555 P.2d 1160 (1976).

The phrase "charged with", as used in the former accessory after the fact statute, means more than a mere formal charge and includes responsibility for the crime. Self v. People, 167 Colo. 292, 448 P.2d 619 (1968).

Elements of offense. The offense may be committed by either concealing the commission of the crime from the magistrate, or by harboring or protecting the felon. Howard v. People, 97 Colo. 550, 51 P.2d 594 (1935).

To convict a defendant under this section it must be proved that a crime has been committed; that after full knowledge of the commission of such crime, the defendant concealed the same from the magistrate, or that defendant harbored and protected the criminal after he had full knowledge that the crime had been committed. Lowe v. People, 135 Colo. 209, 309 P.2d 601 (1957).

Where defendant was prosecuted as an accessory to murder, it was necessary for the people to prove that the alleged killer had murdered his wife, and that defendant with knowledge of that fact concealed the commission of the crime, or that after full knowledge of the commission of the crime had harbored and protected the murderer. Lowe v. People, 135 Colo. 209, 309 P.2d 601 (1957).

Whether one is an accessory depends on whether what he did was a personal help to the offender to elude punishment. He need only aid the criminal to escape arrest and prosecution. Lowe v. People, 135 Colo. 209, 309 P.2d 601 (1957).

To establish that an accused is guilty of being an accessory under subsection (5), the following statutory elements must be proven: (1) A crime has been committed; (2) the accused rendered assistance to the actor; (3) the accused intended to hinder, delay, or prevent the discovery, detection, apprehension, prosecution, conviction, or punishment of the principal; (4) the accused knew that the person being assisted has committed, or has been convicted of, or is charged by pending information, indictment, or complaint with such crime, or is suspected of or wanted in connection with such crime; and, (5) the underlying crime is designated as a felony other than a class 1 or 2 felony. Barreras v. People, 636 P.2d 686 (Colo. 1981).

Mere silence is not enough. Mere silence as to one's knowledge of a felony, with no intent to aid the felon, or mere failure to inform the public authorities, does not establish such person as an accessory. Lowe v. People, 135 Colo. 209, 309 P.2d 601 (1957).

Specific statutory definition of "render assistance" must be included in jury instructions, where failure to do so may lead jurors to conclude that the defendant's mere presence at scene of crime is "assistance". People v. Broom, 797 P.2d 754 (Colo. App. 1990).

Section does not retain full knowledge requirement of previous accessory after fact statutes. Prior to the adoption of subsection (1), proof that the defendant had full knowledge of the underlying crime actually committed was a condition precedent to conviction for the statutory offense of accessory after the fact. People v. Barreras, 44 Colo. App. 402, 618 P.2d 704 (1980), aff'd, 636 P.2d 686 (Colo. 1981).

This section has no application to one who was guilty of the principal offense as a complicitor, if the commission of both offenses is grounded upon the same act; a different specific intent is required for accessory offenses than for the crime of conspiracy. People v. Broom, 797 P.2d 754 (Colo. App. 1990).

Evidence that defendant rendered assistance to his companions' efforts to conceal or destroy evidence of murder for which defendant was convicted supported defendant's conviction of being an accessory, on the basis of complicity, to the conduct of his two companions. People v. Ager, 928 P.2d 784 (Colo. App. 1996).

This section has no application to one who was a principal in the commission of the crime. Miller v. People, 92 Colo. 481, 22 P.2d 626 (1933).

Guilt of principal, not legal status, is element of section. The guilt or innocence of an accessory after the fact depends as to one element on the factual status of the principal as to guilt or innocence; not on his legal status as regards liability or nonliability to suffer a penalty. Roberts v. People, 103 Colo. 250, 87 P.2d 251 (1938).

Thus, the state must establish that the crime was in fact committed on the trial of the accessory, and the result of the trial of the principal, if there is a trial, is immaterial. Roberts v. People, 103 Colo. 250, 87 P.2d 251 (1938).

Since this section creates a crime complete in itself, before a conviction may be had every necessary element must be established in the case in which the accessory is on trial, including the factual commission of the antecedent crime concealed or the perpetrator of which was harbored. Roberts v. People, 103 Colo. 250, 87 P.2d 251 (1938).

On the trial of a criminal charge of accessory to a murder, the state is required to establish the killing, and this requirement is not satisfied by evidence of the prior conviction of the principal perpetrator of the crime. Roberts v. People, 103 Colo. 250, 87 P.2d 251 (1938).

To successfully convict a defendant of being an accessory, there must be sufficient evidence presented to show that there was, in fact, a principal who was guilty of the crime charged, even though it is inconsequential whether or not the principal was ever charged with the criminal offense. Britto v. People, 178 Colo. 216, 497 P.2d 325 (1972).

But conviction of principal is not condition precedent. Under this article, being an accessory after the fact is a statutory offense, and a person may be convicted thereof although the principal had not been formally charged with, or convicted of the crime. Howard v. People, 97 Colo. 550, 51 P.2d 594 (1935).

The accessory statute is held to create a substantive statutory crime and, as construed, the conviction of the principal is not a condition precedent to the conviction of an accessory. Roberts v. People, 103 Colo. 250, 87 P.2d 251 (1938).

The conviction of the principal is not a condition precedent to the conviction of an accessory. Lowe v. People, 135 Colo. 209, 309 P.2d 601 (1957).

Accessory distinguished from one who aids or abets a crime. It is not true that one can be indicted as principal whose conduct is such as to make of him an accessory. The penalty provided for this crime is entirely different from that authorized for one who "aids, abets, or assists", or who has advised and encouraged the perpetration of the crime, and the essential ingredients of the crimes under comparison are entirely different. Martinez v. People, 166 Colo. 524, 444 P.2d 641 (1968).

