

STATUTORY DEFINITIONS

CHAPTER ONE

1.051

Definition of “Act”

“Act” means a bodily movement.

1.052

Definition of “Benefit”

“Benefit” means anything of value or an advantage, present or future.

1.053

Definition of “Calendar Year”

“Calendar Year” means three hundred sixty-five days actual time served without release, suspension or commutation of sentence, probation, pardon or parole, work furlough or release from confinement on any other basis.

1.055

Definition of “Conduct”

“Conduct” means an act or omission and its accompanying culpable mental state.

1.056

Definition of “Crime”

“Crime” means a misdemeanor or a felony.

1.057

Definition of “Criminal Street Gang”

“Criminal street gang” means an ongoing formal or informal association of persons whose members or associates individually or collectively engage in the commission, attempted commission, facilitation or solicitation of any felony act and who has at least one individual who is a criminal street gang member.

1.058

Definition of “Criminal Street Gang Member”

“Criminal street gang member” means an individual to whom two of the following seven criteria that indicate criminal street gang membership apply:

- (a) Self-proclamation.
- (b) Witness testimony or official statement.
- (c) Written or electronic correspondence.
- (d) Paraphernalia or photographs.
- (e) Tattoos.
- (f) Clothing or colors.
- (g) Any other indicia of street gang membership.

1.056(a)(1)

INTENTIONALLY OR WITH INTENT TO DEFINED

“Intentionally” [or “with intent to”] as used in these instructions means that a defendant's objective is to cause that result or to engage in that conduct.

SOURCE: A.R.S. § 13-105(6)(a).

USE NOTE: Use language in brackets as appropriate to the facts.

The Committee feels that the language of the instruction is more understandable to jurors than is the statutory language.

Use in conjunction with instructions defining the criminal statute involved.

It is error to instruct that intent may be presumed from an inherently dangerous act. *People v. Burres*, 101 Cal. App. 3d 341, 161 Cal. Rptr. 593 (1980).

COMPARABLE INSTRUCTION: CALJIC 3.34 (1979 revision) describes proof of intent by statement and circumstances.

1.056(a)(2)

INTENT — INFERENCE

Intent may be inferred from all the facts and circumstances disclosed by the evidence. It need not be established exclusively by direct sensory proof. The existence of intent is one of the questions of fact for your determination.

SOURCE: *State v. Quatsling*, 24 Ariz. App. 105, 536 P.2d 226 (1975), with “direct sensory proof” substituted for the language of the opinion.

1.056(b)

KNOWINGLY DEFINED

“Knowingly” means that a defendant acted with awareness of [or belief in] the existence of conduct or circumstances constituting an offense. It does not mean that a defendant must have known the conduct is forbidden by law.

[It is no defense that the defendant was not aware of [or could not believe in] the existence of conduct or circumstances solely because of voluntary intoxication.]

SOURCE: A.R.S. § 13-105(6)(b).

Use this language where the defendant does not possess actual knowledge but has a belief that a certain circumstance exists, *e.g.*, believing that property is stolen when in fact it is not, or believing that a co-conspirator is a trusted accomplice who in fact is an undercover agent.

Ignorance of the law is no defense. See A.R.S. § 13-204(B). This final sentence is intended to counter the possibility that jurors may interpret the preceding sentence to establish that defense. There may be an exception to this general rule in conspiracy cases involving public welfare offenses. See *State v. Gunnison*, 127 Ariz. 110, 618 P.2d 604 (1980), and the comments to Instruction 10.031.

COMPARABLE INSTRUCTION: CALJIC 1.21 (1979 revision) defines knowledge as general awareness of facts bringing conduct within a statutory proscription.

1.056(c)

RECKLESSLY (RECKLESS DISREGARD) DEFINED

“Recklessly [reckless disregard] _____” means that a defendant is aware of and consciously disregards a substantial and unjustifiable risk that conduct will result in _____. The risk must be such that disregarding it is a gross deviation from what a reasonable person would do in the situation.

