MODEL CRIMINAL JURY INSTRUCTIONS COMMITTEE

REPORTER'S ONLINE UPDATE

Updated May 21, 2026

Introduction

The Committee intends to publish annual updates to the model jury instructions. During the periods between these formal publications, the Committee's Reporter will maintain a "Reporter's Online Update," which will include developments in case law relevant to the instructions. The update may also include substantive changes to instructions that the Committee has formally approved but that have yet to appear in the most recent edition.

Although the Committee expects that the Reporter's Online Update will be a valuable research tool, the Committee emphasizes that it will be an informal publication that is not subject to review by the Committee. Thus, users should not assume that the Committee will make modifications based on information that appears in the Reporter's Online Update.

The Reporter's summaries are purely descriptive; they do not include recommendations for how (or whether) to draft jury instructions based on the authorities that are summarized. Although each summary appears beneath a caption that corresponds to the most relevant model instruction(s), irrespective of whether the summarized authority refers to the model instruction(s), the use of this organizational structure here should not be construed as an indication that the Committee intends to modify an instruction, or a Comment.

The Committee encourages users to alert the Reporter of any errors at: mcjic@judicial.state.co.us.

I. Decisions of the Colorado Supreme Court

1.3:01.INT CRIME OF VIOLENCE—INTERROGATORY (DEADLY WEAPON) and 3-1:07 MURDER IN THE SECOND DEGREE

People v. Shockey, 2026 CO 10, ¶ 14, 585 P.3d 850 (holding that, where the jury found Shockey guilty of second-degree murder but answered "no" to an interrogatory asking whether he used a deadly weapon during the commission of the crime or in immediate flight therefrom, the verdict remained valid because the interrogatory response didn't negate any element of the murder conviction and the court could "discern the jury's unambiguous intent").

4-2:03 SECOND DEGREE BURGLARY

People v. Dilka, 2026 CO 12, ¶ 3, 584 P.3d 564 (holding that criminal violation of a protection order under section 18-6-803.5, C.R.S., constitutes "a crime against another person or property," meaning it can serve as a predicate crime for second-degree burglary).

7-4:01 SOLICITING FOR CHILD PROSTITUTION (ANOTHER) and 7-4:02 SOLICITING FOR CHILD PROSTITUTION (ARRANGING)

People v. Vega Dominguez, 2026 CO 30, ¶ 3, __ P.3d __ (agreeing with *Randolph v. People*, 2025 CO 44, 570 P.3d 1022, that "the culpable mental state for soliciting for child prostitution is 'knowingly'").

7-4:10 INDUCEMENT OF CHILD PROSTITUTION and 7-4:11 PATRONIZING A PROSTITUTED CHILD (ACT)

People v. Vega Dominguez, 2026 CO 30, ¶¶ 1–2, 34–36, __ P.3d __ (considering whether Vega Dominguez's conviction for attempted patronizing a prostituted child violated equal protection because it allegedly stemmed from the same conduct as his conviction for attempted inducement of child prostitution, but carried a higher sentence; holding that any error wasn't obvious and thus wasn't plain; distinguishing *People v. Maloy*, 2020 COA 71, 465 P.3d 146, because unlike in that case, Vega Dominguez was convicted under the "by a child" prong of the statute rather than "of a child," meaning his case "involved potential distinctions

between patronizing and inducing that were not at issue in *Maloy*").

8-3:09 ATTEMPT TO INFLUENCE A PUBLIC SERVANT

People v. Hupke, 2026 CO 31, ¶¶ 2–3, __ P.3d __ (rejecting Hupke's argument that, where he told his mother to lie to a parole officer to persuade the officer to lift Hupke's parole hold, he couldn't be culpable because section 18-8-306 only criminalizes a defendant's direct deceit; holding instead that "the phrase 'by means of deceit' in section 18-8-306 encompasses a defendant's use of a third party to engage in deception").

II. Final Decisions of the Colorado Court of Appeals

C:01 OATH FOR WITNESSES

People v. Lopez, 2024 COA 26, ¶ 52, 550 P.3d 731 (holding that, where the trial court administered the oath to a ten-year-old witness by asking if he understood "the difference between what is true and what is not true" and by posing sample questions (e.g., "If I said you're wearing a blue shirt, would that be true?"), those questions didn't improperly bolster the witness's credibility but were instead "part of an age-appropriate oath" per CRE 603).

E:12 MULTIPLE COUNTS (STANDARD CASE)

People v. Lopez, 2024 COA 26, ¶¶ 39, 43, 550 P.3d 731 (jury asked court if it could return verdicts on some charges and hang on others, and court simply re-read the multiple-counts instruction: holding that (1) the trial court didn't abuse its discretion by *not* telling the jury that it could hang, and (2) the court's re-reading of the multiple-counts instruction wasn't coercive).

