

**PROPOSED INSTRUCTIONS APPROVED BY THE CRJI COMMITTEE  
ON OCTOBER 31, 2011**

**23.16.A.7 – Computer Tampering**

The crime of computer tampering requires proof that the defendant, [without authority] [in excess of defendant’s authorization of use], knowingly obtained [any information that was required by law to be kept confidential] [any records that were not public records] by accessing a [computer] [computer system] [network] that was operated by [the State of Arizona] [a political subdivision of the State of Arizona] ~~[a medical institution]~~ **[a health care provider] [a clinical laboratory] [a person or entity that provides services on behalf of a health care provider or a clinical laboratory].**

“Access” means to instruct, communicate with, store data in, retrieve data from or otherwise make use of any resources of a computer, computer system or network.

**“Clinical laboratory” or “laboratory” means any facility, agency, institution, medical office, health care institution, building, or place which provides through its ownership or operation facilities for the microbiological, serological, chemical, immunohematological, hematological, cytologic, histologic, radiobioassay, cytogenetic, histocompatibility, pathological, toxicological or other examination of materials derived from the human body for the purpose of providing information for the diagnosis, prevention and treatment of a disease or an impairment or the assessment of human health conditions or to determine the presence, absence or concentration of various substances in the body. Clinical laboratory does not include law enforcement crime laboratories.**

“Computer” means an electronic device that performs logic, arithmetic or memory functions by the manipulations of electronic or magnetic impulses and includes all input, output, processing, storage, software or communication facilities that are connected or related to such a device in a system or network.

“Computer system” means a set of related, connected or unconnected computer equipment, devices and software, including storage, media and peripheral devices.

**“Health care provider” means:**

- (a) A person who is licensed pursuant to law and who maintains medical records.**
- (b) A health care institution as defined in statute.**
- (c) An ambulance service as defined in statute.**
- (d) A health care services organization licensed pursuant to law.**

“Network” includes a complex of interconnected computer or communication systems of any type.

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**SOURCE:** A.R.S. § 13-2316(A)(7) (statutory language as of ~~July 18, 2000~~ **July 20, 2011**); definitions from A.R.S. § 13-2301(E) (statutory language as of January 1, 2006).

**USE NOTE:** Use bracketed language as appropriate to the facts of the case.

The court shall instruct on the culpable mental state.

“Knowingly” is defined in A.R.S. § 13-105 (Statutory Definition Instruction 1.056(b)).

**COMMENT:** In *State v. Young*, 223 Ariz. 447, 224 P.3d 944 (App. 2010), the court discussed the elements of this particular offense. Regarding the issue of “authority,” the court wrote at ¶ 15:

Accordingly, the issue of authority for purposes of A.R.S. § 13-2316(A)(7) turns on whether a person has authority to obtain the *information or records* that are the object of the offense-not on whether the person has authority to access the computer.

The court also addressed the meaning of the phrases “information that is required by law to be kept confidential” and “any records that are not public records.” As to the first phrase, the court noted that it “is easily understood” and information within that category must be “protected by state or federal law.” See ¶¶ 20 and 21. Regarding the meaning of the phrase “any records that are not public records,” the court gave the phrase its plain meaning and concluded that only “records that are not subject to the public records law: information that must be kept confidential by law and private records” fall within that category. See ¶ 25.

**If the specific definition of a health care provider is in issue, the terms are defined in the following statutes:**

- (a) A person who is licensed pursuant to title 32 and who maintains medical records.**
- (b) A health care institution as defined in section 36-401.**
- (c) An ambulance service as defined in section 36-2201.**
- (d) A health care services organization licensed pursuant to title 20, chapter 4, article 9.**

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**STATUTORY CRIMINAL 12.08.A**

**Assault; Vicious Animals**

**The crime of assault by a vicious animal requires proof that the defendant intentionally or knowingly:**

**[caused any dog to bite and inflict serious physical injury on a human being.]**

**[caused any dog to engage in conduct resulting in serious physical injury to a human being.]**

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**SOURCE:** A.R.S. § 13-1208 (Statutory Language as of July 20, 2011).

**USE NOTE:** The court shall instruct on the culpable mental state.

“Intentionally” is defined in A.R.S. § 13-105 (statutory definitional instruction 1.056(a)).

“Knowingly” is defined in A.R.S. § 13-105 (statutory definitional instruction 1.056(b)).

“Physical injury” is defined in A.R.S. § 13-105 (statutory definitional instruction 1.0529).

“Serious physical injury” is defined in A.R.S. § 13-105 (statutory definitional instruction 1.0534).

If a justification defense is raised, the court shall instruct on the appropriate justification defense.

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**STATUTORY CRIMINAL 12.08.B**

**ASSAULT; VICIOUS ANIMALS**

**The crime of assault by a vicious animal requires proof that:**

- 1. The defendant owned a dog that the defendant knew or had reason to know had a history of biting or a propensity to ~~attack~~, to cause injury or otherwise endanger the safety of human beings without provocation, or that had been found to be a vicious animal by a court of competent authority; and**
- 2. The dog, while at large, bit, inflicted physical injury on, or attacked a human being.**

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**SOURCE: A.R.S. § 13-1208 (statutory language as of July 20, 2011).**

**USE NOTE: The court shall instruct on the culpable mental state.**

**~~“Knowingly” and physical injury are~~ is defined in A.R.S. § 13-105 (Statutory Definitional Instruction 1.056(b)).**

**“Physical injury” is defined in A.R.S. § 13-105 (Statutory Definitional Instruction 1.0529).**

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## **STATUTORY CRIMINAL 18.06.B**

### **Unlawful Failure to Return Rented or Leased Property**

**The crime of Unlawful Failure to Return Rented or Leased Property requires proof that the defendant knowingly failed to:**

- 1. Return the rented or leased [motor vehicle] [property] within 72 hours after the time provided for return in the rental agreement; and**
- 2. Return the rented or leased [motor vehicle] [property] without good cause; and**
- 3. Give notice to and obtain permission of the lessor of the rented or leased [motor vehicle] [property] to be late.**

**[If the (motor vehicle) (property) was not leased on a periodic tenancy basis, the person who rented out the (motor vehicle) (property) shall have included the following information, clearly written as part of the terms of the rental agreement:**

- 1. The date and time the (motor vehicle) (property) is required to be returned.**
- 2. The maximum penalties if the (motor vehicle) (property) is not returned within seventy-two hours of the date and time listed in paragraph 1.]**

**[If the (motor vehicle) (property) was leased on a periodic tenancy basis without a fixed expiration or return date, the lessor shall have included within the lease clear written notice that the lessee was required to return the (motor vehicle) (property) within seventy-two hours from the date and time of the failure to pay any periodic lease payment required by the lease.]**

**[It is an affirmative defense that the Defendant was physically incapacitated and unable to request or obtain permission of the lessor to retain the (motor vehicle) (property) or that the (motor vehicle) (property) itself was in such a condition, through no fault of Defendant, that it could not be returned to the lessor within such time.]**

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**SOURCE: A.R.S. § 13-1806(B) (statutory language as of July 20, 2011).**

**USE NOTE: The court shall instruct on the culpable mental state.**

**“Knowingly” is defined in A.R.S. § 13-105 (Statutory Definitional Instruction 1.056(b)).**

**For the offense to be a felony, the property rented or leased must be a motor vehicle.**

**If the affirmative defense under §13-1806(D) is asserted, the Court shall instruct on Affirmative Defense (Statutory Criminal Instruction 2.025).**

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## STATUTORY CRIMINAL 14.05.02

### **Sexual Conduct with a Minor – ~~Parent, Guardian, Teacher or Clergy~~ Special Relationship**

The crime of sexual conduct with a minor requires proof of the following:

1. the defendant intentionally or knowingly engaged in [sexual intercourse] [oral sexual contact] with another person; *and*
2. the other person was fifteen, sixteen or seventeen years of age; *and*
3. the defendant was **or had been** the other person's [parent] [stepparent] [adoptive parent] [legal guardian] [foster parent] [teacher] [clergyman] [priest].

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**SOURCE:** A.R.S. §13-1405 (Statutory language as of ~~January 1, 1994~~ July **20, 2011**).

**USE NOTE:** The court shall instruct on the culpable mental state.

“Intentionally” is defined in A.R.S. §13-105 (**Statutory Definitional Instruction 1.056(a)**).

“Knowingly” is defined in A.R.S. §13-105 (**Statutory Definitional Instruction 1.056(b)**).

“Sexual intercourse” is defined in A.R.S. §13-1401: (~~Statutory Criminal Instruction 14.01.03~~).

“Oral Sexual contact” is defined in A.R.S. §13-1401: (~~Statutory Criminal Instruction 14.01.01~~).

**"Teacher" means a ~~teacher certified by the Arizona Board of Education~~ certificated teacher or any other person who provides instruction to pupils in any school district, charter school or**

**accommodation school, the Arizona state schools for the deaf and the blind or a private school in this state.**

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## **12.04 – Aggravated Assault – General**

The crime of aggravated assault requires proof of the following:

1. The defendant committed an assault, *and*
2. The assault was aggravated by at least one of the following factors:
  - The defendant caused serious physical injury to another person; *or*
  - The defendant used a deadly weapon or dangerous instrument; *or*
  - The defendant committed the assault after entering the private home of another with the intent to commit the assault; *or*
  - The defendant was eighteen years of age or older and the person assaulted was fifteen years of age or under; *or*
  - The defendant knew or had reason to know that the person assaulted was a [prosecutor/peace officer/someone summoned and directed by a peace officer performing official duties]; *or*
  - The defendant committed the assault while the person assaulted was bound or otherwise physically restrained; *or*
  - The defendant committed the assault while the assaulted person’s ability to resist was substantially impaired; *or*
  - The defendant knew or had reason to know that the victim was a [fire fighter/ fire inspector/ fire investigator/ emergency medical technician/paramedic] performing official duties or a person summoned and directed by such person performing official duties; *or*
  - The defendant knew or had reason to know that the victim was a constable performing official duties or a person summoned and directed by a constable performing official duties; *or*
  - The defendant knew or had reason to know that the victim was a health care provider or a person summoned and directed by such person performing professional duties; *or*
  - The assault was committed by any means of force that caused temporary but substantial disfigurement, temporary but substantial loss or impairment of any body organ or part, or a fracture of any body part; *or*
  - The defendant was in violation of an order of protection issued against him or her pursuant to A.R.S. § 13-3602 or 13-3624.

- **The defendant knew or had reason to know that the person assaulted was a code enforcement officer.**
- **The defendant knew or had reason to know that the person assaulted was a state or municipal park ranger.**
- **The defendant knew or had reason to know that the person assaulted was a public defender.**

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**SOURCE:** A.R.S. § 13-1204 (statutory language as of ~~January 1, 2009~~ **July 20, 2011**).

**USE NOTE:** The court shall instruct on the culpable mental state.

~~“Physical injury” “serious physical injury,” “deadly weapon,” and “dangerous instrument” are defined in A.R.S. § 13-105.~~

“Intentionally” is defined in A.R.S. §13-105 (Statutory Definitional Instruction 1.056(a)).

“Knowingly” is defined in A.R.S. §13-105 (Statutory Definitional Instruction 1.056(b)).

“Recklessly” is defined in A.R.S. §13-105 (Statutory Definitional Instruction 1.056(c)).

**"Code enforcement officer" is defined in A.R.S. § 39-123.**

“Dangerous instrument” is defined in A.R.S. §13-105 (Statutory Definitional Instruction 1.058).

“Deadly weapon” is defined in A.R.S. §13-105 (Statutory Definitional Instruction 1.0510).

“Physical injury” is defined in A.R.S. §13-105 (Statutory Definitional Instruction 1.0529).

“Serious physical injury” is defined in A.R.S. §13-105 (Statutory Definitional Instruction 1.0534).

The court shall also instruct on assault (Statutory Criminal Instruction 12.03).

A special verdict form should be used to determine which subsection applies.

If assault is aggravated by a deadly weapon, dangerous instrument, or serious physical injury, a special verdict form should be used if the victim is under 15 years of age.

If assault is aggravated by a deadly weapon, dangerous instrument, serious physical injury, or if the means of force used caused a temporary but substantial disfigurement, temporary but substantial loss or impairment of any body organ of part, or a fracture of any body part, a special verdict form should be used if the victim is a peace officer engaged in the execution of any official duties or a prosecutor.

If the person who commits the assault is seriously mentally ill, as defined in A.R.S. § 36-550, or is inflicted with Alzheimer's disease or related dementia, the specific provisions relating to aggravated assaults on licensed health care providers do not apply [13-1204(A)(10)].

When the offense is alleged to have arisen in violation of an order of protection, the assault must have occurred as defined by A.R.S. § 13-1203(A)(1) or (3).