[It is no defense that a person who created such a risk was unaware of it solely because of voluntary intoxication.]

SOURCE: A.R.S. § 13-105(6)(c).

USE NOTE: Use language in brackets as appropriate to the facts.

Insert the appropriate conduct, *e.g.*, “causing any physical injury,” A.R.S. § 13-1203(A)(1); or “infringing on the inhabitant’s right of privacy,” A.R.S. § 13-1504(A)(2). This instruction is not necessary in cases of manslaughter under A.R.S. § 13-1103(A)(1) and (3), second degree murder under A.R.S. § 13-1104(A)(3), endangerment under A.R.S. § 13-1201 and reckless burning under A.R.S. § 13-1702 because “recklessly” has been incorporated in the instructions defining those crimes.

Insert the appropriate result. Generally, the same language inserted at 2, *supra*, will suffice. However, if the charge is criminal damage under A.R.S. § 13-1602(A)(4), the appropriate language would be “depriv[ing] livestock of access to the only reasonably available water.” If the charge is trafficking in stolen property under A.R.S. § 13-2306, “conduct will result in” should be deleted from the first sentence of the instruction and the following language should be inserted: “[he] [she] possesses property the permanent identifying features of which, including serial numbers and labels, have been removed or in any fashion altered.”

Use this sentence only if there is evidence that the defendant was intoxicated.

“Recklessness” is more than merely engaging in “dangerous conduct” because of the conscious disregard for the known danger. *State v. Huffman*, 137 Ariz. 300, 670 P.2d 405 (App. 1983).

1.056(d)

CRIMINAL NEGLIGENCE

“Criminal negligence” means, with respect to a result or a circumstance described by a statute defining an offense, that a person fails to perceive a substantial and unjustifiable risk that the result will occur or that the circumstance exists. The risk must be of such nature and degree that the failure to perceive it constitutes a gross deviation from the standard of care that a reasonable person would observe in the situation.

[It is no defense that the defendant is unaware of or disregards the risk solely because of voluntary intoxication.]

SOURCE: A.R.S. § 13-105(6)(d).

USE NOTE: This instruction should be used only in those statutes whose mental state involves the rarely-criminalized standard of negligence, *e.g.*, A.R.S. § 13-1102, negligent homicide.

1.058

DANGEROUS INSTRUMENT DEFINED

“Dangerous instrument” means anything that is readily capable of causing death or serious physical injury under the circumstances in which it is [used] [attempted to be used] or [threatened to be used].

SOURCE: A.R.S. § 13-105(8).

USE NOTE: Use language in brackets as appropriate to the facts.

“Dangerous instrument” as defined by subsection (8) includes a fire, *State v. Wilson*, 135 Ariz. 395, 661 P.2d 659 (App. 1983) and an automobile when used under circumstances that are “readily capable of causing death or serious physical injury.” *State v. Venegas*, 137 Ariz. 171, 669 P.2d 604 (App. 1983). Whether an object is a dangerous instrument is usually a jury question. *State v. Caldera*, 141 Ariz. 634, 688 P.2d 642 (1984).

1.059

Deadly Physical Force Defined

“Deadly physical force” means either:

1. Force which is used with the purpose of causing death or serious physical injury, *or*
2. Force which in the manner of its use is capable of creating a substantial risk of causing death or serious physical injury.

1.0510

Deadly Weapon Defined

“Deadly weapon” means anything designed for lethal use, including a firearm.

Use Note: An unloaded gun may qualify as a deadly weapon. A firearm is a deadly weapon unless it is permanently inoperable. A missing pin makes it only temporarily inoperable. *State v. Spratt*, 126 Ariz. 184, 613 P.2d 848 (App. 1980). Whether an object is a deadly weapon is usually a jury question. *State v. Caldera*, 141 Ariz. 634, 688 P.2d 642 (1984).