4-4:06.INT THEFT—INTERROGATORY (VALUE)

People v. Bolden, 2026 COA 17, ¶¶ 9, 14–17, __ P.3d __ (holding that, while an item's discounted sale price constitutes *evidence* of value, "it does not establish value as a matter of law"; concluding that, where the discounted sale price of the stolen items was under $2,000 but a manager testified that their regular prices exceeded $2,000, the evidence was sufficient to sustain

Bolden's conviction for felony theft (i.e., value of $2,000 or more); also holding that the trial court properly rejected Bolden's tendered "speculation" instructions—which told the jury that speculation was "insufficient evidence of value"—because (1) no caselaw required them, (2) the court separately instructed the jury that the prosecution had the burden to prove value, and (3) the parties "presented competent and detailed evidence of the merchandise's value"; finally holding that the trial court didn't err in rejecting Bolden's proposed instruction that the value of the stolen items was their "reasonable market value").

9-1:59 FAILURE OR REFUSAL TO LEAVE PREMISES OR PROPERTY UPON REQUEST OF A PEACE OFFICER (NONCOMPLIANCE)

People v. Montoya, 2025 COA 89, ¶ 50, 583 P.3d 124 (holding that section 18-9-119(2) "provides two ways of committing failure to leave the premises: (1) barricading and refusing to leave the premises when asked to do so by law enforcement or (2) refusing police entry by using or threatening to use force and refusing to leave the premises when asked to do so by law enforcement").

III. Non-Final Decisions of the Colorado Court of Appeals

CHAPTER 1.3-8: HABITUAL PROCEEDINGS

People v. Fields, 2025 COA 84, ¶ 16, 581 P.3d 789 (holding that, where the trial court rather than the jury adjudicated Fields a habitual criminal, the error was harmless because while the jury was still empaneled, the prosecution presented overwhelming evidence that Fields's prior convictions "were separately brought and tried and arose out of distinct criminal episodes").

Status: Petition for certiorari pending as of 5/20/26.

People v. Medina, 2026 COA 36, ¶ 2, __ P.3d __ (holding that *Erlinger v. United States*, 602 U.S. 821 (2024)—which requires a jury to decide whether the defendant's prior convictions were committed on separate occasions—doesn't apply retroactively).

Status: Petition for rehearing pending as of 5/20/26.

D:02 EVIDENCE LIMITED AS TO PURPOSE (CONTEMPORANEOUS)

People v. Jones, 2025 COA 43, ¶¶ 54–55, 571 P.3d 947 (rejecting the argument that, where the trial court instructed the jury that evidence of injuries was admitted "for a limited purpose to establish identity and lack of accident," the court's use of the word "establish" told the jury that Jones inflicted the injuries, and holding instead that the word "establish" didn't constitute plain error).

> Status: Petition for certiorari granted on other grounds. Oral arguments not yet held as of 5/20/26.

E:03 PRESUMPTION OF INNOCENCE, BURDEN OF PROOF, AND REASONABLE DOUBT

People v. Schlehuber, 2025 COA 50, ¶¶ 19–20, 28–34, 572 P.3d 641 (agreeing with *People v. Melara*, 2025 COA 48, 572 P.3d 619, that the absence of "lack of evidence" language in the 2022 model instruction didn't constitute structural error, but disagreeing that a court "should" include such language, and holding instead that "a court does not err by omitting that language"; further holding that a court's decision not to include "hesitate to act" language (which no longer appears in the model instruction) isn't error "so long as the instruction otherwise correctly defines the reasonable doubt standard"; approving of the current model instruction's language—that proof beyond a reasonable doubt "is proof that leaves you firmly convinced of the defendant's guilt," and that the prosecution fails to meet its burden "if you think there is a real possibility that the defendant is not guilty"—because it "give[s] the jury a complete picture of the reasonable doubt standard").

> Status: Petition for certiorari held pending *Teran-Sanchez v. People*, 25SC148, as of 5/20/26.

People v. Berumen, 2025 COA 93, ¶¶ 22–33, 583 P.3d 1264 (agreeing with *Schlehuber* that the 2022 model instruction is "an accurate statement of the law"; rejecting Berumen's argument that the phrases "firmly convinced" and "real possibility" lowered the prosecution's burden of proof to clear and convincing evidence, and noting that the instruction "requires *more* than proof that something is highly probable"; also rejecting the argument

that the term "real possibility" shifts the burden, and remarking that in total, the instructions given at trial "repeatedly instructed the jury that the prosecution has the burden of proof"; recognizing that the 2022 instruction (unlike the current instruction) didn't include "lack of evidence" language, but holding that, although "it's best practice to instruct the jury to consider the lack of evidence in the case," the omission of such language "doesn't lower the prosecution's burden of proof").