Accessory after the fact is not lesser included offense. As to accessories after the fact a specific charge raising that issue is necessary. Questions relating thereto are not included, upon the theory of a lesser included offense, within an information in which the persons accused are charged as principals. Martinez v. People, 166 Colo. 524, 444 P.2d 641 (1968); Mingo v. People, 171 Colo. 474, 468 P.2d 849 (1970).

The court's refusal to instruct the jury that the crime of accessory during the fact is also a lesser included offense when robbery is charged, which was the defendant's principal theory of the case, was not error because accessory during the fact is a separate and distinct offense which was not charged and which could not properly have been the subject of an instruction. Maes v. People, 178 Colo. 46, 494 P.2d 1290 (1972).

And acquittal of a criminal charge does not bar conviction as an accessory after the fact. Howard v. People, 97 Colo. 550, 51 P.2d 594 (1935).

This section requires only that a defendant obstruct anyone in the performance of any act which might aid in detection of the principal; this section does not require that the act be successful. People v. Preciado-Flores, 66 P.3d 155 (Colo. App. 2002).

This section is distinguishable from § 18-8-111. A deliberate attempt to thwart law enforcement is more destructive than conduct not designed to do so. As a result, the greater punishment for the offense of accessory to a crime is justified. People v. Preciado-Flores, 66 P.3d 155 (Colo. App. 2002).

Applied in People v. Roberts, 43 Colo. App. 100, 601 P.2d 654 (1979); People v. McCall, 43 Colo. App. 117, 603 P.2d 950 (1979); People v. Archuleta, 616 P.2d 977 (Colo. 1980); People v. R.V., 635 P.2d 892 (Colo. 1981); People v. Mann, 646 P.2d 352 (Colo. 1982); People v. Simien, 656 P.2d 698 (Colo. 1983).

18-8-107. Refusing to aid a peace officer

A person, eighteen years of age or older, commits a class 1 petty offense when, upon command by a person known to him to be a peace officer, he unreasonably refuses or fails to aid the peace officer in effecting or securing an arrest or preventing the commission by another of any offense.

HISTORY: Source: L. 71: R&RE, p. 456, § 1. C.R.S. 1963: § 40-8-107.

18-8-108. Compounding

(1) A person commits compounding if he accepts or agrees to accept any pecuniary benefit as consideration for:

(a) Refraining from seeking prosecution of an offender; or

(b) Refraining from reporting to law enforcement authorities the commission or suspected commission of any crime or information relating to a crime.

(2) It is an affirmative defense to prosecution under this section that the benefit received by the defendant did not exceed an amount which the defendant reasonably believed to be due as restitution or indemnification for harm caused by the crime.

(3) Compounding is a class 3 misdemeanor.

HISTORY: Source: L. 71: R&RE, p. 456, § 1. C.R.S. 1963: § 40-8-108.

Cross references: For affirmative defenses generally, see § § 18-1-407, 18-1-710, and 18-1-805.

ANNOTATION

Annotator's note. Since § 18-8-108 is similar to former G.S. § 810, relevant cases construing that provision have been included in the annotations to this section.

A promise to compound any criminal offense is itself a crime and affords no valid consideration for a contract. Lomax v. Colo. Nat'l Bank, 46 Colo. 229, 104 P. 85 (1909).

Thief or third person may recompense owner for loss resulting from theft. A thief is under a legal, as well as a moral, duty to repay the person whose property he has stolen, and it is not in itself an illegal contract for him to give his own obligation therefor, or for a third party to agree to recompense the owner for the loss. Giles v. De Cow, 30 Colo. 412, 70 P. 681 (1902); Lomax v. Colo. Nat'l Bank, 46 Colo. 229, 104 P. 85 (1909).

18-8-113. Impersonating a public servant

(1) A person commits impersonating a public servant if he falsely pretends to be a public servant other than a peace officer and performs any act in that pretended capacity.

(2) It is no defense to a prosecution under this section that the office the actor pretended to hold did not in fact exist.

(3) Impersonating a public servant is a class 3 misdemeanor.

HISTORY: Source: L. 71: R&RE, p. 457, § 1. C.R.S. 1963: § 40-8-113.

18-8-114. Abuse of public records

(1) A person commits a class 1 misdemeanor if:

(a) The person knowingly makes a false entry in or falsely alters any public record; or

(b) Knowing the person lacks the authority to do so, the person knowingly destroys, mutilates, conceals, removes, or impairs the availability of any public record; or

(c) Knowing the person lacks the authority to retain the record, the person refuses to deliver up a public record in the person's possession upon proper request of any person lawfully entitled to receive such record; or

(d) Knowing the person has not been authorized by the custodian of the public record to do so, the person knowingly alters any public record.

(2) As used in this section, the term "public record" includes all official books, papers, or records created, received, or used by or in any governmental office or agency.

HISTORY: Source: L. 71: R&RE, p. 457, § 1. C.R.S. 1963: § 40-8-114.L. 77: (1)(b) amended, p. 966, § 40, effective July 1.L. 96: (1) amended, p. 1561, § 15, effective July 1.

ANNOTATION

Applicability of section. This section applies only to records after they are created, received, or used by a public office. People v. Trujillo, 189 Colo. 23, 536 P.2d 46 (1975).

Records in custody or control of public agency. A violation of this section occurs only where a person falsifies or otherwise corrupts a record which is in, or is required by law to be in, the custody or control of a public agency at the time of falsification. People v. Trujillo, 185 Colo. 14, 521 P.2d 769 (1974).

Limitation imposed on section improper. Imposing limitation that criminal liability for a violation of this section hinges on whether the document in question is open to public inspection is not proper. People v. Trujillo, 185 Colo. 14, 521 P.2d 769 (1974).

