

CHAPTER 8-2

ESCAPE AND OFFENSES RELATING TO CUSTODY

[FORMERLY COLJI-CRIM., CHAPTER 26 (1983)]

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These instructions cover offenses contained in §§18-8-201 through -213, C.R.S.

### 8-2:01 AIDING ESCAPE (CONVICTION)

The elements of the crime of aiding escape are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. knowingly,
4. aided, abetted, or assisted another person,
5. to [escape] [attempt to escape],
6. from custody or confinement, and
7. the person escaping was in custody or confinement as a result of a conviction of \_\_\_\_\_ .  
(insert crime)
8. [without the affirmative defense in instruction number \_\_\_\_\_.]

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

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of aiding escape.

#### NOTES ON USE

Delete inapplicable bracketed material. When this instruction is used, the applicable definitions of "assist", "escape" and "custody" must be given.

Pursuant to §18-8-201(4) through (6), C.R.S., the degree of the crime of aiding escape is dependent upon the severity of the crime the escapee was convicted of when the escape or attempted escape occurred. Consequently, the specific crime must be named in the instruction. Once the

jury has found that the escapee was convicted of the specifically named crime, the question of whether the crime with which the escapee was convicted of was a felony, misdemeanor or petty offense is a question of law for the judge to determine. *Massey v. People*, 649 P.2d 1070 (Colo. 1982).

#### **SOURCE & AUTHORITY**

§18-8-201, C.R.S.

COLJI-Crim No. 26:01 (1983).

#### **CLASSIFICATION OF OFFENSE**

F2, if person is confined for a conviction for a class 1 or 2 felony.

F3, if person is confined for and charged with any felony or convicted of any felony other than a class 1 or 2.

M1, if person is confined for or charged with a misdemeanor or petty offense.

#### **8-2:02 AIDING ESCAPE (HELD OR CHARGED)**

The elements of the crime of aiding escape are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. knowingly,
4. aided, abetted, or assisted another person,
5. to [escape] [attempt to escape],
6. from custody or confinement, and

7. the person escaping was being [held for] [charged with] \_\_\_\_\_

(insert crime escapee was held for or charged with at the time of the escape).

8. [without the affirmative defense in instruction number \_\_\_\_\_ .]

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

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of aiding escape.

#### NOTES ON USE

Delete inapplicable bracketed material. When this instruction is used, the applicable definitions of "assist", "escape" and "confinement" must be given.

Pursuant to §18-8-201(4) through (6), C.R.S., the degree of the crime of Aiding Escape is dependent upon the severity of the crime the escapee was charged with or held for when the escape or attempted escape occurred. Consequently, the specific crime must be named in the instruction. Once the jury has found that the escapee was being charged with or held for the specifically named crime, the question of whether the crime with which the escapee was being charged with or held for was a felony, misdemeanor or petty offense is a question of law for the judge to determine. *Massey v. People*, 649 P.2d 1070 (Colo. 1982)

#### SOURCE & AUTHORITY

§18-8-201, C.R.S.

COLJI-Crim. No. 26:01 (1983).

## CLASSIFICATION OF OFFENSE

F2, if person is confined for a conviction for a class 1 or 2 felony.

F3, if person is confined for and charged with any felony or convicted of any felony other than a class 1 or 2.

M1, if person is confined for or charged with a misdemeanor or petty offense.

### 8-2:03 AIDING ESCAPE FROM MENTAL INSTITUTION

The elements of the crime of aiding escape from mental institution are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. knowingly,
4. aided the escape,
5. of a person who was an inmate of an institution for the care and treatment of the mentally ill, and
6. the defendant knew that the person aided was confined in such institution pursuant to a court commitment concerning insanity or incompetency in a criminal case.
7. [without the affirmative defense in instruction number \_\_\_\_\_ .]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of aiding escape from mental institution.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of aiding escape from mental institution.