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**STATUTORY DEFINITIONS -- CHAPTER ONE**

**1.0523. “Human smuggling organization” means an ongoing formal or informal association of persons in which members or associates individually or collectively engage in the smuggling of human beings.**

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**SOURCE: A.R.S. §13-105(23) (Statutory language as of July 20, 2011).**

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NEW

### **23.23.A Participating in a Human Smuggling Organization**

**The crime of participating in a human smuggling organization requires proof that the defendant:**

**[Intentionally [organized], [managed], [directed], [supervised] or [financed] a human smuggling organization with the intent to promote or further the criminal objectives of the human smuggling organization.]**

**[Knowingly directed or instructed others to engage in violence or intimidation to promote or further the criminal objectives of a human smuggling organization.]**

**[Furnished advice or direction in the conduct, financing or management of a human smuggling organization's affairs with the intent to promote or further the criminal objectives of a human smuggling organization.]**

**[Intentionally promoted or furthered the criminal objectives of a human smuggling organization by inducing or committing any act or omission by a public servant in violation of the public servant's official duty.]**

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**SOURCE: A.R.S. §13-2323(A) (statutory language as of July 20, 2011).**

**USE NOTE: The court shall instruct on the culpable mental state.**

**“Intentionally” is defined in A.R.S. §13-105 (Statutory Definitional Instruction 1.056(a)).**

**“Knowingly” is defined in A.R.S. §13-105 (Statutory Definitional Instruction 1.056(b)).**

**"Human Smuggling Organization" is defined in A.R.S. § 13-105 (Statutory Definitional Instruction 1.0523).**

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### **23.23.B Assisting a Human Smuggling Organization**

**The Crime of assisting a human smuggling organization requires proof that Defendant committed [*fill in the felony offense, whether completed or preparatory*] with the knowledge that it was at the direction of, or in association with, any human smuggling organization.**

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**SOURCE: A.R.S. §13-2323(B) (statutory language as of July 20, 2011).**

**USE NOTE: The court shall instruct on the culpable mental state.**

**“Intentionally” is defined in A.R.S. §13-105 (Statutory Definitional Instruction 1.056(a)).**

**“Knowingly” is defined in A.R.S. §13-105 (Statutory Definitional Instruction 1.056(b)).**

**"Human Smuggling Organization" is defined in A.R.S. §13-105 (Statutory Definitional Instruction 1.0523).**

**COMMENT: Although the statute does not include a culpable mental state as to the defendant’s knowledge of the human smuggling organization, the Committee believes that the knowledge requirement is implicit. See A.R.S. §13-202(B).**

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## STATUTORY CRIMINAL 37.01(A)(1)

### Unlawful use of food stamps

The crime of unlawful use of food stamps requires proof that the defendant:

1. knowingly [(used) (transferred) (acquired) (possessed) (redeemed)] food stamps; *and*
2. did so by means of a [(false statement or representation) (material omission) (~~impersonation~~) (failure to disclose a change in circumstances) (fraudulent device) (manner not authorized by law or by the **state** department of economic security)]; *and*
3. knew that the [(use) (transfer) (acquisition) (possession) (redemption)] of the food stamps was not authorized.

"Food stamps" means food stamp coupons or electronically transferred food stamp **supplemental nutrition assistance** program benefits.

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**Source:** A.R.S. § 13-3701(A)(1) (Statutory language as of ~~July 21, 1997~~ **July 20, 2011**).

**Use Note:** Use the language in brackets as appropriate to the facts.

The court shall instruct on the culpable mental state.

“Knowingly” is defined in A.R.S. § 13-105 (Statutory Definitional Instruction 1.056(b)).

“Possess” is defined in A.R.S. § 13-105 (Statutory Definitional Instruction 1.05(30))

The verdict must include a value finding in order to determine the class of the offense. Therefore, the following section should be included in the standard “guilty / not guilty” verdict form:

[Complete this section of the verdict form if you find the defendant “guilty” of the charged offense.]

We the jury, duly impaneled in the above-entitled action, find that the defendant received the following: (check only one)

\_\_\_\_\_ More than \$100

\_\_\_\_\_ \$100 or less

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**NEW**

**STATUTORY CRIMINAL 37.01(A)(4)**

**UNLAWFUL USE OF FOOD STAMPS**

**The crime of unlawful use of food stamps requires proof that the defendant knowingly used, after an unlawful transfer, the Food Stamps of another person.**

**"Food stamps" means food stamp coupons or electronically transferred supplemental nutrition assistance program benefits.**

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**Source: A.R.S. § 13-3701(A) (2) (Statutory language as of July 20, 2011).**

**USE NOTE:**

**The court shall instruct on the culpable mental state.**

**“Knowingly” is defined in A.R.S. § 13-105 (Statutory Definitional Instruction 1.056(b)).**

**“Unlawful” is defined in A.R.S. § 13-105 (Statutory Definitional Instruction 1.0535).**

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## 13.02 – Custodial Interference

The crime of custodial interference requires proof that the defendant;

1. [took] [enticed] [kept] from lawful custody any [child] [incompetent person] entrusted by authority of law to the custody of another person or institution; *or*

before a court order determining custodial rights denying that parent access to any child, [took] [enticed] [withheld] any child from the other parent; *or*

had joint legal custody of the child and [took] [enticed] [withheld] the child from the physical custody of the other custodian; *or*

intentionally failed or refused to return [or impeded the return] of the child to the lawful custodian at the time the defendant's access rights outside this state had expired; *and*

2. knew or had reason to know that the defendant had no legal right to do so.

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**SOURCE:** A.R.S. § 13-1302 (statutory language as ~~amended in~~ of August 21, 1998).

**USE NOTE:**

~~Use Statutory Definition Instruction 1.056(b) defining “knowingly.~~

**The court shall instruct on the culpable mental state.**

**“Knowingly” is defined in A.R.S. § 13-105 (Statutory Definitional Instruction 1.056(b)).**

**For A.R.S. §13-1302(a)(2) & (3), if justified by the facts, the following instruction should be given:**

**It is not a crime if the defendant is the child's parent and both of the following are found:**

1. **Defendant had filed an emergency petition regarding custodial rights with the superior court and had received a hearing date from the court; and**

- 2. Defendant had a good faith and reasonable belief that the child would be in immediate danger if the child was left with the other parent.**

**The state must convince you beyond a reasonable doubt that the exception to the crime does not apply to the defendant.**

**A.R.S. §13-1302(D).**

Use Verdict Form 13.02 for Statutory Criminal Instruction 13.02.

**COMMENT:** “Out of wedlock” children are assumed to be in the custody of the mother until paternity and custody are determined by a court. A.R.S. § 13-1302(B). A.R.S. § 13-1302(B) making the mother of child born out of wedlock legal custodian until paternity is established is substantially related to important state interest and, therefore, is not a gender-based equal protection violation nor does the statute violate due process. *State v. Bean*, 174 Ariz. 544, 851 P.2d 843 (App. 1992).

“Custody” includes parental authority and other lawful authority to have control of the person; it does not mean arrest or incarceration as “custody” is defined in A.R.S. § 13-2501(3).

A.R.S. § 13-1302(A)(2) does not require that there be ongoing custody proceedings before a person may be charged with custodial interference. “Pending custody proceedings are not a prerequisite to a prosecution for custodial interference under this section.” *State v. Wood*, 198 Ariz. 275, 277, 8 P.3d 1189, 1191 (App. 2000).

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**Statutory Criminal 14.09 - Unlawful Sexual Conduct by Probation  
Department Employees**

**The crime of Unlawful Sexual Conduct by Probation Department Employee requires proof of the following:**

- 1. The defendant was [an adult probation department] [juvenile court] employee; and**
- 2. The defendant knowingly coerced the victim to engage in [sexual contact], [oral sexual contact] or [sexual intercourse]; and**
- 3. The coercion was accomplished by [threatening to negatively influence the victim's supervision or release status] [offering to positively influence the victim's supervision or release status].**

**"Adult probation department employee" or "juvenile court employee" means an employee of an adult probation department or the juvenile court who either:**

- (a) Through the course of employment, directly provides treatment, care, control or supervision to a victim; or**
- (b) Provides presentence or predisposition reports directly to a court regarding the victim.**

**"Victim" means a person who is either of the following:**

- (a) Subject to conditions of release or supervision by a court.**
- (b) A minor who has been referred to the juvenile court.**

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**SOURCE: A.R.S. §13-1409 (Statutory language as of July 20, 2011).**

**USE NOTE: The court needs to determine the age of the victim for sentencing purposes. See §§ 13-1409(B). Therefore, use of the following verdict form is suggested:**

**[Complete this portion of the verdict form only if you find the defendant guilty of the offense.]**

**We the jury, duly impaneled in above-entitled action, find that the other person was (check only one):**

\_\_\_\_\_ **18 years of age or older.**

\_\_\_\_\_ **At least 15 years of age, but under 18.**

\_\_\_\_\_ **Under 15 years of age.**

**The court shall instruct on the culpable mental state.**

**“Knowingly” is defined in A.R.S. §13-105 (Statutory Definitional Instruction 1.056(b)).**

**“Sexual intercourse” is defined in A.R.S. §13-1401 (Statutory Criminal Instruction 14.01.03).**

**“Oral sexual contact” is defined in A.R.S. §13-1401 (Statutory Criminal Instruction 14.01.01).**

**“Sexual contact” is defined in A.R.S. §13-1401 (Statutory Criminal Instruction 14.01.02).**

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## STATUTORY CRIMINAL 14.19.1

### UNLAWFUL SEXUAL CONDUCT BY CORRECTIONAL EMPLOYEE

The crime of unlawful sexual conduct by a correctional employee requires proof of the following:

1. the defendant was employed by or contracted to provide services to [the state department of corrections] [the department of juvenile corrections] [a private prison facility] **[a juvenile detention facility]**[a city or county jail]; ~~and~~

or

1. the defendant was [an official visitor] [a volunteer] [an agency representative] of [the state department of corrections] [the department of juvenile corrections] [a private prison facility] **[a juvenile detention facility]** [a city or county jail]; ~~and~~

and

2. the defendant engaged in any act of a sexual nature with another person; **and**
3. the other person was in the custody of [the state department of corrections] [the department of juvenile corrections] [a private prison facility] **[a juvenile detention facility]** [a city or county jail] or an offender under the supervision of the state department of corrections, the department of juvenile corrections or a city or county.

"Any act of a sexual nature" means [any completed, attempted, threatened or requested touching of the genitalia, anus, groin, breast, inner thigh, pubic area or buttocks with the intent to arouse or gratify sexual desire] [any act of exposing the genitalia, anus, groin, breast, inner thigh, pubic area or buttocks with the intent to arouse or gratify sexual desire] [any act of photographing, videotaping, filming, digitally recording or otherwise viewing, with or without a device, a prisoner or offender with the intent to arouse or gratify sexual desire, either while the prisoner or offender is in a

state of undress or partial dress or while the prisoner or offender is urinating or defecating].

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**Source:** A.R.S. §13-1419 (Statutory language as of **July 20, 2011**).

**Use Note:** The court shall instruct on the culpable mental state.

Use the appropriate paragraph 1 and bracketed language as appropriate to the facts.

“Intentionally” is defined in A.R.S. §13-105 (**Statutory Definitional Instruction 1.056(a)(1)**).

“Knowingly” is defined in A.R.S. §13-105 (**Statutory Definitional Instruction 1.056(b)**).

“Sexual intercourse” is defined in A.R.S. §13-1401 (**Statutory Criminal Instruction 14.01.03**).

“Oral Sexual contact” is defined in A.R.S. §13-1401 (**Statutory Criminal Instruction 14.01.01**).

“Sexual contact” is defined in A.R.S. §13-1401 (**Statutory Criminal Instruction 14.01.02**).

A verdict form must indicate the age of the victim in order to classify the offense. The following addition to the verdict form is suggested:

[Complete this section of the verdict form if you find the defendant “guilty” of the charged offense.]

We the jury, duly impaneled in the above-entitled action, find that the other person was:

- \_\_\_\_\_ Under the age of fifteen years
- \_\_\_\_\_ At least 15 years of age, but not yet 18 years of age
- \_\_\_\_\_ Eighteen years of age or over

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**Statutory Criminal 20.02.C**  
**Forgery In Connection With a Drop House**

The crime of forgery in connection with a drop house requires proof of the following:

1. The defendant is guilty of forgery; and
2. The forged instrument was knowingly used in connection with the [purchase], [lease], or [renting] of a dwelling; and
3. The defendant knew that the dwelling was used as a drop house.

“Drop house” means property that is used to facilitate smuggling of human beings for profit or commercial purpose.