Comparison with section 18-5-114. Abuse of public records under this section was not meant to cover the offense of offering a false instrument for recording under § 18-5-114. People v. Trujillo, 189 Colo. 23, 536 P.2d 46 (1975).

Term "record" includes civil service examination questions with answers. The word, "record", in the sense in which the word is used in this section, includes examination questions of the state personnel system with the answers of applicants thereto, but does not include unused examination question. Shimmel v. People, 108 Colo. 592, 121 P.2d 491 (1942) (decided under former CSA, C. 48, § 151).

Personal book kept by probate judge for his own information and convenience which contained records not germane to his office was not a public record. Downing v. Brown, 3 Colo. 571 (1877) (decided under former R.S. p. 208, § 69).

Incorrect information on application for college admission was not included within the offense covered by this section. People v. Trujillo, 189 Colo. 23, 536 P.2d 46 (1975).

18-8-115. Duty to report a crime - liability for disclosure

It is the duty of every corporation or person who has reasonable grounds to believe that a crime has been committed to report promptly the suspected crime to law enforcement authorities. Notwithstanding any other provision of the law to the contrary, a corporation or person may disclose information concerning a suspected crime to other persons or corporations for the purpose of giving notice of the possibility that other such criminal conduct may be attempted which may affect the persons or corporations notified. When acting in good faith, such corporation or person shall be immune from any civil liability for such reporting or disclosure. This duty shall exist notwithstanding any other provision of the law to the contrary; except that this section shall not require disclosure of any communication privileged by law.

HISTORY: Source:. L. 79: Entire section added, p. 729, § 9, effective July 1.L. 81: Entire section amended, p. 976, § 15, effective July 1.

ANNOTATION

The Tenth Circuit held no general duty exists under this section to stop or report a crime being committed, in context of defending a charge of conspiracy to commit fraud against the government. U.S. v. Zimmermann, 943 F.2d 1204 (10th Cir. 1991).

This section does not require the degree of certainty on the part of a citizen reporting the commission of a crime as does the probable cause standard that police officers are held to in making warrantless arrests. Lunsford v. Western States Life Ins., 919 P.2d 899 (Colo. App. 1996).

TITLE 18. CRIMINAL CODE
ARTICLE 8. OFFENSES - GOVERNMENTAL OPERATIONS
PART 3. BRIBERY AND CORRUPT INFLUENCES

18-8-301. Definitions

The definitions contained in section 18-8-101 are applicable to this part 3, unless the context otherwise requires, and, in addition to those definitions:

(1) "Benefit" means any gain or advantage to the beneficiary, including any gain or advantage to a third person pursuant to the desire or consent of the beneficiary.

(2) "Party officer" means a person who holds any position or office in a political party, whether by election, appointment, or otherwise.

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

(4) "Public servant", as used in sections 18-8-302 to 18-8-308, includes persons who presently occupy the position of a public servant as defined in section 18-8-101 (3) or have been elected, appointed, or designated to become a public servant although not yet occupying that position.

HISTORY: Source: L. 71: R&RE, p. 459, § 1. C.R.S. 1963: § 40-8-301.

Editor's note: This title was numbered as chapter 40, C.R.S. 1963. The substantive provisions of this title were repealed and reenacted in 1971, resulting in the addition, relocation, and elimination of sections as well as subject matter. For amendments to this title prior to 1971, consult the Colorado statutory research explanatory note beginning on page vii in the front of this volume. For a detailed comparison of this title, see the comparative tables located in the back of the index.

Editor's note: This title was repealed and reenacted in 1971. For historical information concerning the repeal and reenactment, see the editor's note following the title heading.

18-8-302. Bribery

(1) A person commits the crime of bribery, if:

(a) He offers, confers, or agrees to confer any pecuniary benefit upon a public servant with the intent to influence the public servant's vote, opinion, judgment, exercise of discretion, or other action in his official capacity; or

(b) While a public servant, he solicits, accepts, or agrees to accept any pecuniary benefit upon an agreement or understanding that his vote, opinion, judgment, exercise of discretion, or other action as a public servant will thereby be influenced.

(2) It is no defense to a prosecution under this section that the person sought to be influenced was not qualified to act in the desired way, whether because he had not yet assumed office, lacked jurisdiction, or for any other reason.

(3) Bribery is a class 3 felony.

HISTORY: Source: L. 71: R&RE, p. 459, § 1. C.R.S. 1963: § 40-8-302.

Cross references: For bribery of persons other than a public servant, see § 18-5-401.

ANNOTATION

Legislative intent. The general assembly apparently intended to define bribery as the commission of any one of the following three acts: (1) offering to confer upon a public servant, (2) conferring upon a public servant, or (3) agreeing to confer upon a public servant. Although the statute does not specify the person with whom the agreement must be made to be guilty of the third act, under a strict construction, the agreement must be with the public servant, not a third party, while a defendant may be guilty of the first two acts even if the public official does not agree to be bribed. People v. Bailey, 41 Colo. App. 504, 595 P.2d 252 (1978), rev'd on other grounds, 200 Colo. 549, 617 P.2d 549 (1980).

The substantive offense of bribery of a judge can be committed by one person. People v. Incerto, 180 Colo. 366, 505 P.2d 1309 (1973) (decided under former § 40-7-5, C.R.S. 1963).

Corporation or a corporate body is not included in the definition of "government" in § 18-8-101. Bailey v. People, 200 Colo. 549, 617 P.2d 549 (1980).

Definition of term "public servant" is question of law for court. People v. Bailey, 41 Colo. App. 504, 595 P.2d 252 (1978), rev'd on other grounds, 200 Colo. 549, 617 P.2d 549 (1980).

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 § 18-8-101. Bailey v. People, 200 Colo. 549, 617 P.2d 549 (1980).