## NOTES ON USE

Delete inapplicable bracketed material. See §§16-8-101 et. seq., C.R.S., for the applicable provisions regarding confinement for insanity and incompetency. When this instruction is used, the applicable definitions of "escape" and "assist" must be given.

## SOURCE & AUTHORITY

§18-8-201.1, C.R.S.

COLJI-Crim. No. 26:02 (1983).

## CLASSIFICATION OF OFFENSE

F5

### **8-2:04 INDUCING PRISONERS TO ABSENT THEMSELVES**

The elements of the crime of inducing prisoners to absent themselves are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. [invited, enticed, solicited, or induced a prisoner, in custody or confinement to absent himself from his work.]

-or-

[substantially delayed or hindered a prisoner in his work.]

4. [without the affirmative defense in instruction number \_\_\_\_\_ .]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of inducing prisoners to absent themselves.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of inducing prisoners to absent themselves.

#### NOTES ON USE

Delete inapplicable bracketed material.

#### SOURCE & AUTHORITY

§18-8-202, C.R.S.

COLJI-Crim. No. 26:03 (1983).

#### CLASSIFICATION OF OFFENSE

PO1

#### 8-2:05 INTRODUCING CONTRABAND IN THE FIRST DEGREE

The elements of the crime of introducing contraband in the first degree are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. knowingly and
4. unlawfully,
5. [[introduced] [attempted to introduce] and
6. [a dangerous instrument] [malt, vinous, or spirituous liquor] [fermented malt beverage] [controlled substance] [marihuana or marihuana concentrate],
7. [into a detention facility] [any location where an inmate is or was likely to be located, while such inmate is in custody and under the jurisdiction of a political

subdivision of the State of Colorado or the department of corrections, but not on parole]

-or-

5. [while confined in a detention facility,

6. made any [dangerous instrument] [controlled substance] [marihuana or marihuana concentrate] [alcohol].]

[7. or 8. without the affirmative defense in instruction number \_\_\_\_\_ .]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of first degree introducing contraband.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of first degree introducing contraband.

#### **NOTES ON USE**

Delete inapplicable bracketed material. When this instruction is used, the applicable definitions of "dangerous instrument," "malt, vinous, or spirituous liquor," "fermented malt beverage," "controlled substance," "marihuana," "marihuana concentrate" and "detention facility" must be given.

#### **SOURCE & AUTHORITY**

§18-8-203, C.R.S.

COLJI-Crim. No. 26:04 (1983).

#### **CLASSIFICATION OF OFFENSE**

F4

**8-2:06 INTRODUCING CONTRABAND IN THE SECOND DEGREE**

The elements of the crime of introducing contraband in the second degree are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. knowingly and
4. unlawfully,
5. [[introduced] [attempted to introduce] contraband,
6. into a detention facility.]

-or-

5. [while confined in a detention facility,
6. made any contraband.]

-or-

5. [while confined in a detention facility
6. [introduced] [attempted to introduce] contraband

7. [into a detention facility] [any location where an inmate is or was likely to be located, while such inmate is in custody and under the jurisdiction of a political subdivision of the State of Colorado or the department of corrections, but not on parole]]

[7.or 8. without the affirmative defense in instruction number \_\_\_\_\_ .]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of introducing contraband in the second degree.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the

defendant not guilty of introducing contraband in the second degree.

#### NOTE ON USE

Delete inapplicable bracketed material. When this instruction is used, the applicable definitions of "contraband" and "detention facility" must be given.

After July 1, 2005, cigarettes and tobacco products became contraband in certain detention facilities and cellular phone, pagers and other portable electronic devices became contraband in all detention facilities. See § 18-8-204(2)(m) and (n), C.R.S.

#### SOURCE & AUTHORITY

§18-8-204, C.R.S.

COLJI-Crim. No. 26:05.

*People v. Holmes*, 959 P.2d 406 (Colo. 1998) (constitutional delegation of power to allow administrative head of detention facility to determine whether item is contraband).