“Smuggling of human beings” means the transportation, procurement of transportation or use of property or real property by a person or an entity that knows or has reason to know that the person or persons transported or to be transported are not united states citizens, permanent resident aliens or persons otherwise lawfully in this state or have attempted to enter, entered or remained in the united states in violation of law.

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SOURCE: A.R.S. § 13-2002(C) (Statutory language as of July 20, 2011).

USE NOTE:

The court shall instruct on the culpable mental state.

“Knowingly” is defined in A.R.S. §13-105 (Statutory Definitional Instruction 1.056(b)).

The court shall instruct on the offense of Forgery (Statutory Criminal Instruction 20.02).

**COMMENT: The statute does not include a culpable mental state as to the defendant's knowledge that the lease, rent or purchase of the home was to be used as a drop house. The instruction includes this mental state, because a majority of the Committee believed that the knowledge requirement is implicit.**

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## **STATUTORY CRIMINAL 23.08.01**

### **TERRORISM**

The crime of terrorism requires proof that the defendant intentionally or knowingly:

[engaged in an act of terrorism.]

[organized, managed, directed, supervised or financed an act of terrorism.]

[solicited, incited or induced others to promote or further an act of terrorism.]

[made property available to another, by transaction, transportation or otherwise, knowing or having reason to know that the property was intended to facilitate an act of terrorism.]

[provided advice, assistance or direction in the conduct, financing or management of an act of terrorism knowing or having reason to know that an act of terrorism had occurred or may have resulted by:

(a) Harboring or concealing any person or property.

(b) Warning any person of impending discovery, apprehension, prosecution or conviction. This subdivision does not apply to a warning that is given in connection with an effort to bring another person into compliance with the law.

(c) Providing any person with material support or resources or any other means of avoiding discovery, apprehension, prosecution or conviction. "Material support or resources" includes money or other financial securities, financial services, lodging, sustenance, training, safehouses, false documentation or identification, communications equipment, facilities, weapons, lethal substances, explosives, personnel, transportation, disguises and other physical assets but does not include medical assistance, legal assistance or religious materials.

(d) Concealing or disguising the nature, location, source, ownership or control of material support or resources.

(e) Preventing or obstructing by means of force, deception or intimidation anyone from performing an act that might aid in the discovery, apprehension, prosecution or conviction of any person or that might aid in the prevention of an act of terrorism.

(f) Suppressing by any act of concealment, alteration or destruction any physical evidence that might aid in the discovery, apprehension, prosecution or conviction of any person or that might aid in the prevention of an act of terrorism.

(g) Concealing the identity of any person.]

**[Possess, with the intent to injure another person, an infectious biological substance or a radiological agent.]**

**[Destroy or damage or attempt to destroy or damage any facility, equipment or material involved in the sale, manufacture, storage or distribution of an infectious biological substance or a radiological agent with the intent to injure another by the release of the substance or agent.]**

**[Manufacture, sell, give, distribute or use an infectious biological substance or a radiological agent with the intent to injure another person.]**

**[Cause injury to another person by means of an infectious biological substance or a radiological agent.]**

**[Give or send to another person or place in a public or private place a simulated infectious biological substance or a radiological agent with the intent to terrify, intimidate, threaten or harass.**

**The placing or sending of a simulated infectious biological substance or radiological agent without written notice attached to the substance or agent in a conspicuous place that the substance or device has been rendered inert and is possessed for a curio or relic collection,**

**display or other similar purpose is prima facie evidence of an intent to terrify, intimidate, threaten or harass.]**

**[Transport any radiological isotope or agent for the purpose of committing another act in violation of this section.]**

**[Adulterate or misbrand any radiological isotope.]**

**[Manufacture, hold, sell or offer to sell any radiological isotope that is adulterated or misbranded.]**

**[Alter, mutilate, destruct, obliterate or remove any part of the labeling of a radiological isotope.]**

**[Any other act with respect to a radiological isotope if the act is done when the article is possessed, transferred, transported or held for sale and results in the article being adulterated or misbranded.]**

**[The possession of any infectious biological substance or a radiological agent, unless satisfactorily explained, may give rise to an inference that the person who is in possession of the substance or agent is aware of the risk that the substance or agent may be used to commit an act in violation of this instruction.**

**You are free to accept or reject this inference as triers of fact. You must determine whether the facts and circumstances shown by the evidence in this case warrant any inference that the law permits you to make. Even with the inference, the State has the burden of proving each and every element of the offense beyond a reasonable doubt before you can find the defendant guilty.]**

"Terrorism" means any felony, including any completed or preparatory offense, that involved the use of a deadly weapon or a weapon of mass destruction or the intentional or knowing infliction of serious physical injury with the intent to:

- (a) Influence the policy or affect the conduct of this state or any of the political subdivisions, agencies or instrumentalities of this state, or

(b) Cause substantial damage to or substantial interruption of public communications, communication service providers, public transportation, common carriers, public utilities, public establishments or other public services.

"Weapon of mass destruction" means:

(a) Any device or object that was/is designed or that the person intended to use to cause multiple deaths or serious physical injuries through the use of an explosive agent or the release, dissemination or impact of a toxin, biological agent, poisonous chemical, or its precursor, or any vector.

(b) Except as authorized and used in accordance with a license, registration or exemption by the radiation regulatory agency, any device or object that was designed or that the person intended to use to release radiation or radioactivity at a level that was dangerous to human life.

"Explosive agent" means an ["explosive"] [flammable fuels in amounts over fifty gallons] [fire accelerants in amounts over fifty gallons].

["Explosive agent" excludes (fireworks) (firearms) (a propellant actuated device) (propellant actuated industrial tool) (a device that is commercially manufactured primarily for the purpose of illumination) ( a rocket having a propellant charge of less than four ounces).]

**"Infectious biological substance" includes any bacteria, virus, fungus, protozoa, prion, toxin or material found in nature that is capable of causing death or serious physical injury. Infectious biological substance does not include human immunodeficiency virus, syphilis or hepatitis.**

**"Radiological agent" includes any substance that is able to release radiation at levels that are capable of causing death or serious bodily injury or at any level if used with the intent to terrify, intimidate, threaten or harass.**

"Vector" means a living organism or molecule, including a recombinant molecule or biological product engineered through

biotechnology that was/is capable of carrying a biological agent or toxin to a host.

"Biological agent" means any microorganism, virus, infectious substance or biological product that may be engineered through biotechnology or any naturally occurring or bioengineered component of any microorganism, virus, infectious substance or biological product and that was/is capable of causing [death, disease or physical injury in a human, animal, plant or other living organism] [the deterioration or contamination of air, food, water, equipment, supplies or material of any kind].

"Toxin" means the toxic material of plants, animals, microorganisms, viruses, fungi or infectious substances or a recombinant molecule, whatever its origin or method of reproduction, including:

(a) Any poisonous substance or biological product engineered through biotechnology and that was/is produced by a living organism.

(b) Any poisonous isomer or biological product, homolog or derivative of such substance.

["Communication service provider" means any person who is engaged in providing a service that allows its users to send or receive oral, wire or electronic communications or computer services.]

["Public establishment" means [a structure that is owned, leased or operated by this state or a political subdivision of this state] [a health care institution].]

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**Source:** A.R.S. § 13-2308.01 (statutory language as of **July 20, 2011**) and 13-3001 (statutory language as of August 22, 2002).

**Notes:** The court shall instruct on the culpable mental state.

Use bracketed language as appropriate to the case.

“Intentionally” and “knowingly” are defined in A.R.S. §13-105 (Statutory Definitions 1.056(a)(1) and 1.056(b)).

“Dangerous instrument” is defined in A.R.S. § 13-105. ~~See~~ (Statutory Criminal Instruction 1.058).

“Deadly weapon” is defined in A.R.S. § 13-105. ~~See~~ (Statutory Criminal Instruction 1.0510).

“Serious physical injury” is defined in A.R.S. § 13-105. ~~See~~ (Statutory Criminal Instruction 1.0534).

If the jury finds one aggravating circumstance listed in A.R.S. § 13-702(C), the court may impose a life sentence. A.R.S. § 13-2308.01(C). If an aggravating circumstance is alleged, use the Aggravating Circumstance instructions.

**Comment:** The statute further provides that this section does not apply to any person who **is permitted or licensed pursuant to Title 30, chapter 4 and 10 Code of Federal Regulations part 30, or** is a member or employee of the armed forces of the United States, a federal or state governmental agency or any political subdivision of a state, a charitable, scientific or educational institution or a private entity provided: 1. The person is engaged in lawful activity within the scope of the person's employment and the person is otherwise duly authorized or licensed to manufacture, possess, sell, deliver, display, use, exercise control over or make accessible to others any weapon of mass destruction or to otherwise engage in any activity described in this paragraph and, 2. The person is in compliance with all applicable federal and state laws in doing so.

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## 31.07

### UNLAWFUL DISCHARGE OF FIREARMS

The crime of unlawful discharge of a firearm requires proof that the defendant, with criminal negligence, discharged a firearm within or into the limits of a municipality.

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**SOURCE:** A.R.S. §13-3107 (Statutory language as of **July 20, 2011**).

**USE NOTE:** The court shall instruct on the culpable mental state.

“Criminal negligence” is defined in A.R.S. §13-105. Statutory Criminal Instruction 1.056(d).

“Firearm” is defined in A.R.S. § 13-3101. Statutory Criminal Instruction 31.01.04.

“Municipality” is defined in A.R.S. §13-3107. Statutory Criminal Instruction 31.07.01.

This offense shall not apply if the firearm is discharged:

1. as allowed by Chapter 4;
2. on a properly supervised range;
- ~~3. in an area recommended as a hunting area by the Arizona Game & Fish Department, approved and posted as required by the chief of police, but any such area may be closed when deemed unsafe by the chief of police or the director of the Game & Fish Department;~~
- 3. To lawfully take wildlife during an open season established by the Arizona Game and Fish Commission and subject to the limitations prescribed by Title 17 and Arizona Game and Fish Commission rules and orders. This paragraph does not prevent a city, town or county from adopting an ordinance or rule restricting the discharge of a firearm within one-fourth mile of an occupied structure. For purposes of this paragraph, “take” has the same meaning prescribed in section 17-101.**

4. for the control of nuisance wildlife by permit from the Arizona Game & fish Department or the U.S. Fish & Wildlife Service;
5. by special permit of the chief of police of the municipality;
6. as required by an animal control officer in the performance of official duties;
7. using blanks;
8. more than one mile from any occupied structure as defined in §13-3101; or
9. in self-defense or defense of another person against an animal attack if a reasonable person would believe that deadly physical force against the animal is necessary and reasonable under the circumstances to protect oneself or the other person.

A.R.S. §13-3107(C).

**COMMENT:** In a case brought under the predecessor to this statute, A.R.S. §§ 13-917 and 917.01, the Arizona Supreme Court held that the intent to do bodily harm was not an element of the statute. *State v. Andrews*, 106 Ariz. 372, 377, 476 P.2d 673, 678 (1970).

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#### 4.04 – Justification for Self-Defense

A defendant is justified in using or threatening physical force in self-defense if the following two conditions existed:

1. A reasonable person in the situation would have believed that physical force was immediately necessary to protect against another's use or apparent attempted or threatened use of unlawful physical force; *and*
2. The defendant used or threatened no more physical force than would have appeared necessary to a reasonable person in the situation.

A defendant may use deadly physical force in self-defense only to protect against another's use or apparent attempted or threatened use of deadly physical force.

Self-defense justifies the use or threat of physical force or deadly physical force only while the apparent danger continues, and it ends when the apparent danger ends. The force used may not be greater than reasonably necessary to defend against the apparent danger.

The use of physical force or deadly physical force is justified if a reasonable person in the situation would have reasonably believed that immediate physical danger appeared to be present. Actual danger is not necessary to justify the use of physical force or deadly physical force in self-defense.

You must decide whether a reasonable person in a similar situation would believe that:

1. Physical force was immediately necessary to protect against another's [use] [attempted use] [threatened use] [apparent attempted use] [apparent threatened use] of unlawful physical force; *or*
2. Deadly physical force was immediately necessary to protect against another's [use] [attempted use] [threatened use] [apparent attempted use] [apparent threatened use] of unlawful deadly physical force.

You must measure the defendant's belief against what a reasonable person in the situation would have believed.