18-8-303. Compensation for past official behavior

(1) A person commits a class 6 felony, if he:

(a) Solicits, accepts, or agrees to accept any pecuniary benefit as compensation for having, as a public servant, given a decision, opinion, recommendation, or vote favorable to another or for having otherwise exercised a discretion in his favor, whether or not he has in so doing violated his duty; or

(b) Offers, confers, or agrees to confer compensation, acceptance of which is prohibited by this section.

HISTORY: Source:. L. 71: R&RE, p. 460, § 1. C.R.S. 1963: § 40-8-303.L. 89: IP(1) amended, p. 840, § 81, effective July 1.

18-8-304. Soliciting unlawful compensation

A public servant commits a class 2 misdemeanor if he requests a pecuniary benefit for the performance of an official action knowing that he was required to perform that action without compensation or at a level of compensation lower than that requested.

HISTORY: Source: L. 71: R&RE, p. 460, § 1. C.R.S. 1963: § 40-8-304.

18-8-305. Trading in public office

(1) A person commits trading in public office if:

(a) He offers, confers, or agrees to confer any pecuniary benefit upon a public servant or party officer upon an agreement or understanding that he or a particular person will or may be appointed to a public office or designated or nominated as a candidate for public office; or

(b) While a public servant or party officer, he solicits, accepts, or agrees to accept any pecuniary benefit from another upon an agreement or understanding that a particular person will or may be appointed to a public office or designated or nominated as a candidate for public office.

(2) It shall be an affirmative defense that the pecuniary benefit was a customary contribution to political campaign funds solicited and received by lawfully constituted political parties.

(3) Trading in public office is a class 1 misdemeanor.

HISTORY: Source:. L. 71: R&RE, p. 460, § 1. C.R.S. 1963: § 40-8-305.L. 72: p. 275, § 7.L. 73: p. 539, § 6.

Cross references: For affirmative defenses generally, see § § 18-1-407, 18-1-710, and 18-1-805.

18-8-306. Attempt to influence a public servant

Any person who attempts to influence any public servant by means of deceit or by threat of violence or economic reprisal against any person or property, with the intent thereby to alter or affect the public servant's decision, vote, opinion, or action concerning any matter which is to be considered or performed by him or the agency or body of which he is a member, commits a class 4 felony.

HISTORY: Source: L. 71: R&RE, p. 460, § 1. C.R.S. 1963: § 40-8-306.

Cross references: For interference with the legislative process, see part 4 of article 2 of title 2; for legislative witnesses, see § 8-2.5-101.

RECENT ANNOTATIONS

False reporting to authorities is not a specific instance of attempt to influence a public servant. The crime of false reporting penalizes those who provide untruthful information to public officials, regardless of an attempt to influence public officials. The attempted influence offense can occur without any false reporting at all. Thus, the attempted influence charge and the false reporting charge do not differ solely by prohibiting general and specific conduct. People v. Blue, 253 P.3d 1273 (Colo. App. 2011).

ANNOTATION

This statute was not unconstitutionally overbroad on its face where it was narrowly tailored to enable citizens to proscribe the type of conduct that rose to a level of criminal culpability and where defendant's letter to a district court judge went beyond a mere expression of criticism and did not lie within the area of protected speech. People v. Janousek, 871 P.2d 1189 (Colo. 1994).

This statute was not unconstitutionally overbroad as applied to defendant where the tone and language of a letter to a district court judge evinced a threatening manner and the language suggested conduct that was squarely within the statute's proscriptions and was therefore unprotected under the first amendment. People v. Janousek, 871 P.2d 1189 (Colo. 1994).

The words "deceit" and "economic reprisal" contained in this section were not unconstitutionally vague where the statute clearly portrayed the type of conduct that subjected a person to criminal prosecution, it defined the offense with particular words to limit the scope of the offense, and the language was plain and unambiguous. People v. Janousek, 871 P.2d 1189 (Colo. 1994).

First amendment does not require the people to prove that defendant subjectively intended to threaten public official. People v. Stanley, 170 P.3d 782 (Colo. App. 2007).

Criminal defendant has no first amendment privilege to threaten violence against a judge even if he does so in the context of a court proceeding. People v. Stanley, 170 P.3d 782 (Colo. App. 2007).

Requisite intent can exist in case where defendant used a false written instrument prepared by another. Prosecution is not obligated to prove defendant either mailed the false instrument or explicitly directed another to do so on defendant's behalf. People v. Taylor, 159 P.3d 730 (Colo. App. 2006).

Evidence supported a charge under statute where defendant gave a false name to a police officer during a traffic stop with intent to alter officer's official actions toward defendant. People v. Beck, 187 P.3d 1125 (Colo. App. 2008).

Applied in People v. Norman, 703 P.2d 1261 (Colo. 1985).

18-8-307. Designation of supplier prohibited

(1) No public servant shall require or direct a bidder or contractor to deal with a particular person in procuring any goods or service

required in submitting a bid to or fulfilling a contract with any government.

(2) Any provision in invitations to bid or any contract documents prohibited by this section are against public policy and void.

(3) It shall be an affirmative defense that the defendant was a public servant acting within the scope of his authority exercising the right to reject any material, subcontractor, service, bond, or contract tendered by a bidder or contractor because it does not meet bona fide specifications or requirements relating to quality, availability, form, experience, or financial responsibility.

(4) Any public servant who violates the provisions of subsection (1) of this section commits a class 6 felony.

HISTORY: Source:. L. 71: R&RE, p. 460, § 1. C.R.S. 1963: § 40-8-307.L. 73: p. 539, § 7.L. 89: (4) amended, p. 840, § 82, effective July 1.