#### CLASSIFICATION OF OFFENSE

F6

#### 8-2:07 POSSESSION OF CONTRABAND IN THE FIRST DEGREE

The elements of the crime of possession of contraband in the first degree are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. while confined in a detention facility,

4. knowingly obtained or had in his possession [a dangerous instrument] [malt, vinous, or spirituous liquor] [a fermented malt beverage] [alcohol] [marihuana or marihuana concentrate].

5. [without the affirmative defense in instruction number \_\_\_\_\_ .]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of possession of contraband in the first degree.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of possession of contraband in the first degree.

#### **NOTES ON USE**

Delete inapplicable bracketed material. When this instruction is used, the applicable definitions of "detention facility," "dangerous instrument," "malt, vinous, or spirituous liquor," "fermented malt beverage," and "marihuana or marihuana concentrate" must be given.

#### **SOURCE & AUTHORITY**

§18-8-204.1, C.R.S.

COLJI-Crim. No. 26:06 (1983).

*People v. Higgins*, 874 P.2d 479 (Colo. App. 1994).

#### **CLASSIFICATION OF OFFENSE**

F4, if dangerous instrument

F6, if not a dangerous instrument

**8-2:08 POSSESSION OF CONTRABAND IN THE SECOND DEGREE**

The elements of the crime of possession of contraband in the second degree are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. while confined in a detention facility,
4. knowingly obtained or had in his possession contraband,
5. and the possession was not authorized by rule or regulation promulgated by the administrative head of the detention facility.
6. [without the affirmative defense in instruction number \_\_\_\_\_ .]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of possession of contraband in the second degree.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of possession of contraband in the second degree.

**NOTES ON USE**

Delete inapplicable bracketed material. When this instruction is used, the applicable definition of "detention facility" and "contraband" must be given.

After July 1, 2005, cigarettes and tobacco products became contraband in certain detention facilities and cellular phone, pagers and other portable electronic devices became contraband in all detention facilities. See § 18-8-204(2)(m) and (n), C.R.S.

**SOURCE & AUTHORITY**

§18-8-204.2, C.R.S.

COLJI-Crim. No. 26:07 (1983).

**CLASSIFICATION OF OFFENSE**

M1

**8-2:09 AIDING ESCAPE FROM CIVIL PROCESS**

The elements of the crime of aiding escape from civil process are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. aided, abetted, or assisted the escape,
4. of any person in legal custody,
5. under civil process.
6. [without the affirmative defense in instruction number \_\_\_\_\_ .]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of aiding escape from civil process.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of aiding escape from civil process.

**NOTES ON USE**

Delete inapplicable bracketed material. When this instruction is used, the applicable definitions of "assist" and "escape" must be given.

**SOURCE & AUTHORITY**

§18-8-205, C.R.S.

COLJI-Crim. No. 26:08 (1983).

**8-2:10 ASSAULT DURING ESCAPE (CONVICTION)**

The elements of the crime of assault during escape are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. was confined in any lawful place of confinement,
4. while [escaping] [attempting to escape],
5. committed an assault,
6. with intent to commit bodily injury upon another person,
7. [with a deadly weapon] [by any means of force likely to produce serious bodily injury], and
8. [the defendant had been convicted of \_\_\_\_\_].  
(insert crime defendant was convicted of).
9. [without the affirmative defense in instruction number \_\_\_\_\_ .]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of assault during escape.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt you should find the defendant not guilty of assault during escape.

## NOTES ON USE

Delete inapplicable bracketed material. When this instruction is used, the applicable definitions of "assault," "serious bodily injury," "deadly weapon," "escape" and "bodily injury" must be given.

Pursuant to §18-8-206(a) and (b), C.R.S., the degree of the crime of Assault During Escape is dependent upon the severity of the crime the escapee was convicted of when the assault during escape or attempted escape occurred. Consequently, the specific crime must be named in the instruction. Once the jury has found that the defendant was convicted of the specifically named crime, the question of whether the crime with which the defendant was convicted of was a felony, misdemeanor or petty offense is a question of law for the judge to determine. *Massey v. People*, 649 P.2d 1070 (Colo. 1982).