The State has the burden of proving beyond a reasonable doubt that the defendant did not act with such justification. If the State fails to carry this burden, then you must find the defendant not guilty of the charge. [*The user*

*is directed to the Prefatory Use Note regarding the applicability of this paragraph.]*

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**SOURCE:** A.R.S. §§ 13-404 ~~and—405~~ (statutory language as of October 1, 1978), **A.R.S. §§ 13-405 (statutory language as of July 29, 2010)** and 13-205 (statutory language as of April 24, 2006); *State v. Grannis*, 183 Ariz. 52, 60-61, 900 P.2d 1, 9-10 (1995); *State v. Dumaine*, 162 Ariz. 392, 404, 783 P.2d 1184, 1196 (1989); *State v. Noriega*, 142 Ariz. 474, 482, 690 P.2d 775, 783 (1984), *overruled on other grounds*, *State v. Burge*, 167 Ariz. 25, 28 n.7, 804 P.2d 754, 757 n.7 (1990) (overruling only on *Noriega*'s holding that a grand jury's allegation of dangerousness in an indictment is insufficient to invoke § 13-604's sentence enhancement allegations).

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

If there have been past acts of domestic violence as defined in A.R.S. § 13-3601, subsection A, against the defendant by the victim, the state of mind of a reasonable person shall be determined from the perspective of a reasonable person who has been a victim of those past acts of domestic violence. A.R.S. § 13-415.

**When defendant's residential structure or occupied vehicle is involved, the presumption set forth in A.R.S. § 13-419 may apply.**

"Physical Force" and "Deadly Physical Force" are defined in A.R.S. § 13-105 (Statutory Definition Instructions 1.0528 and 1.059).

**COMMENT:** This instruction modifies the 1989 RAJI version of Statutory Criminal Instruction 4.04. An instruction that was almost identical to former 4.04 was held reversible error in *Grannis*: "A defendant may only use deadly physical force in self-defense to protect himself from another's use or attempted use of deadly physical force." 183 Ariz. at 61, 900 P.2d at 10. Furthermore, "[u]nder A.R.S. §§ 13-404 and -405, *apparent* deadly force can be met with deadly force, so long as defendant's belief as to apparent deadly force is a reasonable one. An instruction on self-defense is required when a defendant acts under a reasonable belief; actual danger is not required." (Emphasis in the original).

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#### **4.04-1 – Non-Justification for Threat or Use of Physical Force**

A defendant is not justified in using or threatening physical force against another:

[in response to verbal provocation alone.]

[to resist an arrest that the defendant knew or should have known was being made by a peace officer or by a person acting in a peace officer's presence and at the peace officer's direction, whether the arrest is lawful or unlawful, unless the physical force used by the peace officer exceeds that allowed by law.]

[if the defendant provoked the other person's use or attempted use of unlawful physical force, unless:

1. the defendant withdrew from the encounter or clearly communicated to the other person the intent to withdraw with the reasonable belief that the defendant could not safely withdraw; *and*
2. the other person continued or attempted to use unlawful physical force against the defendant.]

The State has the burden of proving beyond a reasonable doubt that the defendant did not act with such justification. If the State fails to carry this burden, then you must find the defendant not guilty of the charge. *[The user is directed to the Prefatory Use Note regarding the applicability of this paragraph.]*

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**SOURCE:** A.R.S. § 13-404(B) (statutory language as of October 1, 1978).

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

**When defendant's residential structure or occupied vehicle is involved, the presumption set forth in A.R.S. § 13-419 may apply.**

The court should instruct on the culpable mental state.

“Knowingly” is defined in A.R.S. § 13-105 (Statutory Definition Instruction 1.056(b)).

“Intentionally” is defined in A.R.S. § 13-105 (Statutory Definition Instruction 1.056(a)(1)).

“Physical Force” and “Unlawful” are defined in A.R.S. § 13-105 (Statutory Definition Instructions 1.0528) and 1.0535).

In cases asserting a defense based upon excessive force by police, the court may also choose to instruct on “arrest” and “method of arrest by officer” as defined in A.R.S. §§ 13-3881, -3887 and -3888 (Statutory Definition Instructions 38.81, 38.87 and 38.88).

**COMMENT:** The privilege of self-defense is not available to one who is at fault in provoking an encounter or difficulty that results in a crime. *State v. Lujan*, 136 Ariz. 102, 104-05, 664 P.2d 646, 648-49 (1983) (stating that “an aggressor may not claim self-defense unless he withdraws from the combat in such a manner as will indicate his intention in good faith to refrain from further aggressive conduct.”)

The public policy prohibiting force against an unlawful arrest accomplished without excessive force is to avoid violence against police officers by relegating the interest of the individual to the interest of the public, and by allowing the individual to seek recourse through civil damages in a subsequent lawsuit. *See State v. Lockner*, 20 Ariz. App. 367, 371, 513 P.2d 374, 379 (1973).

A suspect has no right to use physical force against the lawful use of a police dog to apprehend the suspect. *State v. Doss*, 192 Ariz. 408, 412-13, 966 P.2d 1012, 1016-17 (App. 1998).

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#### **4.07 – Justification in Defense of Premises**

A defendant in lawful possession or control of the premises is justified [in threatening to use deadly physical force] [in using physical force] [in attempting to use physical force] [in threatening to use physical force] in defense of premises if a reasonable person in the situation would have believed it immediately necessary to prevent or terminate the commission or attempted commission of a criminal trespass by another person in or upon the premises. The force used may not be greater than reasonably necessary to prevent the [attempted] criminal trespass.

An actual criminal trespass is not necessary to justify the use of physical force in defense of premises. A defendant is justified in defending premises if the defendant reasonably believed that a criminal trespass was being [committed] [attempted]. You must measure the defendant’s belief against what a reasonable person in the situation would have believed.

The defense ends when the [attempted] criminal trespass ends.

The State has the burden of proving beyond a reasonable doubt that the defendant did not act with such justification. If the State fails to carry this burden, then you must find the defendant not guilty of the charge. *[The user is directed to the Prefatory Use Note regarding the applicability of this paragraph.]*

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**SOURCE:** A.R.S. §§ 13-407 (statutory language as of October 1, 1978) and 13-205 (statutory language as of April 24, 2006).

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

A.R.S. § 13-407(A) provides that a person or the person’s agent in lawful possession or control of the premises may be entitled to claim this defense.

**When defendant’s residential structure or occupied vehicle is involved, the presumption set forth in A.R.S. § 13-419 may apply.**

“Physical Force” and “Deadly Physical Force” are defined in A.R.S. § 13-105 (Statutory Definition Instructions 1.0528 and 1.059).

“Possess” is defined in A.R.S. § 13-105 (Statutory Definition Instruction 1.0530).

“Possession” is defined in A.R.S. § 13-105 (Statutory Definition Instruction 1.0531).

“Premises” is defined in A.R.S. § 13-407(C).

“Criminal Trespass” is defined in A.R.S. § 13-1501 *et seq.*

**COMMENT:** A person may use deadly physical force in the defense of premises only if it is used in the defense of the person or third persons as described in A.R.S. §§ 13-405 and -406. *See* A.R.S. § 13-407(B).

The term “lawful” possession or control is not defined by statute. However, it appears from case law that it has the same meaning as “possession” as defined in A.R.S. § 13-105. *See, e.g., State v. Malory*, 113 Ariz. 480, 483, 557 P.2d 165, 168 (1976) (noting that lawful possession or control is shown if the accused had the property under his control in the sense that it was under his direction or management).

While a person’s entry on premises may be initially lawful based on express or implied invitation, the person in lawful possession or control always has the right to withdraw that invitation, making such entry a trespass, at which time reasonable force may be used to eject the trespasser. *See Ramirez v. Chavez*, 71 Ariz. 239, 226 P.2d 143 (1951) (bar owner had the right to remove an unruly bar customer).

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#### 4.08 – JUSTIFICATION IN DEFENSE OF PROPERTY

A defendant is justified in using physical force against another in defense of property if a reasonable person in the situation would believe it necessary to prevent what a reasonable person in the situation would believe was [an attempt] [a commission] [a threat] by the other person of [theft] [criminal damage] involving tangible movable property under the defendant's possession or control.

Defense of property justifies the use physical force only while the danger continues, and it ends when the danger ends. The force used may not be greater than reasonably necessary to defend against the danger.

Actual danger is not necessary to justify the use of physical force or deadly physical force in defense of property.

The use of physical force is justified if a reasonable person in the situation would have reasonably believed that immediate physical danger appeared to be present.

You must measure the defendant's belief against what a reasonable person in the situation would have believed.

The State has the burden of proving beyond a reasonable doubt that the defendant did not act with such justification. If the State fails to carry this burden, then you must find the defendant not guilty of the charge. [*The user is directed to the Prefatory Use Note regarding the applicability of this paragraph.*]

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**SOURCE:** A.R.S. §§ 13-408 (statutory language as of October 1, 1978) and 13-205 (statutory language as of April 24, 2006); *State v. Grannis*, 183 Ariz. 52, 60-61, 900 P.2d 1, 9-10 (1995).

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

“Physical Force” and “Deadly Physical Force” are defined in A.R.S. § 13-105 (Statutory Definition Instructions 1.0528 and 1.059).

“Theft” is defined in A.R.S. § 13-1801 *et seq.*

“Criminal damage” is defined in A.R.S. § 13-1601 *et seq.*

A person may use deadly physical force in the defense of property only if it is used in the defense of the person, third persons or for crime prevention as described in A.R.S. §§ 13-405, -406 and -411. *See* A.R.S. § 13-408.

**When defendant's residential structure or occupied vehicle is involved, the presumption set forth in A.R.S. § 13-419 may apply.**

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#### 4.11 – Use of Force in Crime Prevention

The defendant was justified in threatening or using physical force and/or deadly physical force against another if and to the extent the person reasonably believed that physical force or deadly physical force was immediately necessary to prevent another from committing or apparently committing the crime[s] of:

[list applicable enumerated crime[s] from A.R.S. § 13-411(A).

There is no duty to retreat before threatening or using deadly physical force. There is no requirement that any threat to the defendant's safety exist before the defendant may use physical force and/or deadly physical force. However, physical force and/or deadly physical force can be used only to the extent it appears reasonable and immediately necessary to prevent commission of the crime[s].

The defendant's use or threatened use of physical or deadly force is not limited to a person's home, residence, place of business, land the person owns or leases, or conveyance of any kind, but includes any place in this state where a person has a right to be.

The defendant is presumed to **have be-acting acted** reasonably if the defendant **reasonably believed [he/she] is was** acting to prevent the **imminent or actual** commission of [list applicable enumerated crime[s] from A.R.S. § 13-411(A)].

The defendant is justified in using physical force and/or deadly physical force against another person even if that person is not actually committing or attempting to commit the crime[s] if the defendant reasonably believed he/she was preventing the commission of the crime[s]. Actual danger is not necessary to justify the use of physical force or deadly physical force in crime prevention.

The State has the burden of proving beyond a reasonable doubt that the defendant did not act with such justification. If the State fails to carry this burden, then you must find the defendant not guilty of the charge. *[The user is directed to the Prefatory Use Note regarding the applicability of this paragraph.]*

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**SOURCE:** A.R.S. §§ 13-411(A)–(D) ~~and 13-205~~ (statutory language as of ~~April 24, 2006~~ **July 20, 2011**); and 13-205 (statutory language as of April 24, 2006); *State v. Korzep*, 165 Ariz. 490, 492-94, 799 P.2d 831, 833-35

(1990); *State v. Martinez*, 202 Ariz. 507, 511, 47 P.3d 1145, 1149 (App. 2002); *Korzep v. Superior Court (Ellsworth)*, 172 Ariz. 534, 537-38, 838 P.2d 1295, 1298-99 (App. 1991); *State v. Taylor*, 169 Ariz. 121, 122-23, 817 P.2d 488, 489-90 (1991) (holding that the defense applied where the defendant shot and killed the deceased, but could not tell whether the deceased had a gun); *State v. Hussain*, 189 Ariz. 336, 339, 942 P.2d 1168, 1171 (App. 1997) (holding that a person may use deadly physical force under § 13-411 if the person reasonably believes that it is immediately necessary to prevent an enumerated crime — it is not necessary that the other person used or attempted to use unlawful deadly physical force); *Korzep*, 165 Ariz. at 492, 799 P.2d at 833 (holding that “the only limitation upon the use of deadly force under § 13-411 is the reasonableness of the response.”); *cf.*, *State v. Grannis*, 183 Ariz. 52, 60, 900 P.2d 1, 9 (1995) (self-defense) (holding that “[u]nder A.R.S. §§ 13-404 and -405, *apparent* deadly force can be met with deadly force.”) (Emphasis in the original.)

**USE NOTE:** Use the language in brackets as appropriate. The court should also give definitions of the enumerated crimes if it gives this instruction. To the lay person, some of the legal definitions are not intuitive, especially that of kidnapping. If the crime of burglary in the second degree is defined, the predicate felony should also be specified and defined.

A defendant is entitled to a justification instruction if it is supported by the slightest evidence. *Hussain*, 189 Ariz. at 337, 942 P.2d at 1169.