Cross references: For affirmative defenses generally, see § § 18-1-407, 18-1-710, and 18-1-805.

ANNOTATION

It is within the discretion of a public servant to accept or reject any or all bids submitted, once they have been opened and modification did not constitute a designation of supplier to fulfill a government contract, but an exercise of the public servant's discretion in rejecting a particular subcontractor on the basis of experience. Heritage Pools v. Foothills Metro. Recreation and Park Dist., 701 P.2d 1260 (Colo. App. 1985).

18-8-308. Failing to disclose a conflict of interest

(1) A public servant commits failing to disclose a conflict of interest if he exercises any substantial discretionary function in connection with a government contract, purchase, payment, or other pecuniary transaction without having given seventy-two hours' actual advance written notice to the secretary of state and to the governing body of the government which employs the public servant of the existence of a known potential conflicting interest of the public servant in the transaction with reference to which he is about to act in his official capacity.

(2) A "potential conflicting interest" exists when the public servant is a director, president, general manager, or similar executive officer or owns or controls directly or indirectly a substantial interest in any nongovernmental entity participating in the transaction.

(3) Failing to disclose a conflict of interest is a class 2 misdemeanor.

HISTORY: Source:. L. 71: R&RE, p. 461, § 1. C.R.S. 1963: § 40-8-308.L. 79: (1) amended, p. 744, § 1, effective July 1.

ANNOTATION

Law reviews. For article, "Director Conflicts: The Effect on Disclosure -- Parts I and II", see 17 Colo. Law. 461 and 639 (1988). For article, "Conflicts of Interest in Government", see 18 Colo. Law. 595 (1989).

Section deals with formal, express contracts. Former section prohibiting interest in contract by officer had to do with such contracts as the officer is charged with the duty of making, and with those in the awarding of which he has a voice, or vote, and clearly means formal, express contracts, which are in terms agreed upon, or awarded on bids. People v. Brown, 60 Colo. 276, 152 P. 1169 (1915) (decided under former R.S. 08, § 4994).

TITLE 18. CRIMINAL CODE
ARTICLE 8. OFFENSES - GOVERNMENTAL OPERATIONS
PART 4. ABUSE OF PUBLIC OFFICE

18-8-402. Misuse of official information

(1) Any public servant, in contemplation of official action by himself or by a governmental unit with which he is associated or in reliance on information to which he has access in his official capacity and which has not been made public, commits misuse of official information if he:

(a) Acquires a pecuniary interest in any property, transaction, or enterprise which may be affected by such information or official action; or

(b) Speculates or wagers on the basis of such information or official action; or

(c) Aids, advises, or encourages another to do any of the foregoing with intent to confer on any person a special pecuniary benefit.

(2) Misuse of official information is a class 6 felony.

HISTORY: Source:. L. 71: R&RE, p. 461, § 1. C.R.S. 1963: § 40-8-402.L. 89: (2) amended, p. 840, § 83, effective July 1.

ANNOTATION

Statute as basis for jurisdiction. See People v. Heckers, 37 Colo. App. 166, 543 P.2d 1311 (1975).

TITLE 18. CRIMINAL CODE
ARTICLE 8. OFFENSES - GOVERNMENTAL OPERATIONS
PART 5. PERJURY AND RELATED OFFENSES

18-8-501. Definitions

The definitions in sections 18-8-101 and 18-8-301 are applicable to this part 5, and, in addition to those definitions:

(1) "Materially false statement" means any false statement, regardless of its admissibility under the rules of evidence, which could have affected the course or outcome of an official proceeding, or the action or decision of a public servant, or the performance of a governmental function.

(2) (a) "Oath" includes an affirmation and every other mode authorized by law of attesting to the truth of that which is stated. For the purposes of this section, written statements shall also be treated as if made under oath if:

(I) The statement was made on or pursuant to a form bearing notice, authorized by law, to the effect that false statements made therein are punishable; or

(II) The statement recites that it was made under oath, the declarant was aware of such recitation at the time he made the statement and intended that the statement should be represented as a sworn statement, and the statement was in fact so represented by its delivery or utterance with the signed jurat of an officer authorized to administer oaths appended thereto; or

(III) The statement is made, used, or offered with the intent that it be accepted as compliance with a statute, rule, or regulation which requires a statement under oath or other like form of attestation to the truth of the matter contained in the statement; or

(IV) The statement meets the requirements for an unsworn declaration under the "Uniform Unsworn Foreign Declarations Act", part 3 of article 55 of title 12, C.R.S.

(b) An oath is "required or authorized by law" when the use of the oath is specifically provided for by statute, court rule, or appropriate regulatory provision.

(3) "Official proceeding" means a proceeding heard before any legislative, judicial, administrative, or other government agency, or official authorized to hear evidence under oath, including any magistrate, hearing examiner, commissioner, notary, or other person taking testimony or depositions in any such proceedings.

HISTORY: Source:. L. 71: R&RE, p. 462, § 1. C.R.S. 1963: § 40-8-501.L. 91: (3) amended, p. 360, § 23, effective April 9.L. 96: (1) amended, p. 738, § 11, effective July 1.L. 2009: (2) amended, (HB 09-1190), ch. 115, p. 485, § 2, effective August 5.

Editor's note: This title was numbered as chapter 40, C.R.S. 1963. The substantive provisions of this title were repealed and reenacted in 1971, resulting in the addition, relocation, and elimination of sections as well as subject matter. For amendments to this title prior to 1971, consult the Colorado statutory research explanatory note beginning on page vii in the front of this volume. For a detailed comparison of this title, see the comparative tables located in the back of the index.

Editor's note: This title was repealed and reenacted in 1971. For historical information concerning the repeal and reenactment, see the editor's note following the title heading.

