18-13-105. Criminal libel.

(1) A person who shall knowingly publish or disseminate, either by written instrument, sign, pictures, or the like, any statement or object tending to blacken the memory of one who is dead, or to impeach the honesty, integrity, virtue, or reputation or expose the natural defects of one who is alive, and thereby to expose him to public hatred, contempt, or ridicule, commits criminal libel.

(2) It shall be an affirmative defense that the publication was true, except libels tending to blacken the memory of the dead and libels tending to expose the natural defects of the living.

(3) Criminal libel is a class 6 felony.

Source: L. 71: R&RE, p. 484, § 1. **C.R.S. 1963:** § 40-13-105. **L. 73:** p. 540, § 14. **L. 77:** (1) amended, p. 971, § 65, effective July 1. **L. 89:** (3) amended, p. 842, § 102, effective July 1.

Cross references: For affirmative defenses generally, see §§ 18-1-407, 18-1-710, and 18-1-805; for provisions on damages for broadcasting defamatory statements, see § 13-21-106.

ANNOTATION

Am. Jur.2d. See 50 Am. Jur.2d, Libel and Slander, § 521.

Law reviews. For article, "The Law of Libel in Colorado", see 28 Dicta 121 (1951). For article, "Libel as a Limitation on Newspaper Publications", see 25 Rocky Mt. L. Rev. 278 (1953). For note, "When the Spoken Word Becomes a Libel", see 30 Dicta 183 (1953). For article, "Emotional Distress, The First Amendment, and "This kind of speech": A Heretical Perspective on Hustler Magazine v. Falwell", see 50 U. Colo. L. Rev. 315 (1989).

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

This section is invalid only insofar as it reaches constitutionally protected statements about public officials or public figures on matters of public concern and this partial invalidation affects only the application of subsection (1). Truth shall remain an affirmative defense under subsection (2) and article II, section 10 of the Colorado constitution. People v. Ryan, 806 P.2d 935 (Colo. 1991).

This section remains valid to the extent that it penalizes libelous attacks where one private person has disparaged the reputation of another private individual. People v. Ryan, 806 P.2d 935 (Colo. 1991).

Purely private libels are in no way impacted by the New York Times v. Sullivan rule that in civil or criminal libel actions brought by public officials, truth is an absolute defense and only false statements made with "actual malice" are subject to sanctions. People v. Ryan, 806 P.2d 935 (Colo. 1991).

It is inappropriate to require that defamatory false statements must be made with "actual malice", where one private person disseminates defamatory statements about another private individual in the victim's community. Rather, in a purely private context, a less restrictive culpability standard may be used to meet the state's legitimate interest in controlling constitutionally unprotected conduct injurious to its citizens. People v. Ryan, 806 P.2d 935 (Colo. 1991).

At common law there was a distinction between civil and criminal libel; in the former publication was a necessary element, while in the latter the exhibition of the libelous matter to the prosecutor with intent to provoke a breach of the peace would support the charge. Leighton v. People, 90 Colo. 106, 6 P.2d 929 (1931).

The law makes the publication of a libel a crime, not because of injury to the reputation of an individual, but because such publication tends to affect injuriously the peace and good order of society. Bearman v. People, 91 Colo. 486, 16 P.2d 425 (1932).

And proof of publication is essential. In a prosecution for criminal libel under this section, the record was reviewed and held not to establish the statutory crime as charged, there being no proof of publication. Leighton v. People, 90 Colo. 106, 6 P.2d 929 (1931).

Section applicable to release of autopsy report. The criminal sanctions that may be imposed if a criminal libel results from the release of an autopsy report are sufficient to deter such actions without compromising the legislative policy of open access to public records. Denver Publishing Co. v. Dreyfus, 184 Colo. 288, 520 P.2d 104 (1974).

Truth may be shown in justification, but it was otherwise at common law. Leighton v. People, 90 Colo. 106, 6 P.2d 929 (1931).

Evidence of the truth of any allegedly libelous statement is admissible, even where the libel is per se, or where the publication is admittedly false. Gomba v. McLaughlin, 180 Colo. 232, 504 P.2d 337 (1972).

And truth is an absolute defense in a libel action, whether civil or criminal, and the trend of the law is toward the recognition of substantial rather than absolute truth as a defense to allegedly libelous statements. Gomba v. McLaughlin, 180 Colo. 232, 504 P.2d 337 (1972).

A defendant asserting truth as a defense in a libel action is not required to justify every word of the alleged defamatory matter; it is sufficient if the substance, the gist, the sting, of the matter is true. Gomba v. McLaughlin, 180 Colo. 232, 504 P.2d 337 (1972).

The burden is on the defendant to prove that the publication was substantially true. Gomba v. McLaughlin, 180 Colo. 232, 504 P.2d 337 (1972).