The elemental instruction on assault must also be given. *People v. Wilson*, 791 P.2d 1247 (Colo. App. 1990).

## SOURCE & AUTHORITY

§18-8-206, C.R.S.

COLJI-Crim. No. 26:09 (1983).

## CLASSIFICATION OF OFFENSE

F1, if defendant has been convicted of a class 1 felony

F2, if defendant has been convicted of any felony but class 1

F3, if defendant was being held or confined but not convicted of a felony

F3, if defendant was being held but not convicted of a misdemeanor or petty offense

## 8-2:11 ASSAULT DURING ESCAPE (HELD OR CHARGED)

The elements of the crime of assault during escape are:

1. That the defendant,
  2. in the State of Colorado, at or about the date and place charged,
  3. was confined in any lawful place of confinement,
  4. while [escaping] [attempting to escape],
  5. committed an assault,
  6. with intent to commit bodily injury upon another person,
  7. [with a deadly weapon] [by any means of force likely to produce serious bodily injury], and
  8. [the defendant was in custody or confinement and
  9. [held for] [charged with]
- 

(insert name of crime defendant was held for or charged with at the time of the escape or attempted escape.)

- 10.[without the affirmative defense in instruction number \_\_\_\_\_ .]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of assault during escape.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt you should find the defendant not guilty of assault during escape.

#### **NOTES ON USE**

Delete inapplicable bracketed material. When this instruction is used, the applicable definitions of "assault," "escape," "serious bodily injury," "deadly weapon," and "bodily injury" must be given.

Pursuant to §18-8-206(c) and (d), C.R.S., the degree of the crime of Assault During Escape is dependent upon the severity of the crime the escapee was charged with or held for when the assault during escape or attempted escape occurred. Consequently, the specific crime must be named in the instruction. Once the jury has found that the defendant was charged with or held for the specifically named crime, the question of whether the crime with which the defendant was charged with or held for was a felony, misdemeanor or petty offense is a question of law for the judge to determine. *Massey v. People*, 649 P.2d 1070 (Colo. 1982).

The applicable instruction on assault must also be given. *People v. Wilson*, 791 P.2d 1247 (Colo. App. 1990).

#### **SOURCE & AUTHORITY**

§18-8-206, C.R.S.

COLJI-Crim. No. 26:09.

#### **CLASSIFICATION OF OFFENSE**

F1, if defendant has been convicted of a class 1 felony

F2, if defendant has been convicted of any felony but class 1

F3, if defendant was being held or confined but not convicted of a felony

F3, if defendant was being held but not convicted of a misdemeanor or petty offense

#### **8-2:12 HOLDING HOSTAGES**

The elements of the crime of holding hostages are:

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

3. was in lawful custody or confinement, and
4. while [escaping] [attempting to escape],
5. knowingly
6. [held as any person hostage] [held any person against his/her will by force or threat of force].
7. [without the affirmative defense in instruction number \_\_\_\_\_ .]

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

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of holding hostages.

#### **NOTES ON USE**

Delete inapplicable bracketed material. The definition of "escape" must be given with this instruction. Although not contained in the statute, the general intent of knowingly is the proper mens rea. *People v. Williams*, 199 Colo. 515, 611 P.2d 973 (1980).

#### **SOURCE & AUTHORITY**

§18-8-207, C.R.S.

#### **CLASSIFICATION OF OFFENSE**

F2

### **8-2:13 ESCAPE (CONVICTION)**

The elements of the crime of escape are:

1. That the defendant,

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

3. was in custody or confinement,

4. following conviction of \_\_\_\_\_ ,  
and,

(insert name of crime of which defendant was convicted at time of escape)

5. knowingly escaped from custody or confinement.