“Physical force” and “deadly physical force” are defined in A.R.S. § 13-105 (Statutory Definition Instructions 1.0528 and 1.059).

The presumption that a defendant is acting reasonably in preventing a crime is not an element of the defense, but only a rebuttable presumption. The presumption applies to the elements of the defense, which are set forth in subsection A of A.R.S. § 13-411. *State v. Martinez*, 202 Ariz. 507, 511, 47 P.3d 1145, 1149 (App. 2002).

As noted above, defendant’s argument essentially is that the presumption in § 13-411(C) contains an element of the defense of justification-crime prevention. The plain language of § 13-411(C), however, creates only a presumption. The presumption applies to the elements of the defense which are set forth in subsection (A). It disappears in the face of contradictory evidence presented by the state. This is consistent with not only the plain language of § 13-411(A) and (C) and our case law dealing generally with presumptions, *supra* at ¶ 18, but also *Korzep III*: “this presumption is rebuttable and *vanishes* when

the state provides contradictory evidence.” 172 Ariz. at 539, 838 P.2d at 1300 (emphasis added). Having once “vanished,” the presumption does not remain to create an element of the defense. Additionally, we note the plain language of § 13-205(B), enacted some years after *Korzep III*, specifically designates § 13-411(C) for what it is: a “presumption.”

**COMMENT:** A.R.S. § 13-411(D) provides that **“This section includes the use or threatened use of physical force or deadly physical force in a person’s home, residence, place of business, land the person owns or leases, conveyance of any kind, or any other place in this state where a person has a right to be.”** ~~That provision appears to have overruled a line of cases that limited § 13-411 to one’s home, the equivalent of a home and crimes reasonably related to the home, its contents or its residents. See *State v. Taylor, supra*; *Herrell v. Sargeant*, 189 Ariz. 627, 628-29, 944 P.2d 1241 (1997); and *State v. Hussain, supra*.~~

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#### **4.18 – Justification for Using Force in Defense of Residential Structure or Occupied Vehicles**

The defendant was justified in threatening to use or using physical force or deadly physical against another person if the defendant reasonably believed the following:

1. The defendant, or another person, was in imminent peril of death or serious physical injury; *and*
2. [The person against whom the physical force or deadly physical force was threatened or used was in the process of unlawfully or forcefully entering or had unlawfully or forcefully entered a residential structure or occupied vehicle.]

[The person against whom the physical force or deadly physical force was threatened or used had removed or was attempting to remove [the defendant] [another person] against the [defendant’s] [other person’s] will from a residential structure or occupied vehicle.]

“Residential structure” means any structure, movable or immovable, permanent or temporary, that is adapted for both human residence and lodging whether occupied or not.

“Vehicle” means a conveyance of any kind, whether or not motorized, that is designed to transport persons or property.

The defendant has no duty to retreat before threatening or using physical force or deadly physical force.

The State has the burden of proving beyond a reasonable doubt that the defendant did not act with such justification. If the State fails to carry this burden, then you must find the defendant not guilty of the charge. *[The user is directed to the Prefatory Use Note regarding the applicability of this paragraph.]*

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**SOURCE:** A.R.S. §§ 13-418 and 13-205 (statutory language as of April 24, 2006) and 13-1501 (statutory language as of ~~September 18, 2003~~ **September 30, 2009**).

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

**When defendant’s residential structure or occupied vehicle is involved, the presumption set forth in A.R.S. § 13-419 may apply.**

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#### 4.19 – Justification: Presumption and Exceptions

~~The defendant is presumed to have acted reasonably if the defendant acted against another person who unlawfully or forcefully entered the defendant's residential structure or occupied vehicle.~~

**A person is presumed to reasonably believe that the threat or use of physical force or deadly force is immediately necessary for justification if the person knows or has reason to believe that the person against whom physical force or deadly force is threatened or used is unlawfully or forcefully entering or has unlawfully or forcefully entered and is present in the person's residential structure or occupied vehicle.**

**For the purposes of justification, a person who is unlawfully or forcefully entering or who has unlawfully or forcefully entered and is present in a residential structure or occupied vehicle is presumed to pose an imminent threat of unlawful deadly harm to any person who is in the residential structure or occupied vehicle.**

~~The~~ **These** presumptions does *not* apply if:

[The person against whom physical force or deadly physical force was **threatened or** used had the right to be in or was a lawful resident of the residential structure or occupied vehicle, including an owner, lessee, invitee or titleholder, and an order of protection or injunction against harassment had not been filed against that person.]

[The person against whom physical force or deadly physical force was **threatened or** used was the parent or grandparent, or had legal custody or guardianship, of a child or grandchild sought to be removed from the residential structure or occupied vehicle.]

[The person who used **or threatened** physical force or deadly physical force was engaged in an unlawful activity or was using the residential structure or occupied vehicle to further an unlawful activity.]

[The person against whom physical force or deadly physical force was **threatened or** used was a law enforcement officer who entered or attempted to enter a residential structure or occupied vehicle in the performance of official duties.]

["Residential structure" means any structure, movable or immovable, permanent or temporary, that is adapted for both human residence and lodging whether occupied or not.]

["Vehicle" means a conveyance of any kind, whether or not motorized, that is designed to transport persons or property.]

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**SOURCE:** A.R.S. §§ 13-419 (statutory language as of ~~April 24, 2006~~ **July 20, 2011**) and 13-1501 (statutory language as of ~~September 18, 2003~~ **September 30, 2009**).

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

When the defendant's residential structure or occupied vehicle is involved, the presumption applies to the justification defenses set forth in A.R.S. §§ 13-404–408, and 13-418.

**This instruction should not be given unless the defendant is the resident or occupier of the vehicle and is charged with using force in response to another person unlawfully entering the residential structure or occupied vehicle. See *State v. Abdi*, 226 Ariz. 361, 365-366, 248 P.3d 209, 213-14, ¶¶8, 15 (App. 2011) (finding reversible error in giving this instruction when the defendant (non-resident) claimed self-defense against the homeowner's attack, because it created a presumption that lessened the state's burden of proof and required the defendant to present rebuttal evidence to overcome the presumption).**

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## Standard Criminal 47 - Evidence for Limited Purpose

You [are about to hear] [have heard] evidence that [*describe evidence to be received for limited purpose*]. This evidence is admitted only for the limited purpose of [*describe purpose*] and, therefore, you must consider it only for that limited purpose and not for any other purpose.

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**SOURCE:** Federal Jury Instruction 2.11; Arizona Rules of Evidence 105 (effective as of September 1, 1977).

### **USE NOTE:**

**This instruction should be given to the jury before such evidence is admitted, and should be given again in the final instructions.**

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## **Standard Criminal 48 - Dismissal/Severance of Some Charges Against Defendant**

**At the beginning of the trial, the charge[s] against the defendant [was][were] read to you. [Specify count[s] or charge[s]] [is] [are] no longer before you. You should not speculate about why the charge[s] [is] [are] no longer part of this trial.**

**The defendant is on trial only for the charge[s] of [remaining count[s]]. You may consider the evidence presented only as it relates to the remaining count[s].**

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**SOURCE: Federal Jury Instruction 2.13.**

### **USE NOTE:**

**This instruction should be given to the jury during the trial after the dismissal or severance of charges, and should be given again in the final instructions.**

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## **Standard Criminal 49 - Disposition of Charge Against Defendant**

**For reasons that do not concern you, the case against codefendant [name] is no longer before you. Do not speculate why. This fact should not influence your verdict[s] with reference to the remaining defendant[s], and you must base your verdict[s] solely on the evidence against the remaining defendant[s].**

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**SOURCE: Federal Jury Instruction 2.14.**

### **USE NOTE:**

**This instruction should be given to the jury during the trial after the dismissal of a codefendant from the case, and should be given again in the final instructions.**

**It may not be appropriate to give this instruction if the defense is based on third-party culpability of a dismissed codefendant.**

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## **Standard Criminal 50 – Redacted Exhibits**

**Some of the exhibits that have been admitted into evidence have had portions deleted from them for legal reasons. Do not concern yourselves with the reasons why some portions of the exhibits have been deleted. Do not speculate upon what the deleted portions might, or might not, reveal.**

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**SOURCE: *State v. Kennedy*, 122 Ariz. 22, 27, 592 P.2d 1288, 1293 (App. 1979).**

### **USE NOTE:**

**This instruction should be given to the jury at the time that the redacted exhibit has been admitted and published to the jury, and should be given again in the final instructions.**

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## STATUTORY CRIMINAL 14.06.01

### SEXUAL ASSAULT

The crime of sexual assault requires proof that the defendant:

1. intentionally or knowingly engaged in sexual intercourse or oral sexual contact with another person; *and*
2. engaged in the act without the consent of the other person; **and**
3. **The defendant knew the act was without the consent of the other person.**

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**SOURCE:** A.R.S. §13-1406 (Statutory language as of ~~August 6, 1999~~ **January 1, 2009**); *State v. Kemper*, **227 Ariz. 452, 258 P.3d 270, ¶5 (App. 2011)**.

**USE NOTE:** The court may need to determine the age of the victim and the defendant for sentencing purposes. *See* §§ 13-1406(B) and 13-~~604.01~~ **705**. If that determination is needed, use of the following verdict form is suggested:

[Complete this portion of the verdict form only if you find the defendant guilty of the offense.]

We the jury, duly impaneled in above-entitled action, find that the other person was (check only one):

\_\_\_\_ 15 years of age or older.

\_\_\_\_ 13 or 14 years of age.

\_\_\_\_ 12 years of age.

\_\_\_\_ under 12 years of age.

[Complete this portion of the verdict form only if you find that the other person was 12 years of age or younger.]

We the jury, duly impaneled in above-entitled action,  
find that the defendant was (check only one):

\_\_\_\_ 18 years of age or older.

\_\_\_\_ under 18 years of age.

The court shall instruct on the culpable mental state.

“Intentionally” is defined in A.R.S. §13-105 **(Statutory Definitional Instruction 1.056(a)(1))**.

“Knowingly” is defined in A.R.S. §13-105 **(Statutory Definitional Instruction 1.056(b))**.

“Sexual intercourse” is defined in A.R.S. §13-1401- (Statutory Criminal Instruction 14.01.03).

“Oral sexual contact” is defined in A.R.S. §13-1401- (Statutory Criminal Instruction 14.01.01).

“Without consent” is defined in A.R.S. §13-1401- (Statutory Criminal Instruction 14.01.05).

**COMMENT: The Court of Appeals in *State v. Kemper*, 227 Ariz. 452, 258 P.3d 270, ¶5 (App. 2011) (holding that an instruction that omitted the *mens rea* element that the conduct was conducted without the consent of the victim was fundamental error).**

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### 23.07.01 – Trafficking in Stolen Property in the Second Degree

The crime of trafficking in stolen property in the second degree requires proof ~~of the following~~ **that the defendant:**

1. ~~The defendant recklessly~~ **T**rafficked in the property of another; *and*
2. **Was reckless concerning whether** the property had been stolen.

“Traffic” means to sell, transfer, distribute, dispense, or otherwise dispose of stolen property to another person, or to buy, receive, possess, or obtain control of stolen property, with the intent to sell, transfer, distribute, dispense, or otherwise dispose of the property to another person.

“Stolen property” means property of another that has been the subject of any unlawful taking.

“Property of another” means property in which any person other than the defendant has an interest on which the defendant is not privileged to infringe.

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

“Control” or “exercise control” means to act so as to exclude others from using their property except on the defendant’s own terms.

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**SOURCE:** A.R.S. §§ 13-2307(A) (statutory language as of October 1, 1978); 13-2301 (statutory language as of January 1, 2006); 13-1801 (statutory language as of ~~July 18, 2000~~ **September 30, 2009**).

**USE NOTE:** The inference(s) in A.R.S. § 13-2305 (Statutory Criminal Instruction 23.05) should be given when appropriate.

The court shall instruct on the culpable mental state.

“Intentionally” is defined in A.R.S. § 13-105 (Statutory Definition Instruction 1.056(a)(~~H~~)).

“Recklessly” is defined in A.R.S. § 13-105 (Statutory Definition Instruction 1.056(c)).

**COMMENT: The Court of Appeals in *State v. Noriega*, 144 Ariz. 258, 259, 697 P.2d 341, 342 (App. 1984), held that a jury instruction on trafficking in stolen property in the second degree needs to include a reckless culpable mental state in regard to whether the property had been stolen.**

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### 23.07.02 – Trafficking in Stolen Property in the First Degree

The crime of trafficking in stolen property in the first degree requires proof of the following:

1. the defendant knowingly [initiated] [organized] [planned] [financed] [directed] [managed] [supervised] the theft of the property of another;  
*and*
2. the defendant knowingly [initiated] [organized] [planned] [financed] [directed] [managed] [supervised] the trafficking in the same property;  
*and*
3. **The defendant knew** such property was stolen.