Cross references: For interference with the legislative process, see part 4 of article 2 of title 2; for legislative witnesses, see § 8-2.5-101.

Law reviews: For article, "Testimonial Consistency: The Hobgoblin of the Federal False Declaration Statute", see 66 Den. U.L. Rev. 135 (1989).

ANNOTATION

Law reviews. For article, "The Perjurious Defendant: A Proposed Solution to the Defense Lawyer's Conflicting Ethical Obligations to the Court and to His Client", see 59 Den. L.J. 75 (1981).

Not every false statement constitutes perjury. People v. Onorato, 36 Colo. App. 178, 538 P.2d 898 (1975).

To be perjurious, a false statement must also be "material". People v. Onorato, 36 Colo. App. 178, 538 P.2d 898 (1975).

Test of materiality is whether a witness's testimony, at the time his answers were given, could have affected the course or outcome of the investigation; where the subject of the grand jury's investigation was the heroin distribution ring operating in the Colorado Springs area, all leads were material which might have assisted the grand jury in identifying those who had at any time been members of the heroin ring. People v. Maestas, 199 Colo. 143, 606 P.2d 849 (1980).

To be material, a false declaration must have a tendency to influence, impede or hamper the grand jury from pursuing its investigation and it need not be material to the main issue or directed to the primary subject of the investigation. People v. Spomer, 631 P.2d 1156 (Colo. App. 1981).

Materiality. A false statement is material for purposes of § 18-8-502 (1) if it could have affected the outcome of the official proceeding. People v. Scott, 785 P.2d 931 (Colo. 1990); People v. Drake, 841 P.2d 364 (Colo. App. 1992); People v. Ellsworth, 15 P.3d 1111 (Colo. App. 2000).

Materiality properly question of law. This section does not improperly render the element of materiality in a first degree perjury charge a question for the judge and does not violate the constitutional right to a jury trial on every element of the offense. People v. Smith, 198 Colo. 120, 597 P.2d 204 (1979), abrogated in People v. Vance, 933 P.2d 576 (Colo. 1997).

Materiality is an element of the offense of first-degree perjury entitling a defendant to have a jury determine whether his false statement is material. People v. Vance, 933 P.2d 576 (Colo. 1997)(abrogating People v. Smith, 198 Colo. 120, 597 P.2d 204 (1979)).

A mistrial is an "official proceeding" within the meaning of this section. People v. Valdez, 39 Colo. App. 213, 568 P.2d 71 (1977).

Lawyer knowingly presenting perjuring witness commits subornation of perjury. A lawyer who presents a witness knowing that the witness intends to commit perjury thereby engages in the subornation of perjury. People v. Schultheis, 638 P.2d 8 (Colo. 1981).

Written as well as oral statements may be made under "oath". People v. Chaussee, 847 P.2d 156 (Colo. App. 1992), aff'd in part and rev'd in part on other grounds, 880 P.2d 749 (Colo. 1994).

"Official proceeding", which includes judicial proceedings in the course of which depositions are given under oath, must be read as including interrogatories. People v. Chaussee, 847 P.2d 156 (Colo. App. 1992), aff'd in part and rev'd in part on other grounds, 880 P.2d 749 (Colo. 1994).

As a matter of law, an application for court-appointed counsel constitutes part of an official proceeding under subsection (3). People v. Schupper, 140 P.3d 293 (Colo. App. 2006).

Applied in People v. Frayer, 661 P.2d 1189 (Colo. App. 1982), aff'd, 684 P.2d 927 (Colo. 1984).

18-8-502. Perjury in the first degree

(1) A person commits perjury in the first degree if in any official proceeding he knowingly makes a materially false statement, which he does not believe to be true, under an oath required or authorized by law.

(2) Knowledge of the materiality of the statement is not an element of this crime, and the defendant's mistaken belief that his statement was not material is not a defense, although it may be considered by the court in imposing sentence.

(3) Perjury in the first degree is a class 4 felony.

HISTORY: Source: L. 71: R&RE, p. 463, § 1. C.R.S. 1963: § 40-8-502.L. 77: (1) amended, p. 967, § 46, effective July 1.

ANNOTATION

Annotator's note. Since § 18-8-502 is similar to former § 40-7-1, C.R.S. 1963, and laws antecedent thereto, relevant cases construing those provisions have been included in the annotations to this section.

Ruling of unconstitutionality disapproved. People v. Loomis, 698 P.2d 1320 (Colo. 1985).

The elements of perjury are the falsity of the testimony, its materiality to the issue in the contempt matter, that the oath was administered in a proper proceeding, and the criminal intent. Marrs v. People, 135 Colo. 458, 312 P.2d 505 (1957).

To convict of the crime of perjury it must appear not only that the alleged false testimony was given, and that it was false, but also that it was material. It must be shown to have had a legitimate tendency to prove or disprove some fact material to the matter being investigated. McClelland v. People, 49 Colo. 538, 113 P. 640 (1911).

Not every false statement constitutes perjury. People v. Onorato, 36 Colo. App. 178, 538 P.2d 898 (1975).

To be perjurious, a false statement must also be "material". People v. Onorato, 36 Colo. App. 178, 538 P.2d 898 (1975).

Witness may be guilty of perjury in swearing falsely to any material circumstance. A witness may be guilty of perjury, not only by swearing corruptly and falsely to the fact which is immediately in issue, but also to any material circumstance which legitimately tends to prove or disprove such fact; or to any circumstance which has the effect to strengthen and corroborate the testimony upon the main fact. Thompson v. People, 26 Colo. 496, 59 P. 51 (1899); Stonebraker v. People, 89 Colo. 550, 4 P.2d 915 (1931); Papas v. People, 98 Colo. 306, 55 P.2d 1330 (1936).