6. [without the affirmative defense in instruction number \_\_\_\_\_ .]

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

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of escape.

#### NOTES ON USE

Delete inapplicable bracketed material. Definitions of "escape" and "confinement" must be given with this instruction. Pursuant to § 18-8-208(1) and (2), C.R.S., the degree of the crime of Escape is dependent upon the severity of the crime the escapee was convicted of when the escape occurred. Consequently, the specific crime must be named in the instruction. Once the jury has found that the escapee was in convicted of the specifically named crime, the question of whether the crime with which the defendant was convicted of was a felony, misdemeanor or petty offense is a question of law for the judge to determine. *Massey v. People*, 649 P.2d 1070 (Colo. 1982).

The "knowingly" element only applies to defendant's conduct not his knowledge of the nature of his prior conviction. *People v. Benzor*, 100 P.3d 542 (Colo. App. 2004).

**SOURCE & AUTHORITY**

§18-8-208(1), (2), and (4), C.R.S.

COLJI-Crim. No. 26:11 (1983).

**CLASSIFICATION OF OFFENSE**

F2, if conviction for class 1 or 2 felony

F3, if conviction for any other felony

M3, if conviction for misdemeanor, petty offense or municipal ordinance violation

**8-2:14 ESCAPE (HELD OR CHARGED)**

The elements of the crime of escape are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. was in custody or confinement,
4. while being [held for] [charged with]

---

and,  
(insert crime defendant was held for or charged with at the time of escape),

5. knowingly escaped from custody or confinement.
6. [without the affirmative defense in instruction number \_\_\_\_\_ .]

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

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of escape.

#### **NOTES ON USE**

Delete inapplicable bracketed material. The definitions of "confinement" and "escape" should be given with this instruction.

Pursuant to §18-8-208(3), (4) and (5), C.R.S., the degree of the crime of Escape is dependent upon the severity of the crime the escapee was charged with or held for when the escape occurred. Consequently, the specific crime must be named in the instruction. Once the jury has found that the escapee was being charged with or held for the specifically named crime, the question of whether the crime with which the defendant was charged with or being held for was a felony, misdemeanor or petty offense is a question of law for the judge to determine. *Massey v. People*, 649 P.2d 1070 (Colo. 1982).

The "knowingly" element only applies to defendant's conduct, not knowledge of the nature of his prior conviction. *People v. Benzor*, 100 P.3d 542 (Colo. App. 2004).

#### **SOURCE & AUTHORITY**

§§18-8-208(3) and (5), C.R.S.

COLJI-Crim. No. 26:12 (1983).

#### **CLASSIFICATION OF OFFENSE**

F4, if held for, but not convicted of a felony

PO1, if held for, but not convicted of a misdemeanor, petty offense or municipal ordinance violation

## 8-2:15 ESCAPE (COMMITMENT)

The elements of the crime of escape while under commitment are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. after having previously been charged with \_\_\_\_\_  
\_\_\_\_\_  
.  
(insert crime with which defendant was charged at the proceeding in which the defendant was committed)
4. was confined pursuant to a court commitment concerning insanity or incompetency,
5. knowingly,
6. escaped confinement.
7. [and traveled outside the State of Colorado during the escape.]

[7. or 8. without the affirmative defense in instruction number \_\_\_\_\_ .]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of escape from mental institution.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of escape from mental institution.

### NOTES ON USE

Delete inapplicable bracketed material. See §16-8-101 et. seq., C.R.S., for the applicable provisions regarding confinement for insanity and incompetency.

Pursuant to §§18-8-208(6)(a) through (c), C.R.S., the degree of the crime of escape - commitment is dependent upon the severity of the crime the escapee was charged with at the proceeding in which the escapee was committed. Consequently, the specific crime must be named in the instruction. Once the jury has found that the escapee was charged with the named crime at the proceeding in which the escapee was committed, the question of whether the crime with which the escapee was charged with was a felony or a misdemeanor is a question of law for the judge to determine. *Massey v. People*, 649 P.2d 1070 (Colo. 1982)

The definitions of "escape" and "confinement" should be given with this instruction.