1.0514

Definition of “Economic Loss”

“Economic Loss” means any loss incurred by a person as a result of the commission of an offense. Economic loss includes lost interest, lost earnings and other losses which would not have been incurred but for the offense. Economic loss does not include losses incurred by the convicted person, damages for pain and suffering, punitive damages or consequential damages.

1.0512

Enterprise Defined

“Enterprise” includes any corporation, association, labor union, or other legal entity.

1.0516

Definition of “Felony”

“Felony” means an offense for which a sentence to a term of imprisonment in the custody of the state department of corrections is authorized by any law of this state.

1.0517

Definition of “Firearm”

“Firearm” means any loaded or unloaded handgun, pistol, revolver, rifle, shotgun or other weapon which will or is designed to or may readily be converted to expel a projectile by the action of expanding gases, except that it does not include a firearm in permanently inoperable condition.

1.0520

Definition of “Intoxication”

“Intoxication” means any mental or physical incapacity resulting from use of drugs, toxic vapors or intoxicating liquors.

1.0524

Definition of “Omission”

“Omission” means the failure to perform an act as to which a duty of performance is imposed by law.

1.052)

Definition of “Peace Officer”

“Peace officer” means any person vested by law with a duty to maintain public order and make arrests.

1.0526

Definition of “Person”

“Person” means a human being and, as the context requires, an enterprise, a public or private corporation, an unincorporated association, a partnership, a firm, a society, a government, a governmental authority or an individual or entity capable of holding a legal or beneficial interest in property.

1.0528

Definition of “Physical Force”

“Physical force” means force used upon or directed toward the body of another person and includes confinement, but does not include deadly physical force.

1.0529

Definition of “Physical Injury”

“Physical injury” means the impairment of physical condition.

1.0530

Definition of “Possess”

“Possess” means knowingly to have physical possession or otherwise to exercise dominion or control over property.

1.0531

Definition of “Possession”

“Possession” means a voluntary act if the defendant knowingly exercised dominion or control over property.

1.0532

Definition of “Property”

“Property” means anything of value, tangible or intangible.

1.0530

Public Servant Defined

A “public servant” is a person who is an officer or employee of any branch of government, whether elected, appointed, or otherwise employed. [The term includes any person participating as an advisor, consultant, or otherwise in performing a governmental function.]

[A public servant includes any person who has been elected, appointed, employed, or designated to become a public servant as defined here, even though this person does not yet occupy that position.]

Source: A.R.S. § 13-105(30).

By statute, A.R.S. § 13-105(30), a “public servant” does not include a “juror or witness.” These words are not included in the instruction because of the infrequency of any definitional problem regarding these two roles.

USE NOTE: Use this bracketed language only when evidence shows the public servant was an advisor or consultant or acted in a similar capacity. Use this version where the evidence indicates the public servant did not occupy the office in question at the time of the crime.

1.0534

Serious Physical Injury Defined

As used in the instruction defining an aggravated assault, the term “serious physical injury” includes physical injury which creates a reasonable risk of death, or which causes serious and permanent disfigurement or temporary but substantial disfigurement, serious impairment of health or loss or protracted impairment, including temporary but substantial loss or impairment, of the function of any bodily organ or limb, or a fracture of any body part.

1.0535

Definition of “Unlawful”

“Unlawful” means contrary to law or, where the context so requires, not permitted by law.

1.0536

Definition of “Vehicle”

“Vehicle” means a device in, upon or by which any person or property is or may be transported or drawn upon a highway, waterway or airway, excepting devices moved by human power or used exclusively upon stationary rails or tracks.

1.0537

Definition of “Voluntary Act”

“Voluntary act” means a bodily movement performed consciously and as a result of effort and determination.

1.0538

Definition of “Voluntary Intoxication”

“Voluntary intoxication” means intoxication caused by the knowing use of drugs, toxic vapors or intoxicating liquors by a person, the tendency of which to cause intoxication the person knows or ought to know, unless the person introduces them pursuant to medical advice or under such duress as would afford a defense to an offense.