“Traffic” means to sell, transfer, distribute, dispense, or otherwise dispose of stolen property to another person, or to buy, receive, possess, or obtain control of stolen property, with the intent to sell, transfer, distribute, dispense, or otherwise dispose of the property to another person.

“Stolen property” means property of another that has been the subject of any unlawful taking.

“Property of another” means property in which any person other than the defendant has an interest on which the defendant is not privileged to infringe.

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

“Control” or “exercise control” means to act so as to exclude others from using their property except on the defendant’s own terms.

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**SOURCE:** A.R.S. §§ 13-2307(B) (statutory language as of October 1, 1978); 13-2301 (statutory language as of January 1, 2006); 13-1801 (statutory language as of ~~July 18, 2000~~ **September 30, 2009**).

**USE NOTE:** Use the bracketed language as appropriate to the facts of the case.

The inference(s) in A.R.S. § 13-2305 (Statutory Criminal Instruction 23.05) should be given when appropriate.

The court shall instruct on the culpable mental state.

“Knowingly” is defined in A.R.S. § 13-105 (Statutory Definition Instruction 1.056(b)).

“Intentionally” is defined in A.R.S. § 13-105 (Statutory Definition Instruction 1.056(a)(1)).

**COMMENT:** Trafficking in the second degree is a lesser included offense of trafficking in the first degree. *State v. DiGiulio*, 172 Ariz. 156, 835 P.2d 488 (App. 1992). Because the jury instruction omitted reference to “the theft,” the court found that the instruction lacked the element that the defendant must participate in the theft of the property. *Id.* at 161, 835 P.2d at 493.

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## STATUTORY CRIMINAL 18.02.01

### THEFT

The crime of theft requires proof that the defendant, without lawful authority, knowingly:

[controlled property of another with the intent to deprive the other person of such property.]

[converted for an unauthorized term or use services or property of another entrusted to the defendant or placed in the defendant's possession for a limited, authorized term or use.]

[obtained services or property of another by means of any material misrepresentation with intent to deprive the other person of such services or property.]

[came into control of lost, mislaid or misdelivered property of another under circumstances providing means of inquiry as to the true owner **and** appropriated such property to the defendant's own use or another's use without reasonable efforts to notify the true owner.]

[controlled property of another knowing **[or having reason to know]** that the property was stolen.]

[obtained services known to the defendant to be available only for compensation without paying or without an agreement to pay the compensation or diverted another's services to the defendant's own or another's benefit without authority to do so.]

---

**SOURCE:** A.R.S. § 13-1802 (A) (statutory language as of ~~September 21, 2006~~ **September 30, 2009**).

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

In order to determine the value of the theft, the court shall use Statutory Criminal Instruction 18.027.

The court shall use a verdict form that provides findings as to value of the property or services taken, taking of a firearm, taking of property from the person of another, and taking a dog for the purpose of dog fighting. *See* A.R.S. § 13-1802(E). *See* Statutory Verdict Form 18A.

“In determining the classification of the offense, the state may aggregate in the indictment or information amounts taken in thefts committed pursuant to one scheme or course of conduct, whether the amounts were taken from one or several persons.” A.R.S. § 13-1801(B). If the state has made this allegation, the court will need to fashion a verdict form based on the manner in which the state has alleged the offense or offenses. The committee was not able to fashion a standard verdict form for use in all cases. If the state alleges only one count based on a scheme or course of conduct without also charging each individual theft in separate counts, the issues that will have to be decided are whether the jury is allowed to decide the value of the theft and, if so, how the value of the theft is determined if the state fails to prove the scheme or course of conduct.

If the defendant is charged with A.R.S. § 13-1802 (A)(5), the Court may instruct on the statutory permissible inference under A.R.S. § 13-2305 (Statutory Criminal Instruction 23.05).

The court shall instruct on the culpable mental state.

“Knowingly” is defined in A.R.S. § 13-105. *See* Statutory Definitional Instruction 105 (9b).

“Intentionally” or “with the intent to” is defined in A.R.S. § 13-105 (Statutory Definitional Instruction 105 (9a)).

“Control” is defined in A.R.S. § 13-1801 (Statutory Definitional Instruction 18.01(2)).

“Deprive” is defined in A.R.S. § 13-1801 (Statutory Definitional Instruction 18.01(4)).

“Material misrepresentation” is defined in A.R.S. § 13-1801 (Statutory Definitional Instruction 18.01(8)).

“Obtain” is defined in A.R.S. § 13-1801 (Statutory Definitional Instruction 18.01(10)).

“Property” is defined in A.R.S. § 13-1801 (Statutory Definitional Instruction 18.01(12)).

“Property of another” is defined in A.R.S. § 13-1801 (Statutory Definitional Instruction 18.01(13)).

“Services” is defined in A.R.S. § 13-1801 (Statutory Definitional Instruction 18.01(14)).

“Unlawful” is defined in A.R.S. § 13-105 (Statutory Definitional Instruction 105(35)).

**COMMENT:** *State v. Dixon*, 127 Ariz. 554, 622 P.2d 501 (App. 1981) held that a single act may result in a theft conviction under any one or combination of the subsections of A.R.S. § 13-1802, even though the *mens rea* for the subsections varies, and that the jury need not be unanimous as to which subsection was violated so long as they are unanimous on the question of whether the defendant’s conduct constituted theft.

**The instruction applicable to A.R.S. § 13-1802(A)(5) retains, in brackets, the phrase “...having reason to know...” because it is contained in the statute. However, the Court must be cognizant that case law holds that such phrase requires the defendant to possess actual or constructive knowledge that the property in the defendant’s possession is stolen. *State v. Jones*, 125 Ariz. 417, 420, 610 P.2d 51, 54 (1980). *See also Reser v. State*, 27 Ariz. 43, 49, 229 P. 936, 937-38 (1924) (holding in a case of receiving stolen property that there must be proof of “guilty knowledge” that the property was stolen); *State v. Ware*, 27 Ariz. App. 645, 650-61, 557 P.2d 1077, 1082-83 (1976) (holding that the crime of sale of stolen property must apply a subjective standard of knowledge, and not that of a reasonable man, requiring actual knowledge or belief that that the goods retained were stolen). Because of this, the Court may choose to delete the phrase, or remind the jury that they must follow the instruction on “knowingly.”**

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## 18.14 – Theft of Means of Transportation

The crime of theft of means of transportation requires proof that the defendant, without lawful authority, knowingly:

[controlled another person’s means of transportation with the intent to permanently deprive the person of the means of transportation.]

[converted for an unauthorized term or use another person’s means of transportation that was entrusted to or placed in the defendant’s possession for a limited, authorized term or use.]

[obtained another person’s means of transportation by means of any material misrepresentation with intent to permanently deprive the person of the means of transportation.]

[came into control of another person’s means of transportation that was lost or misdelivered under circumstances providing means of inquiry as to the true owner and appropriated the means of transportation to the defendant’s own or another’s use without reasonable efforts to notify the true owner.]

[controlled another person’s means of transportation knowing **[or having reason to know]** that the property was stolen.]

---

**SOURCE:** A.R.S. § 13-181~~3~~**4** (statutory language as of September 19, 2007).

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

If the defendant is charged with A.R.S. § 13-1814(A)(5), the court may instruct on the statutory permissible inference under A.R.S. § 13-2305 (Statutory Criminal Instruction 23.05).

The court shall instruct on the culpable mental state.

“Knowingly” is defined in A.R.S. § 13-105 (Statutory Definition Instruction 1.056(b)).

“Intentionally” or “with the intent to” is defined in A.R.S. § 13-105 (Statutory Definition Instruction 1.056(a)(1)).

“Control” is defined in Statutory Definition Instruction 18.01(2).

“Deprive” is defined in Statutory Definition Instruction 18.01(4).

“Means of transportation” is defined in Statutory Definition Instruction 18.01(9).

“Property” is defined in Statutory Definition Instruction 18.01(12).

“Property of another” is defined in Statutory Definition Instruction 18.01(13).

“Possess” is defined in A.R.S. § 13-105 (Statutory Definition Instruction 1.0530).

“Possession” is defined in A.R.S. § 13-105 (Statutory Definition Instruction 1.0531).

“Unlawful” is defined in A.R.S. § 13-105 (Statutory Definition Instruction 1.0535).

“Vehicle” is defined in A.R.S. § 13-105 (Statutory Definition Instruction 1.0536).

**COMMENT:** *State v. Dixon*, 127 Ariz. 554, 622 P.2d 501 (App. 1981) held that a single act may result in a theft conviction under any one or combination of the subsections of A.R.S. § 13-1802, even though the *mens rea* for the subsections varies, and that the jury need not be unanimous as to which subsection was violated so long as they are unanimous on the question of whether the defendant’s conduct constituted theft. Because the subsections of A.R.S. § 13-1814 track those of A.R.S. § 13-1802, the same rationale should apply.

**The instruction applicable to A.R.S. § 13-1814(A)(5) retains, in brackets, the phrase “...having reason to know...” because it is contained in the statute. However, the Court must be cognizant that case law holds that such phrase requires the defendant to possess actual**

or constructive knowledge that the property in the defendant's possession is stolen. *State v. Jones*, 125 Ariz. 417, 420, 610 P.2d 51, 54 (1980). See also *Reser v. State*, 27 Ariz. 43, 49, 229 P. 936, 937-38 (1924) (holding in a case of receiving stolen property that there must be proof of "guilty knowledge" that the property was stolen); *State v. Ware*, 27 Ariz. App. 645, 650-61, 557 P.2d 1077, 1082-83 (1976) (holding that the crime of sale of stolen property must apply a subjective standard of knowledge, and not that of a reasonable man, requiring actual knowledge or belief that that the goods retained were stolen). Because of this, the Court may choose to delete the phrase, or remind the jury that they must follow the instruction on "knowingly."

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### **23.05 Permissible Inferences Relating to Theft under A.R.S. 13-1802(A)(5) and 13-1814(A)(5)**

The defendant has been accused of [theft] [theft of means of transportation] by controlling [property of another] [another person's means of transportation] knowing **[or having reason to know]** that the property was stolen.

[Proof of possession of property recently stolen, unless satisfactorily explained, may give rise to an inference that the defendant (was aware of the risk that such property had been stolen/in some way participated in its theft).]

[Proof of the purchase or sale of stolen property at a price substantially below its fair market value, unless satisfactorily explained, may give rise to an inference that the defendant was aware of the risk that it had been stolen.]

[Proof of the purchase or sale of stolen property by a dealer in property, (out of the regular course of business/without the usual indication of ownership other than mere possession), unless satisfactorily explained, may give rise to an inference that the defendant was aware of the risk that it had been stolen.]

You are free to accept or reject this inference as triers of fact. You must determine whether the facts and circumstances shown by the evidence in this case warrant any inference that the law permits you to make. Even with the inference, the State has the burden of proving each and every element of the offense of [theft] [theft of means of transportation] beyond a reasonable doubt before you can find the defendant guilty.

[In considering whether possession of recently stolen property has been satisfactorily explained, you are reminded that in the exercise of constitutional rights, a defendant need not testify. Possession may be satisfactorily explained through other circumstances and other evidence, independent of any testimony by a defendant.]

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**Source:** A.R.S. 13-1802(C) (statutory language as of ~~September 21, 2006~~ **September 30, 2009**); 13-1814(B) (statutory language as of ~~December 28,~~

**1998 September 19, 2007**); 13-2305 (statutory language as of 1987); *State v. Mohr*, 150 Ariz. 564, 568-69, 724 P.2d 1233, 1237-38 (App. 1986).

**Use Note:** Use the language in brackets and parentheses as appropriate to the facts.

The last paragraph is bracketed and should only be given if requested by the defendant.

It is important to caution the jury that the inference is not mandatory and that the jury must look at all the facts and circumstances of the case in deciding whether the presumption should be applied. *State v. Mohr*, 150 Ariz. 564, 568-69, 724 P.2d 1237-38 (App. 1986) (recommending that the language as contained in this instruction is preferable, because it expressly tells the jury that it is not compelled to draw the inference).

The use of the term may give rise to an inference, which is contained in the text of this instruction, was specifically approved in *State v. Mohr*, 150 Ariz. at 569, 724 P.2d at 1238.

The bracketed paragraph pertaining to the defendants constitutional right not to testify was specifically approved *verbatim* in *State v. Mohr*, 150 Ariz. at 568, 724 P.2d at 1237 (citing to *Barnes v. United States*, 412 U.S. 837, 843 (1973)).