#### **SOURCE & AUTHORITY**

§18-8-208(6), C.R.S.

COLJI-Crim. No. 26:13 (1983).

#### **CLASSIFICATION OF OFFENSE**

F5, if charged with a felony and traveled outside the State of Colorado

M1, for all other circumstances

#### **8-2:16 ESCAPE (FUGITIVE FROM JUSTICE)**

The elements of the crime of escape are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. was in custody or confinement,
4. as a fugitive from justice, and
5. knowingly escaped from custody or confinement.

6. [without the affirmative defense in instruction number \_\_\_\_\_ .]

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

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of escape.

#### **NOTES ON USE**

Delete inapplicable bracketed material. The definitions of "escape" and "confinement" should be given with this instruction.

See §§16-19-101, et. seq., C.R.S., for the applicable provisions regarding a fugitive from justice.

#### **SOURCE & AUTHORITY**

§18-8-208(8), C.R.S.

COLJI-Crim. No. 26:14 (1983)

#### **CLASSIFICATION OF OFFENSE**

F5

#### **8-2:17 ATTEMPT TO ESCAPE (CONVICTION)**

The elements of the crime of attempt to escape are:

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

4. following conviction of \_\_\_\_\_ ,  
and

(insert crime of which  
defendant was convicted at the time of the attempted escape)

5. knowingly attempted to escape from custody or  
confinement.

6. [without the affirmative defense in instruction  
number \_\_\_\_\_ .]

After considering all the evidence, if you decide the  
prosecution has proven each of the elements beyond a  
reasonable doubt, you should find the defendant guilty of  
attempt to escape.

After considering all the evidence, if you decide the  
prosecution has failed to prove any one or more of the  
elements beyond a reasonable doubt, you should find the  
defendant not guilty of attempt to escape.

#### NOTES ON USE

Delete inapplicable bracketed material. Pursuant to  
§18-8-208(1) and (2), C.R.S., the degree of the crime of  
Attempted Escape is dependent upon the severity of the crime  
the escapee was convicted of when the attempted escape  
occurred. Consequently, the specific crime must be named in  
the instruction. Once the jury has found that the defendant  
was convicted of the specifically named crime, the question  
of whether the crime with which the defendant was convicted  
of was a felony, misdemeanor or petty offense is a question  
of law for the judge to determine. *Massey v. People*, 649  
P.2d 1070 (Colo.1982).

The definitions of "escape" and "confinement" must be  
given with this instruction. When this instruction is used,  
the applicable definition of "attempt" must be given. *People  
v. Frysig*, 628 P.2d 1004 (Colo.1981)

#### SOURCE & AUTHORITY

§§18-8-208.1(1), (3), (5) and (6), C.R.S.

COLJI-Crim. No. 26:15 (1983).

**CLASSIFICATION OF OFFENSE**

F4

**8-2:18 ATTEMPT TO ESCAPE (HELD OR CHARGED)**

The elements of the crime of attempt to escape are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. was in custody or confinement,
4. while being [held for] [charged with] \_\_\_\_\_, and  
(insert name of crime defendant was held for or charged with at the time of the attempted escape)
5. knowingly attempted to escape from custody or confinement.
6. [without the affirmative defense in instruction number \_\_\_\_\_ .]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of attempt to escape.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of attempt to escape.

**NOTES ON USE**

Delete inapplicable bracketed material.

Pursuant to §18-8-208(1) and (2), C.R.S., the degree of the crime of Attempted Escape is dependent upon the severity of the crime the escapee was convicted of when the attempted escape occurred. Consequently, the specific crime must be

named in the instruction. Once the jury has found that the defendant was in charged with or held for the specifically named crime, the question of whether the crime with which the defendant was charged with or being held for was a felony, misdemeanor or petty offense is a question of law for the judge to determine. *Massey v. People*, 649 P.2d 1070 (Colo. 1982).