It is not necessary to prove that each and all of the answers of the defendant were false, but if the jury believes beyond a reasonable doubt that the defendant had willfully sworn falsely to any of the material statements charged, it was their duty to find him guilty. Marrs v. People, 135 Colo. 458, 312 P.2d 505 (1957).

Probable cause existed where the evidence, taken in a light most favorable to the prosecution, showed the defendant lied to the small claims court and showed a document to the small claims court that he allegedly forged, the referee stated that someone was being dishonest, and the document presented contained certain features consistent with a tracing attempt. People v. Scott, 785 P.2d 931 (Colo. 1990).

Materiality is question of law. The court must determine, as a matter of law, whether or not the alleged false testimony is material to the issue. Treece v. People, 96 Colo. 32, 40 P.2d 233 (1934).

In a prosecution for perjury the question of the materiality of the testimony alleged to be false is one of law for the court and not the jury. Marrs v. People, 135 Colo. 458, 312 P.2d 505 (1957).

The people have the burden of proving "materiality" of a false statement and that element may not be presumed. People v. Onorato, 36 Colo. App. 178, 538 P.2d 898 (1975).

Materiality. A false statement is material for purposes of subsection (1) if it could have affected the outcome of the official proceeding. People v. Scott, 785 P.2d 931 (Colo. 1990); People v. Drake, 841 P.2d 364 (Colo. App. 1992); People v. Ellsworth, 15 P.3d 1111 (Colo. App. 2000).

Materiality must appear by facts or direct averment. It is not necessary that the information should set forth how or in what way the evidence alleged to be false was material to the issue. It is sufficient if its materiality appears either from the facts alleged or by direct averment. Thompson v. People, 26 Colo. 496, 59 P. 51 (1899); Treece v. People, 96 Colo. 32, 40 P.2d 233 (1934).

Issue of materiality must be submitted to jury. People v. Vance, 933 P.2d 576 (Colo. 1997).

Knowledge of materiality is not an element of the crime of first-degree perjury. People v. Vance, 933 P.2d 576 (Colo. 1997).

Failure to submit issue of materiality to jury is structural defect and not harmless error. People v. Vance, 933 P.2d 576 (Colo. 1997). (disapproved of by Supreme Court in Griego v. People, 19 P.3d 1 (Colo. 2001)).

An incorrect jury instruction in a criminal case is not a structural error; instead, such instruction is subject only to harmless or plain error review, following the U.S. supreme court precedent in Neder v. United States, 527 U.S. 1 (1999). Therefore, if a conviction is not attributable to the incorrect instruction, a conviction shall not be overturned and all contrary precedent is disapproved of. Griego v. People, 19 P.3d 1 (Colo. 2001) (disapproving on this point Cooper v. People, 973 P.2d 1234 (Colo. 1999), Bogdanov v. People, 941 P.2d 247 (Colo. 1997), People v. Vance, 933 P.2d 576 (Colo. 1997), People v. Villa-Villa, 983 P.2d 181 (Colo. App. 1999)).

A perjury conviction may be predicated upon false statements made before a grand jury. People v. Onorato, 36 Colo. App. 178, 538 P.2d 898 (1975).

Statements made during a mistrial may be grounds for perjury under this section. People v. Valdez, 39 Colo. App. 213, 568 P.2d 71 (1977).

The defendant's attempted retraction in a retrial having the same case number as the mistrial does not afford him protection from conviction of first degree perjury under this section. People v. Valdez, 39 Colo. App. 213, 568 P.2d 71 (1977).

Defendant must be informed of issue against him. When tried on an indictment alleging that perjury was committed before a grand jury, the defendant is entitled to be advised by the indictment what the issue is, or as to the nature of the point in question, so that he may prepare himself to show, if he can, that though the testimony be false, it was not material. Treece v. People, 96 Colo. 32, 40 P.2d 233 (1934).

Absence of warning as to privilege against self-incrimination does not protect perjury. The required warning concerning one's privilege against self-incrimination in grand jury appearance relates to admissions concerning past acts, and its absence does not grant witnesses the right to commit perjury before the grand jury. People v. Spencer, 182 Colo. 189, 512 P.2d 260 (1973).

And testimony not to be suppressed in later perjury prosecution. Defendants who were not advised of their rights against self-incrimination prior to their grand jury appearance are not entitled to have their testimony before the grand jury suppressed in later perjury prosecution. People v. Spencer, 182 Colo. 189, 512 P.2d 260 (1973).

Inconsistent answer relating to credibility is material. If a witness, in answering a question asked for the purpose of laying a foundation for impeachment by a showing of former inconsistent statements, testifies under oath that he did not at a designated time and place make certain statements to officers concerning the whereabouts of the defendant on a certain day, which answers are inconsistent with his testimony on the trial, such testimony is material on the question of his credibility, and if knowingly false, constitutes perjury. Papas v. People, 98 Colo. 306, 55 P.2d 1330 (1936).

Necessity for record of testimony. The record of the case in which perjury is alleged to have been committed must be produced, and the people must display so much of the testimony given in that hearing as shows clearly the materiality of the testimony alleged to have been falsified. McClelland v. People, 49 Colo. 538 (1911).

Sufficiency of information. An information for perjury under this section which charges that it was committed in the "district court of San Miguel county, Colorado", charged with sufficient certainty before what court the alleged false oath was taken; it is not necessary to state the name of the clerk of the court by whom the oath was administered. Smith v. People, 32 Colo. 251, 75 P. 914 (1904).

An information charging perjury in a grand jury investigation should set forth the subject matter of the investigation in which the alleged false testimony was given, and facts, not conclusions, must be averred. If the information is defective in this particular, the prosecution must fail. Treece v. People, 96 Colo. 32, 40 P.2d 233 (1934).