If not published generally, it must be alleged that libel was sent to party alleged to be injured. At common law where there has been no publication abroad, that is, to the public generally, or to persons other than the one alleged to have been libeled, then it is necessary that the indictment should contain an allegation that the libel was sent to the party libeled with intent to provoke a breach of the peace. Leighton v. People, 90 Colo. 106, 6 P.2d 929 (1931).

Intent is presumed if the libel is not qualifiedly privileged. In prosecutions for criminal libel under this section, if the publication is libelous per se and is not qualifiedly privileged, intent is presumed; but if the publication is qualifiedly privileged, it being the law that intent must be established beyond a reasonable doubt, defendant may introduce evidence on this issue. Bearman v. People, 91 Colo. 486, 16 P.2d 425 (1932).

And privilege may be lost if the libelous matter is given wide circulation. In an action for criminal libel under this section, it is held that a letter addressed to the president of a hospital association charging a doctor with criminal and immoral acts in connection with his management of the institution, if privileged, lost its character as such by reason of the wide distribution of copies of the letter by defendant and offered evidence to negative intent, was properly rejected. Bearman v. People, 91 Colo. 486, 16 P.2d 425 (1932).

Or where publication was intended to injure. The privilege applying to inter-office memoranda alleged to be libelous is qualified and will be lost where the publishers are actuated by express malice. Abrahamsen v. Mountain States Tel. & Tel. Co., 177 Colo. 422, 494 P.2d 1287 (1972).

Questions of law in libel action. The question of whether in a particular libel case a publication is to be deemed privileged, that is, whether the situation of the party making it and the circumstances attending it were such as to rebut the legal inference of intent, is one of law to be determined by the court. Abrahamsen v. Mountain States Tel. & Tel. Co., 177 Colo. 422, 494 P.2d 1287 (1972).

Matters of fact in libel action. When considering the question of whether in a particular libel case a publication is to be deemed privileged, the existence of intent, the question of good faith on the part of the defendants, and their honest belief in the truth of the statements put forth by them, all are matters of fact which are to be determined exclusively by the jury. Abrahamsen v. Mountain States Tel. & Tel. Co., 177 Colo. 422, 494 P.2d 1287 (1972).

Where the defendant asserts truth as a defense in a libel suit the question, a factual one, is whether there is a substantial difference between the allegedly libelous statement and the truth, that is, whether the statement produces a different effect upon the reader than that which would be produced by the literal truth of the matter. Gomba v. McLaughlin, 180 Colo. 232, 504 P.2d 337 (1972).

Where the publication is a single act, it constitutes one offense, even though it is a libel on two or more persons, and may be charged in a single count without rendering it bad for duplicity. Bearman v. People, 91 Colo. 486, 16 P.2d 425 (1932).

For the privilege of judges, counsel, parties, and witnesses, see People v. Green, 9 Colo. 506, 13 P. 514 (1886).

Judicial proceedings are absolutely privileged. In an action for libel and slander, where the entire complaint is based upon judicial acts or semijudicial proceedings, all matters complained of were within the protection of an absolute privilege and as such they could provide no basis upon which relief could be granted. Renner v. Chilton, 142 Colo. 454, 351 P.2d 277 (1960).

Matter published in due course of judicial proceedings and pertinent thereto is within the protection of an absolute privilege. This extends to affidavits although voluntarily made, and to statements referring to persons not parties to the proceedings. Strict legal materiality or relevancy is not required to confer the privilege. Glasson v. Bowen, 84 Colo. 57, 267 P. 1066 (1928).

And the publication of a legal proceeding is qualifiedly privileged, but not until it has gone into court and thereby become public. Moreover, the qualified privilege permits only the publication of a truthful statement of the matter as it took place in court. The defendant cannot claim a qualified privilege to say that one has been accused in a legal proceeding when he has not. Towles v. Meador, 84 Colo. 547, 272 P. 625 (1928).

Words published of jurors. Words published in a newspaper, which tend to impeach the honesty and integrity of jurors in their office, are libelous. Byers v. Martin, 2 Colo. 605, 25 Am. R. 755 (1875).

Charge of attempt to commit murder. Evidence of pecuniary loss is unnecessary to a right of action for a libelous charge of attempt to commit murder. Republican Publishing Co. v. Miner, 12 Colo. 77, 20 P. 345 (1888).

A newspaper may state of a candidate for public office that he has no qualifications for the place, and this statement contains no possible reflection upon plaintiff's personal or professional character, but, being confined to a criticism of his fitness for the place sought, is clearly permissible. Knapp v. Post Printing & Publishing Co., 111 Colo. 492, 144 P.2d 981 (1943).

Evidence sufficient. King v. People, 7 Colo. 224, 3 P. 223 (1883).