The definitions of "escape" and "confinement" must be given with this instruction. When this instruction is used, the applicable definition of "attempt" must be given. *People v. Frysig*, 628 P.2d 1004 (Colo.1981).

#### **SOURCE & AUTHORITY**

§§18-8-208.1(2), (4), (5) and (6), C.R.S.

COLJI-Crim. No. 26:16 (1983).

#### **CLASSIFICATION OF OFFENSE**

F5, if held for or charged with a felony

PO-unspecified, if held for or charged with a misdemeanor or petty offense

#### **8-2:19 ACTIVE PARTICIPATION IN A RIOT**

The elements of the crime of active participation in a riot are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. was confined in a detention facility, and
4. knowingly and actively participated in violent conduct,
5. with two or more persons,
6. that [created grave danger of] [caused]

7. [damage to property] [injury to persons], and

8. [substantially obstructed the performance of institutional functions] [commanded, induced, or entreated others to engage in violent conduct] [attempted to persuade others to engage in violent conduct].

9. [and, in the course of such participation, employed [a deadly weapon] [a destructive device] [an article used or fashioned in a manner to cause a person to reasonable believe that the article was a deadly weapon]

-or-

[and in the course of such participation represented, verbally or otherwise, that s/he was armed with a deadly weapon].

[9. or 10. without the affirmative defense in instruction number \_\_\_\_\_ .]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of active participation in a riot.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of active participation in a riot.

#### **NOTES ON USE**

Delete inapplicable bracketed material. When this instruction is used, the applicable definitions of "detention facility," "deadly weapon," and "destructive device" must be given.

#### **SOURCE & AUTHORITY**

§18-8-211, C.R.S.

COLJI-Crim. No. 26:17 (1983).

## CLASSIFICATION OF OFFENSE

F3, if deadly weapon, destructive device, or article fashioned to be a deadly weapon is used or if defendant represents that s(he) has a deadly weapon.

Felony of 2-10 years, if a deadly weapon, device, article or representation.

### 8-2:20 DISOBEYING AN ORDER DURING A RIOT

The elements of the crime of disobeying an order during a riot are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. was confined in a correctional facility, and
4. [during a riot] [when a riot was impending],
5. intentionally,
6. disobeyed an order of a detention officer,
7. to move, disperse, or refrain from specified activities in the immediate vicinity of the [riot] [impending riot].
8. [without the affirmative defense in instruction number \_\_\_\_\_ .]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of disobeying an order during a riot.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of disobeying an order during a riot.

**NOTES ON USE**

Delete inapplicable bracketed material. When this instruction is used, the applicable definitions of "detention officer" and "detention facility" must be given.

**SOURCE & AUTHORITY**

§18-8-211(3), C.R.S.

COLJI-Crim. No. 26:18 (1983).

**CLASSIFICATION OF OFFENSE**

F5

**8-2:21 VIOLATION OF BAIL BOND CONDITIONS**

The elements of the crime of violation of bail bond conditions are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. was accused by [complaint] [information] [indictment] [delinquency petition] of the commission of a [felony] [misdemeanor], and
4. was released on bail bond of whatever kind, and
5. [knowingly failed to appear for [trial] [proceedings] in the case in which the bail bond was filed.]

- or -

[knowingly violated the conditions of the bail bond.]

6. [without the affirmative defense in instruction number \_\_\_\_\_ .]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of violation of bail bond conditions.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of violation of bail bond conditions.

#### **NOTES ON USE**

Delete inapplicable bracketed material.

#### **SOURCE & AUTHORITY**

§18-8-212, C.R.S.

COLJI-Crim. No. 26:19 (1983).

*People v. Garcia*, 698 P.2d 801 (Colo. 1983) (statute does not violate due process or equal protection).