Status: Petition for certiorari held pending *Teran-Sanchez v. People*, 25SC148, as of 5/20/26.

F:77 CREDIBLE THREAT (STALKING; RETALIATION AGAINST A JUDGE; RETALIATION AGAINST AN ELECTED OFFICIAL; RETALIATION AGAINST A PROSECUTOR)

People v. Casper, 2025 COA 69, ¶ 34, 577 P.3d 489 (holding that even though the definition of "credible threat" doesn't contain a subjective mental state, that definition isn't facially unconstitutional because Casper was charged under section 18-3-602(1)(a), which required the People to prove that he *knowingly* made a credible threat).

Status: Petition for certiorari pending as of 5/20/26.

F:134 EXPLOSIVE OR INCENDIARY DEVICE (POSSESSION, USE, OR REMOVAL), 4-1:01 FIRST DEGREE ARSON, and 4-1:02.INT FIRST DEGREE ARSON—INTERROGATORY (EXPLOSIVE)

People v. Rodriguez-Ortiz, 2025 COA 61, ¶¶ 77–82, 574 P.3d 1196 (rejecting the argument that section 18-12-109(1)(a)—which defines "explosive *or* incendiary device"—separates "explosives" from "incendiary devices," and holding instead that the word "or" means "and/or," meaning all items contained in the definition can qualify as *either* term; applying this holding to conclude that a Molotov cocktail is "either an explosive or an incendiary device," meaning it qualifies as an "explosive" under the sentence enhancer for first-degree arson).

Status: Petition for certiorari granted on other grounds. Oral arguments not yet held as of 5/20/26.

F:194 KNIFE

People v. Romero, 2025 COA 91, ¶ 16, 583 P.3d 449 (holding that because the definition of "knife" in section 18-12-101(1)(q) is limited to article 12, it's inapplicable to what constitutes a knife for purposes of menacing).

Status: Petition for certiorari pending as of 5/20/26.

H:09 CHOICE OF EVILS

People v. Berumen, 2025 COA 93, ¶¶ 46–50, 583 P.3d 1264 (Berumen, believing that he was about to be arrested for sexual assault, redownloaded videos despite knowing that the victim was underage as evidence to obtain evidence that the sex was consensual: holding that the trial court properly foreclosed Berumen from raising the choice of evils defense because, inter alia, he didn't establish that all viable alternatives to redownloading the videos were futile).

Status: Petition for certiorari held pending *Teran-Sanchez v. People*, 25SC148, as of 5/20/26.

3-2:31.INT MENACING—INTERROGATORY (USE, OR SUGGESTED USE, OF A SPECIFIC WEAPON)

People v. Romero, 2025 COA 91, ¶¶ 5, 18, 583 P.3d 449 (holding that a small hatchet, which was "approximately ten inches long and consisted of a blade and a handle," qualified as a "knife" for purposes of menacing because it was "not meaningfully different from any other sharp-edged blade used for cutting and fitted with a handle," meaning the victim would fear "being wounded by cutting or stabbing").

Status: Petition for certiorari pending as of 5/20/26.

3-3:05 SECOND DEGREE KIDNAPPING (SEIZED AND CARRIED)

People v. Fields, 2025 COA 84, ¶¶ 26–28, 581 P.3d 789 (holding that the trial court erred when it defined "seized and carried" as" any movement, however short in distance," but concluding that the error wasn't plain because it wasn't obvious at the time of trial).

Status: Petition for certiorari pending as of 5/20/26.

3-3:13 VIOLATION OF CUSTODY (COURT ORDER)

People v. Wilson, 2025 COA 94, ¶¶ 3, 17, 585 P.3d 248 (holding that the unit of prosecution for violating a child custody court order is "the number of children affected, not the number of custody orders violated"; rejecting the argument that the crime requires "taking" a child, and holding instead that it can also be committed "by refusing to surrender a child").

Status: Petition for certiorari pending as of 5/20/26.

3-4:10.INT SEXUAL ASSAULT—INTERROGATORY (FORCE OR VIOLENCE)

People v. Valdez, 2026 COA 9, ¶¶ 11–12, 17, __ P.3d __ (holding that the term "physical force" in this interrogatory "does not have to rise to the level of full-blown violence," and noting that "force commonly means 'strength or energy exerted or brought to bear'; 'cause of motion or change'; or 'active power'" (quoting Merriam-Webster Dictionary); further holding that the phrase "causes submission" "connotes the means by which the defendant effectuates the sexual assault"—i.e., "the means by which the defendant accomplishes the nonconsensual or assaultive nature of the sexual act").

Status: Petition for certiorari pending as of 5/20/26.