An information that in substance alleges that before a certain district court, properly describing the court, upon the trial of a certain criminal case, the defendant was duly sworn as a witness by the deputy clerk who had authority to administer the oath, sufficiently conforms to this section and by necessary implication states that the proceeding in which the oath was administered was one over which the court had jurisdiction. Thompson v. People, 26 Colo. 496, 59 P. 51 (1899); Papas v. People, 98 Colo. 306, 55 P.2d 1330 (1936).

The information charged that the defendant "feloniously, willfully, corruptly, and falsely" swore that he did not make the statement and then charged that he did make the statement, and concludes with the further allegation "all of which he, the said A, well knew". With these allegations in the information, it is not conceivable that the defendant was not advised that he was charged with swearing falsely that a certain fact was true, with knowledge of its falsity. To hold otherwise requires so "skillful an elimination of the obvious" that it would not be attempted except by one versed in the technicalities and evasions of the criminal law. Papas v. People, 98 Colo. 306, 55 P.2d 1330 (1936).

Sufficiency of indictment. Indictment for perjury was not fatally defective where the indictment, by implication, indicated that the converse of defendant's testimony was the truth, and the indictment was sufficiently definite to inform the defendant of the charges against him so as to enable him to prepare a defense and to plead the judgment in bar of any further prosecutions for the same offense. People v. Mazza, 182 Colo. 166, 511 P.2d 885 (1973).

Insufficiency of indictment. The perjury charge failed to set forth with sufficient specificity the falsity of the defendant's statements before

the grand jury so as to enable him to prepare his defense, where the device by which the defendant was charged with perjury in the indictment was a verbatim partial transcript of the defendant's actual testimony before the grand jury, but there was no averment of fact to demonstrate the falsity of the testimony on which the charge was based. People v. Broncucia, 189 Colo. 334, 540 P.2d 1101 (1975), cert. denied, 431 U.S. 937, 97 S. Ct. 2647, 53 L. Ed.2d 254 (1977).

Joinder of counts in indictment. Two separate counts charging perjury, the first under this section and the second under the following section, were properly joined in one indictment where the two counts were admittedly based upon the same facts, and such facts would render defendants guilty under both sections. People v. Swanson, 109 Colo. 371, 125 P.2d 637 (1942).

Proof required to support conviction. To support a conviction for perjury, the offense must be proved by the testimony of two witnesses or the testimony of one witness and independent, corroborating evidence which is deemed of equal weight to the testimony of another witness. People v. Mazza, 182 Colo. 166, 511 P.2d 885 (1973).

Evidence of defendant's familiarity with crime about which he perjured himself. Evidence in prosecution for perjury which, if believed by the jury, demonstrated defendant's familiarity with the alleged crime about which defendant was being interrogated by the grand jury, was relevant and material to show defendant's knowledge of the perjurious nature of his testimony and his motive for falsifying his testimony. People v. Mazza, 182 Colo. 166, 511 P.2d 885 (1973).

Jury instruction. Where jury instruction failed to include an essential part of the two-witness rule in prosecution for perjury, i.e., that the corroborating evidence must be deemed of equal weight to the testimony of another witness, this omission was harmless error inasmuch as there was direct testimony by three witnesses contradicting the defendant's grand jury testimony. People v. Mazza, 182 Colo. 166, 511 P.2d 885 (1973).

Evidence sufficient to establish guilt beyond reasonable doubt. People v. Concialdi, 191 Colo. 561, 554 P.2d 1094 (1976).

Written versus oral statements. The difference between first- and second-degree perjury does not turn on whether a statement is written versus oral, but rather upon whether a false statement made under oath occurs in an "official proceeding." People v. Chaussee, 847 P.2d 156 (Colo. App. 1992), aff'd in part and rev'd in part on other grounds, People v. Chaussee, 880 P.2d 749 (Colo. 1994).

Applied in People v. Francois, 198 Colo. 249, 598 P.2d 144 (1979); People v. Maestas, 199 Colo. 143, 606 P.2d 849 (1980).

18-8-503. Perjury in the second degree

(1) A person commits perjury in the second degree if, other than in an official proceeding, with an intent to mislead a public servant in the performance of his duty, he makes a materially false statement, which he does not believe to be true, under an oath required or authorized by law.

(2) Perjury in the second degree is a class 1 misdemeanor.

HISTORY: Source: L. 71: R&RE, p. 463, § 1. C.R.S. 1963: § 40-8-503.

ANNOTATION

Annotator's note. Since § 18-8-503 is similar to former § 40-7-1, C.R.S. 1963, a relevant case construing that provision has been included in the annotations to this section.

To make a valid oath, for the falsity of which perjury will lie, there must be in some form, in the presence of an officer authorized to administer it, an unequivocal and present act by which the affiant consciously takes upon himself the obligation of an oath. Rogers v. People, 161 Colo. 317, 422 P.2d 377 (1966).

No presumption of oath-taking is held to apply where the notary's testimony was equivocal on the issue of whether the oath was taken. Rogers v. People, 161 Colo. 317, 422 P.2d 377 (1966).

Independent proof required where presumption fails. Although in some cases a criminal conviction may be had upon a bare presumption, the presumption so allowed must fall where there is some evidence to counter the notion that the oath was actually taken. The courts then require independent proof of the actual oath-taking. Rogers v. People, 161 Colo. 317, 422 P.2d 377 (1966).

Written versus oral statements. The difference between first- and second-degree perjury does not turn on whether a statement is written versus oral, but rather upon whether a false statement made under oath occurs in an "official proceeding." People v. Chaussee, 847 P.2d 156 (Colo. App. 1992), aff'd in part and rev'd in part on other grounds, People v. Chaussee, 880 P.2d 749 (Colo. 1994).

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