The court shall instruct on the culpable mental state.

Knowingly is defined in A.R.S. 13-105 (Statutory Definition Instruction 1.056(b)).

Control is defined in A.R.S. 13-1801 (Statutory Definition Instruction 18.01(2)).

Issue is defined in A.R.S. 13-1801 (Statutory Criminal Instruction 18.01(7)).

Means of transportation is defined in A.R.S. 13-1801 (Statutory Definition Instruction 18.01(9)).

Property is defined in A.R.S. 13-1801 (Statutory Definition Instruction 18.01(12)).

Property of another is defined in A.R.S. 13-1801 (Statutory Definition Instruction 18.01(13)).

Value is defined in A.R.S. 13-1801 (Statutory Definition Instruction 18.01(15)).

Possess is defined in A.R.S. 13-105 (Statutory Definition Instruction 1.0530).

Possession is defined in A.R.S. 13-105 (Statutory Definition Instruction 1.0531).

Vehicle is defined in A.R.S. 13-105 (Statutory Criminal Instruction 1.0536).

**Comment:** In *State v. Mohr*, 150 Ariz. 564, 567, 724 P.2d 1236 (App. 1986), the court of appeals, while noting that the statute speaks of inferences, not presumptions, held that an instruction not worded in a manner consistent with the text of this instruction created an unconstitutional mandatory presumption. The use of the instruction as worded above maintains the permissive feature of the inference and satisfies due process. *Id.* at 568, 724 P.2d at 1237.

An instruction that allows for a permissible inference under A.R.S. 13-2305 does not amount to a comment on the evidence. *State v. Dixon*, 127 Ariz. 554, 560, 622 P.2d 501, 507 (App. 1981).

**The instructions applicable to A.R.S. §§ 13-1802(A)(5) and 13-1814(A)(5) retain, in brackets, the phrase “...having reason to know...” because it is contained in the statute. However, the Court must be cognizant that case law holds that such phrase requires the defendant to possess actual or constructive knowledge that the property in the defendant’s possession is stolen. *State v. Jones*, 125 Ariz. 417, 420, 610 P.2d 51, 54 (1980). *See also Reser v. State*, 27 Ariz. 43, 49, 229 P. 936, 937-38 (1924) (holding in a case of receiving stolen property that there must be proof of “guilty knowledge” that the property was stolen); *State v. Ware*, 27 Ariz. App. 645, 650-61, 557 P.2d 1077, 1082-83 (1976) (holding that the crime of sale of stolen property must apply a subjective standard of knowledge, and not that of a reasonable man, requiring actual knowledge or belief that that the goods retained were**

**stolen). Because of this, the Court may choose to delete the phrase, or remind the jury that they must follow the instruction on “knowingly.”**

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## STATUTORY CRIMINAL 10.031

### ELEMENTS OF CONSPIRACY

The crime of conspiracy to commit \_\_\_\_\_ requires proof:

1. The defendant agreed with one or more persons that one of them or another person would engage in certain conduct; *and*
  2. The defendant intended to promote or assist in the commission of such conduct; *and*
  3. The intended conduct would constitute [the crime charged], **and the defendant knew that such conduct was a crime** [.] [; *and*]
  4. [An overt act was committed in furtherance of such conduct.]
- 

**SOURCE:** A.R.S. §13-1003 (statutory language as of October 1, 1978); ***State v. Gunnison*, 127 Ariz. 110, 114, 618 P.2d 604, 608 (1980).**

**USE NOTE:** The court shall instruct on the culpable mental state.

“Intentionally” is defined in A.R.S. §13-105.

Use language in brackets as appropriate to the facts.

Ignorance of the law is not among the elements of the mental state of "knowingly" defined in A.R.S. § 13-105(6)(b), and hence the claim of ignorance of the law is no defense. *State v. Morse*, 127 Ariz. 25, 31, 617 P.2d 1141, 1147 (1980). The State must show that the defendant participated in a known, criminal agreement; it does not appear necessary under A.R.S. § 13-1003 to prove that the defendant knew the statutory provision or intended to violate a specific law.

Paragraph 4 should be omitted where an overt act is not required. An overt act is not required for felonies against a person, arson of an occupied structure, and burglary in the first degree. A.R.S. §13-1003(A).

If the defendant knows or has reason to know that the person with whom he or she conspired has conspired with another person to commit the same offense, the defendant is guilty of conspiring to commit the offense with the third person even if the third person's identity is unknown. A.R.S. §13-1003(B).

**COMMENT:**

***State v. Gunnison*, 127 Ariz. 110, 114, 618 P.2d 604, 608 (1980) held that the defendant had to know that the underlying act of the conspiracy was a criminal act.**

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## **28.1381(A)(1)-1 Driving or Actual Physical Control while Under the Influence**

The crime of driving or actual physical control while under the influence requires proof that:

1. The defendant [drove] [was in actual physical control of] a vehicle in this state; *and*
2. The defendant was under the influence of [intoxicating liquor] [any drug] [a vapor releasing substance containing a toxic substance] [any combination of liquor, drugs or vapor releasing substances] at the time of [driving] [being in actual physical control]; *and*
3. The defendant's ~~ability to drive a vehicle~~ was impaired to the slightest degree by reason of being under the influence of [intoxicating liquor] [any drug] [a vapor releasing substance containing a toxic substance] [any combination of liquor, drugs or vapor releasing substances].

**Source:** A.R.S. 28-1381(A)(1) (statutory language as of ~~September 19, 2007~~ **January 1, 2012**).

**Use Note:** Use language in brackets as appropriate to the facts.

~~Users are advised to consult *State v. Miller (Oliveri)*, 226 Ariz. 190, 245 P.3d 454 (App. 2011) regarding the use of "ability to drive" as part of the instruction. The opinion directed that the RAJI instruction not be given as currently written. The opinion did not suggest how the instruction should be rewritten.~~

The under the influence offenses can be committed while driving or while in actual physical control of a vehicle. If there is only evidence of driving, do not include actual physical control in the instruction. If there is no issue of driving, do not refer to driving in the instruction. In some cases there may be issues of actual physical control and circumstantial evidence of driving. In those cases, the jury instruction should include both choices. *See State ex rel. O'Neill v. Brown (Juan-Pascal, real party in interest)*, 182 Ariz. 525, 898 P.2d 474 (1995) (police observed cloud of dust in field and then found defendant holding the keys and seated in the stopped car).

If actual physical control is an issue, see the definition of that term at Instruction 28.1381(A)(1)APC.

Drive means to operate or be in actual physical control of a motor vehicle.  
A.R.S.  
28-101(17).

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**28.1383(A)(1) – 1**

**Aggravated Driving or Actual Physical Control While Under the Influence While License][Privilege to Drive] Was [Suspended][Canceled][Revoked][Refused] [Restricted]**

The crime of aggravated driving or actual physical control while under the influence while [license to drive] [privilege to drive] is [suspended] [canceled][revoked] [refused] [restricted] requires proof that:

1. The defendant [drove][was in actual physical control of] a vehicle in this state; *and*
2. The defendant was under the influence of [intoxicating liquor][any drug][a vapor releasing substance containing a toxic substance][any combination of liquor, drugs or vapor releasing substances] at the time of [driving][being in actual physical control]; *and*
3. The defendant's ~~ability to drive a vehicle~~ was impaired to the slightest degree by reason of being under the influence of [intoxicating liquor][any drug][a vapor releasing substance containing a toxic substance][any combination of liquor, drugs or vapor releasing substances]; *and*
4. The defendant's ~~driver license to drive~~ **license to drive** [privilege to drive] was [suspended][canceled][revoked][refused][restricted] at the time the defendant was [driving][in actual physical control]; *and*
5. The defendant knew or should have known that the defendant's [driver license to drive][privilege to drive] was [suspended][canceled][revoked][refused] [restricted] at the time of [driving][being in actual physical control].

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**Source:** A.R.S. §§ 28-1383 (A)(1) and -1381(A)(1) (statutory language as of ~~September 19, 2007~~ **January 1, 2012**).

**Use Note:** Use language in brackets as appropriate to the facts.

~~Users are advised to consult *State v. Miller (Oliveri)*, 226 Ariz. 190, 245 P.3d 454 (App. 2011) regarding the use of “ability to drive” as part of the instruction. The opinion directed that the RAJI instruction not be given as currently written. The opinion did not suggest how the instruction should be rewritten.~~

The “restricted” license must have been for a violation listed in A.R.S. §§ 28-1381 or 28-1382 or under 28-1385.

The under the influence offenses can be committed while driving or while in actual physical control of a vehicle. If there is only evidence of driving, do not include actual physical control in the instruction. If there is no issue of driving, do not refer to driving in the instruction. In some cases there may be issues of actual physical control and circumstantial evidence of driving. In those cases, the jury instruction should include both choices. *See State ex rel. O’Neill v. Brown (Juan-Pascal, real party in interest)*, 182 Ariz. 525, 898 P.2d 474 (1995) (police observed cloud of dust in field and then found defendant holding the keys and seated in the stopped car).

The State must prove that the defendant knew or should have known that the license was suspended or revoked. **State v. Williams, 144 Ariz. 487, 489, 698 P.2d 732, 734 (1985);** *State v. Agee*, 181 Ariz. 58, 61, 887 P.2d 588, 591 (App. 1994); *State v. Rivera*, 177 Ariz. 476, 479, 858 P.2d 1059, 1062 (App. 1994). The knowledge of suspension or revocation may be presumed if the notice of suspension or revocation was mailed to the last known address pursuant to A.R.S. §§ 28-448 and 28-3318. See Instruction 28.3318. This permissive presumption may be rebutted by presenting some evidence that the defendant did not know that the license was suspended or revoked. *State v. Jennings*, 150 Ariz. 90, 94, 722 P.2d 258, 262 (1986).

**Comment:** Driving under the influence can be established by either direct or circumstantial evidence of driving, or by establishing that the defendant was in actual physical control of a vehicle. The offense of driving while a license or privilege to drive was suspended, canceled, or revoked (hereinafter driving on a suspended license) requires either direct or circumstantial evidence of driving. There is no actual physical control element for driving while on a suspended license. Therefore, if actual physical control is part of the greater charge of aggravated driving under the influence, driving on a suspended license is not a lesser-included offense. *State v. Brown*, 195 Ariz. 206, 208, 986 P.2d 239, 241 (App. 1999). Because aggravated driving under

the influence can occur on any property and driving on a suspended license can only occur on a public highway, driving on a suspended license is not a lesser-included offense unless the charging document establishes that the driving occurred on a public highway. *State v. Brown*, 195 Ariz. 206, 209, 986 P.2d 239, 242 (App. 1999).

A.R.S. 28-1383(A)(1) “prohibits a person from, among other activities, committing a DUI offense ‘while a restriction is placed’ on her right to drive because of a prior DUI offense.” *State v. Skiba*, 199 Ariz. 539, 19 P.3d 1255, 1257 (App. 2001).

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**28.1383(A)(1)-2 Aggravated Driving or Actual Physical Control while Under the Influence While [License][Privilege to Drive] Was [Suspended] [Canceled] [Revoked] [Refused] [Restricted] with Lesser-Included Offense of Driving or Actual Physical Control while Under the Influence**

The crime of aggravated driving or actual physical control while under the influence while defendant's [~~drivers~~ license to drive] [privilege to drive] is [suspended] [canceled] [revoked] [refused] [restricted] includes the lesser offense of driving or actual physical control while under the influence. You may consider the lesser offense of driving or actual physical control while under the influence if either:

1. You find the defendant not guilty of aggravated driving or actual physical control while under the influence; *or*
2. After full and careful consideration of the facts, you cannot agree on whether to find the defendant guilty or not guilty of aggravated driving or actual physical control while under the influence.

You cannot find the defendant guilty of [insert the lesser offense] unless you find that the State has proved each element of [insert the lesser offense] beyond a reasonable doubt.

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**Source:** A.R.S. 28-1383(A)(1) and 28-1381(A)(1) (statutory language as of ~~September 19, 2007~~ **January 1, 2012**); *State v. LeBlanc*, 186 Ariz. 437, 924 P.2d 441 (1996).

**Use Note:** Use choices in brackets as appropriate to the facts.

Under the influence offenses can be committed while driving or while in actual physical control of a vehicle. Use the [driving/actual physical control] choices in brackets as appropriate to the facts. If there is only evidence of driving, do not include actual physical control in the instruction. If there is no issue of driving, do not refer to driving in the instruction. In some cases there may be issues of actual physical control and circumstantial evidence of driving. In those cases, the jury instruction should include both choices. *See State ex rel. O'Neill v. Brown (Juan-Pascal, real party in interest)*, 182 Ariz.