3-6:01 STALKING (CREDIBLE THREAT AND CONDUCT)

People v. Casper, 2025 COA 69, ¶¶ 24–35, 577 P.3d 489 (noting that, whereas *Counterman v. Colorado*, 600 U.S. 66 (2023), addressed a prosecution under section 18-3-602(1)*(c)*, Casper was charged under section 18-3-602(1)*(a)*, and holding that because that subsection contains a "knowingly" element, the instructions in his case were "sufficient to meet the subjective mental state required under *Counterman*," as they "required the jury to make factual findings regarding Casper's subjective mental state about whether he was making a credible threat").

Status: Petition for certiorari pending as of 5/20/26.

3-6:01 STALKING (CREDIBLE THREAT AND CONDUCT) and 9-1:36

HARASSMENT (COMMUNICATION)

People v. Casper, 2025 COA 69, ¶¶ 64–67, 577 P.3d 489 (holding that harassment under section 18-9-111(1)(e) isn't a lesser included offense of stalking under section 18-3-602(1)(a)).

Status: Petition for certiorari pending as of 5/20/26.

3-6:03 STALKING (SERIOUS EMOTIONAL DISTRESS)

People v. Conlon, 2025 COA 79M, ¶¶ 91–92, 580 P.3d 603 (stating that although *Counterman v. Colorado*, 600 U.S. 66 (2023), abrogated *People v. Cross*, 127 P.3d 71 (Colo. 2006), as to the mens rea for the "serious emotional distress" element, it didn't "wholly invalidate *Cross*"; applying *Cross* and holding that section 18-3-602(1)(c) isn't unconstitutionally overbroad).

Status: Petition for certiorari pending as of 5/20/26.

4-3:06 AGGRAVATED ROBBERY (SUGGESTION OR REPRESENTATION OF A DEADLY WEAPON)

People v. Ambrose, 2026 COA 39, ¶ 4, __ P.3d __ (holding that section 18-4-302(1)(d)—which in part proscribes a person who represents that he is "then and there so armed" with a deadly weapon—doesn't require the defendant to have represented that he had a deadly weapon "on his person" but instead only requires that he "represented that he then had a deadly weapon easily accessible and readily available for use").

Status: Mandate not issued as of 5/21/26.

8-7:08 RETALIATION AGAINST A WITNESS OR VICTIM

People v. Trujillo, 2025 COA 22, ¶¶ 29–34, 51–57, 568 P.3d 435 (stating that, per *People v. Hickman*, 988 P.2d 628 (Colo. 1999), the defendant "must intend to retaliate against the victim or witness for a specific reason: because of that person's 'status' as a witness to or victim of a crime"; holding that this model instruction, combined with the model instruction for "intent," failed to inform the jury "that the retaliation or retribution must be because of the witness's or victim's status as such"; noting that

Trujillo's proposed instruction—which specified that the jury needed to find that she "intended the threat or act of harassment as retaliation or retribution *because of [her] perception of [the alleged victim's] relationship to a criminal proceeding*"—would have "cured this defect"; rejecting the argument that the theory of defense instruction—in which Trujillo claimed that she "never intended to threaten or harass [the victim] as an act of retaliation for [the victim] being a victim in another case"—salvaged the issue, and emphasizing that "a guilty verdict could only be premised on a finding that Trujillo intended to retaliate against [the victim] for [the victim's] status as a victim of or witness to [the] alleged crime"); separately holding that Trujillo's statement that "I'm going to beat your ass" didn't qualify as "fighting words," but remanding for the trial court to consider if it was a true threat under the subjective standard announced in *Counterman v. Colorado*, 600 U.S. 66 (2023)).

Status: Petition for certiorari granted. Oral arguments not yet held as of 5/20/26.

9-1:55.INT VEHICULAR ELUDING—INTERROGATORY (BODILY INJURY OR DEATH)

People v. Sloan, 2024 COA 52M, ¶¶ 24–25, 554 P.3d 527 (holding that the trial court plainly erred when its interrogatory asked the jury to find whether the "accident" resulted in death rather than whether the "vehicular eluding" resulted in death).

Status: Petition for certiorari granted. Oral arguments held on 5/12/26.

42:09 DRIVING UNDER THE INFLUENCE

People v. Schlehuber, 2025 COA 50, ¶¶ 50–54, 572 P.3d 641 (holding that, when the trial court admitted *the entirety* of the record of a prior Nebraska conviction, the court erred because "certain portions of the record were not relevant" and were unduly prejudicial, but concluding that the error was harmless because "the jury properly heard evidence that Schlehuber had three prior DUI convictions" and the court instructed the jury "that it could only consider the evidence to decide whether the prosecution had proved beyond a reasonable doubt that Schlehuber had three or more prior

qualifying convictions"; cautioning that "such an instruction alone [will not] always make the erroneous admission of such evidence harmless").

Status: Petition for certiorari held pending *Teran-Sanchez v. People*, 25SC148, as of 5/20/26.