*People v. Baker*, 45 P.3d 753 (Colo. App. 2001) (statute not unconstitutional delegation of power)

#### **CLASSIFICATION OF OFFENSE**

F6, if arrest was for felony

M3, if arrest was for misdemeanor

### **8-2:22 UNAUTHORIZED RESIDENCY BY PAROLEE OR PROBATIONER FROM ANOTHER STATE**

The elements of the crime of unauthorized residency by a parolee or probationer from another state are:

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

3. was required to have permission of the administrator of the interstate compact for parolee supervision in order to stay in the state,

4. [was not a resident of this state,

5. had not received the required approval from the interstate compact administrator for parolee supervision and

6. was found residing in this state.]

-or-

4. [was a resident of this state,

5. had not received the required approval from the interstate compact administrator for parolee supervision and

6. was found residing in this state more than ninety days after his/her transfer from the receiving state.]

7. without the affirmative defense in instruction number \_\_\_\_\_ .]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of violation of bail bond conditions.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of violation of bail bond conditions.

#### **NOTES ON USE**

Delete inapplicable bracketed material. When this instruction is used the definition of "resident" and "receiving state" as found in § 24-60-302 (1)(b), C.R.S. must be given.

#### **SOURCE & AUTHORITY**

§18-8-213, C.R.S.

**CLASSIFICATION OF OFFENSE**

F5

**DEFINITIONS**

**8-2(1) ASSIST**

"ASSIST" includes any activity characterized as "rendering assistance" in section 18-8-105.

**NOTES ON USE**

Use with reference to § 18-8-201, C.R.S.

**8-2(2) CONTRABAND**

"CONTRABAND" as used in this section means any of the following, but does not include any article or thing referred to in § 18-8-203, C.R.S.:

(a) any key, key pattern, key replica, or lock pick;

(b) any tool or instrument that could be used to cut fence or wire, dig, pry, or file;

(c) any money or coin of United States or foreign currency or any written instrument of value;

(d) any uncanceled postage stamp or implement of the United States postal service;

(e) any counterfeit or forged identification card;

(f) any combustible material other than safety matches;

(g) any drug, other than a controlled substance as defined in § 12-22-303(7), C.R.S., in quantities other than those authorized by a physician;

(h) any mask, wig, disguise, or other means of altering normal physical appearance which could hinder ready identification;

(i)any drug paraphernalia as defined in § 18-18-426, C.R.S.;

(j)any material which is "obscene" as defined in § 18-7-101, C.R.S.;

(k)any chain, rope or ladder;

(l)any article or thing that poses or may pose a threat to the security of the detention facility as determined by the administrative head of the detention facility if reasonable notice is given that such article or thing is contraband;

(m)for purposes of a facility of the department of corrections or any private contract prison, any cigarettes or tobacco products, as defined in § 39-28.5-101(5), C.R.S.; or

(n)any portable electronic communication device, including but not limited to cellular telephones; cloned cellular telephones as defined in § 18-9-309, C.R.S.; public, private, or family-style radios; pagers; personal digital assistants; any other device capable of transmitting or intercepting cellular or radio signals between providers and users of telecommunication and data services; and portable computers; except those devices authorized by the executive director of the department of corrections or his or her designee.

### **8-2(3) DETENTION FACILITY**

"DETENTION FACILITY" means any building, structure, enclosure, vehicle, institution, worksite, or place, whether permanent or temporary, fixed or mobile, where persons are or may be lawfully held in custody or confinement under the jurisdiction of the department of corrections or under the authority of the United States, the state of Colorado, or any political subdivision of the state of Colorado

### **8-2(4) DANGEROUS INSTRUMENT**

"DANGEROUS INSTRUMENT" as used in this section and in § 18-8-204.1, C.R.S., means a firearm, explosive device or substance (including ammunition), knife or sharpened

instrument, poison, acid, bludgeon, or projective device, or any other device, instrument, material, or substance which is readily capable of causing or inducing fear of death or bodily injury, the use of which is not specifically authorized.