525, 898 P.2d 474 (1995) (police observed cloud of dust in field and then found defendant holding the keys and seated in the stopped car).

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**28.1383(A)(1)–3**

**Aggravated Driving or Actual Physical Control With an Alcohol Concentration of 0.08 While [License][Privilege to Drive][Suspended][Canceled][Revoked][ Refused] [ Restricted]**

The crime of aggravated driving or actual physical control with an alcohol concentration of 0.08 while [license to drive][privilege to drive] is [suspended] [canceled][revoked][ refused] [restricted] requires proof that:

1. The defendant [drove][was in actual physical control of] a vehicle in this state; *and*
2. The defendant had an alcohol concentration of 0.08 or more within two hours of [driving][being in actual physical control of] the vehicle; *and*
3. The alcohol concentration resulted from alcohol consumed either before or while [driving][being in actual physical control of] the vehicle; *and*
4. The defendant’s [~~driver’s license to drive~~ **license to drive**][privilege to drive] was [suspended][canceled][revoked][refused][restricted] at the time the defendant was [driving]/[in actual physical control]; *and*
5. The defendant knew or should have known that the defendant’s [driver’s license to drive][privilege to drive] was [suspended][canceled][revoked][refused] [restricted] at the time of [driving][being in actual physical control].

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**Source:** A.R.S. 28-1383(A)(1) and 28-1381(A)(2) (statutory language as of ~~September 19, 2007~~ **January 1, 2012**).

**Use Note:** Use language in brackets as appropriate to the facts.

The “restricted” license must have been for a violation listed in A.R.S. §§ 28-1381 or 28-1382 or under 28-1385.

The under the influence offenses can be committed while driving or while in actual physical control of a vehicle. Use the [driving/actual physical control] choices in brackets as appropriate to the facts. If there is only evidence of driving, do not include actual physical control in the instruction. If there is no issue of driving, do not refer to driving in the instruction. In some cases there may be issues of actual physical control and circumstantial evidence of driving. In those cases, the jury instruction should include both choices. See *State ex rel. O'Neill v. Brown (Juan-Pascal, real party in interest)*, 182 Ariz. 525, 898 P.2d 474 (1995) (police observed cloud of dust in field and then found defendant holding the keys and seated in the stopped car).

The State must prove that the defendant knew or should have known that the license was suspended or revoked. **State v. Williams, 144 Ariz. 487, 489, 698 P.2d 732, 734 (1985)**; *State v. Agee*, 181 Ariz. 58, 61, 887 P.2d 588, 591 (App. 1994); *State v. Rivera*, 177 Ariz. 476, 479, 858 P.2d 1059, 1062 (App. 1994). The knowledge of suspension or revocation may be presumed if the notice of suspension or revocation was mailed to the last known address pursuant to A.R.S. §§ 28-448 and 28-3318. See Instruction 28.3318. This permissive presumption may be rebutted by presenting some evidence that the defendant did not know that the license was suspended or revoked. *State v. Jennings*, 150 Ariz. 90, 94, 722 P.2d 258, 262 (1986).

**Comment:** Driving under the influence can be established by either direct or circumstantial evidence of driving, or by establishing that the defendant was in actual physical control of a vehicle. The offense of driving while a license or privilege to drive was suspended, canceled, or revoked (hereinafter driving on a suspended license) requires either direct or circumstantial evidence of driving. There is no actual physical control element for driving while on a suspended license. Therefore, if actual physical control is part of the greater charge of aggravated driving under the influence, driving on a suspended license is not a lesser-included offense. *State v. Brown*, 195 Ariz. 206, 208, 986 P.2d 239, 241 (App. 1999). Because aggravated driving under the influence can occur on any property and driving on a suspended license can only occur on a public highway, driving on a suspended license is not a lesser-included offense unless the charging document establishes that the driving occurred on a public highway. *State v. Brown*, 195 Ariz. 206, 209, 986 P.2d 239, 242 (App. 1999).

A.R.S. § 28-1383(A)(1) “prohibits a person from, among other activities, committing a DUI offense ‘while a restriction is placed’ on her right to drive

because of a prior DUI offense.” *State v. Skiba*, 199 Ariz. 539, 19 P.3d 1255, 1257 (App. 2001).

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**28.1383(A)(1)–4**

**Aggravated Driving or Actual Physical Control While There Is a Drug in the Defendant’s Body While [License to Drive][Privilege to Drive][Suspended] [Canceled][Revoked][ Refused] [Restricted]**

The crime of aggravated driving or actual physical control while there is a drug in the defendant’s body while [license to drive][privilege to drive] is [suspended][canceled][revoked][refused][restricted] requires proof that:

1. The defendant [drove][was in actual physical control of] a vehicle in this state; *and*
2. The defendant had in [his] [her] body [(name of drug)] [a metabolite of (name of drug)] at the time of [driving][being in actual physical control of] the vehicle; *and*
3. The defendant’s [~~driver license to drive~~ **license to drive**][privilege to drive] was [suspended][canceled][revoked][refused][restricted] at the time the defendant was [driving][in actual physical control]; *and*
4. The defendant knew or should have known that the defendant’s [driver’s license to drive][privilege to drive] was [suspended][canceled][revoked][refused] [restricted] at the time of [driving][being in actual physical control].

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**Source:** A.R.S. 28-1383(A)(1) and 28-1381(A)(3) (statutory language as of ~~September 19, 2007~~ **January 1, 2012**).

**Use Note:** Use language in brackets as appropriate to the facts.

The “restricted” license must have been for a violation listed in A.R.S. §§ 28-1381 or 28-1382 or under 28-1385.

The under the influence offenses can be committed while driving or while in actual physical control of a vehicle. Use the [driving/actual physical control] choices in brackets as appropriate to the facts. If there is only evidence of driving, do not include actual physical control in the instruction. If there is no issue of driving, do not refer to driving in the instruction. In some cases there may be issues of actual physical control and circumstantial evidence of

driving. In those cases, the jury instruction should include both choices. See *State ex rel. O'Neill v. Brown (Juan-Pascal, real party in interest)*, 182 Ariz. 525, 898 P.2d 474 (1995) (police observed cloud of dust in field and then found defendant holding the keys and seated in the stopped car).

The State must prove that the defendant knew or should have known that the license was suspended or revoked. **State v. Williams, 144 Ariz. 487, 489, 698 P.2d 732, 734 (1985)**; *State v. Agee*, 181 Ariz. 58, 61, 887 P.2d 588, 591 (App. 1994); *State v. Rivera*, 177 Ariz. 476, 479, 858 P.2d 1059, 1062 (App. 1994). The knowledge of suspension or revocation may be presumed if the notice of suspension or revocation was mailed to the last known address pursuant to A.R.S. §§ 28-448 and 28-3318. See Instruction 28.3318. This permissive presumption may be rebutted by presenting some evidence that the defendant did not know that the license was suspended or revoked. *State v. Jennings*, 150 Ariz. 90, 94, 722 P.2d 258, 262 (1986).

**Comment:** Driving under the influence can be established by either direct or circumstantial evidence of driving, or by establishing that the defendant was in actual physical control of a vehicle. The offense of driving while a license or privilege to drive was suspended, canceled, or revoked (hereinafter driving on a suspended license) requires either direct or circumstantial evidence of driving. There is no actual physical control element for driving while on a suspended license. Therefore, if actual physical control is part of the greater charge of aggravated driving under the influence, driving on a suspended license is not a lesser-included offense. *State v. Brown*, 195 Ariz. 206, 208, 986 P.2d 239, 241 (App. 1999). Because aggravated driving under the influence can occur on any property and driving on a suspended license can only occur on a public highway, driving on a suspended license is not a lesser-included offense unless the charging document establishes that the driving occurred on a public highway. *State v. Brown*, 195 Ariz. 206, 209, 986 P.2d 239, 242 (App. 1999).

A.R.S. 28-1383(A)(1) “prohibits a person from, among other activities, committing a DUI offense ‘while a restriction is placed’ on her right to drive because of a prior DUI offense.” *State v. Skiba*, 199 Ariz. 539, 19 P.3d 1255, 1257 (App. 2001).

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**~~28.1383(A)(4) Aggravated Driving or Actual Physical Control while Subject to an Interlock Device and Refusal to Submit to Chemical Test~~**

~~The crime of aggravated driving or actual physical control while subject to an interlock device and refusal to submit to chemical test requires proof that the defendant:~~

- ~~1. was under arrest for driving while under the influence; *and*~~
- ~~2. had been ordered to equip any motor vehicle operated by the defendant with a certified ignition interlock device; *and*~~
- ~~3. refused to consent to a test or tests of [his] [her] blood, breath, urine, or other bodily substance for the purposes of determining the alcoholic content of [his] [her] blood.~~

~~**Source:** A.R.S. 28-1383(A)(4) (statutory language as of September 19, 2007).~~

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**28.1383(A)(4)(b)-1 Aggravated Driving or Actual Physical Control while Subject to an Interlock Device and Under the Influence**

The crime of aggravated driving or actual physical control while subject to an interlock device and under the influence requires proof that:

1. The defendant [drove] [was in actual physical control of] a vehicle in this state; *and*
2. The defendant was under the influence of [intoxicating liquor] [any drug] [a vapor releasing substance containing a toxic substance] [any combination of liquor, drugs or vapor releasing substances] at the time of [driving] [being in actual physical control]; *and*
3. The defendant's ~~ability to drive a vehicle~~ was impaired to the slightest degree by reason of being under the influence of [intoxicating liquor] [any drug] [a vapor releasing substance containing a toxic substance] [any combination of liquor, drugs or vapor releasing substances]; *and*
4. The defendant had been ordered to equip any motor vehicle operated by the defendant with a certified ignition interlock device.

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**Source:** A.R.S. 28-1383(A)(4)(b) and 28-1381(A)(1) (statutory language as of ~~September 19, 2007~~ **January 1, 2012**).

**Use Note:** ~~Users are advised to consult *State v. Miller (Oliveri)*, 226 Ariz. 190, 245 P.3d 454 (App. 2011) regarding the use of “ability to drive” as part of the instruction. The opinion directed that the RAJI instruction not be given as currently written. The opinion did not suggest how the instruction should be rewritten.~~

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**28.1383(A)(4)(b)-2 Aggravated Driving or Actual Physical Control while Subject to an Interlock Device and an Alcohol Concentration of 0.08 or More within Two Hours of Driving**

The crime of aggravated driving or actual physical control while subject to an interlock device and an alcohol concentration of 0.08 or more within two hours of driving requires proof that:

1. The defendant [drove] [was in actual physical control of] a vehicle in this state; *and*
2. The defendant had an alcohol concentration of 0.08 or more within two hours of [driving][being in actual physical control of] the vehicle; *and*
3. The alcohol concentration resulted from alcohol consumed either before or while [driving] [being in actual physical control of] the vehicle; *and*
4. The defendant had been ordered to equip any motor vehicle operated by the defendant with a certified ignition interlock device.

**Source:** A.R.S. 28-1383(A)(4)(b) and 28-1381(A)(2) (statutory language as of ~~September 19, 2007~~ **January 1, 2012**).

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**28.1383(A)(4)(b)-3 Aggravated Driving or Actual Physical Control while Subject to an Interlock Device and There Is a Drug in the Defendants Body**

The crime of aggravated driving or actual physical control while subject to an interlock device and there is a drug in the defendants body requires proof that:

1. The defendant [drove] [was in actual physical control of] a vehicle in this state; *and*
2. The defendant had in [his] [her] body [(name of drug)] [a metabolite of (name of drug)] at the time of [driving] [being in actual physical control of] the vehicle; *and*
3. The defendant had been ordered to equip any motor vehicle operated by the defendant with a certified ignition interlock device.

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**Source:** A.R.S. 28-1383(4)(b) and 28-1381(A)(3) (statutory language as of ~~September 19, 2007~~ **January 1, 2012**).

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**28.1383(A)(4)(b)-4 Aggravated Driving or Actual Physical Control while Under the Extreme Influence of Intoxicating Liquor while Subject to an Interlock Device**

The crime of driving or actual physical control while under the extreme influence of intoxicating liquor while subject to an interlock device requires proof that:

1. The defendant [drove] [was in actual physical control of] a vehicle in this state; *and*
2. The defendant had an alcohol concentration of 0.15 or more within two hours of [driving] [being in actual physical control of] the vehicle; *and*
3. The alcohol concentration resulted from alcohol consumed either before or while [driving] [being in actual physical control of] the vehicle; *and*
4. The defendant had been ordered to equip any motor vehicle operated by the defendant with a certified ignition interlock device.

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**Source:** A.R.S. 28-1383(A)(4)(b) and 28-1382 (statutory language as of ~~September 19, 2007~~ **January 1, 2012**).

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