ADVANCE SHEET HEADNOTE
June 23, 2025

2025 CO 44

No. 23SC167, *Randolph v. People*—Soliciting for Child Prostitution—§ 18-7-402, C.R.S. (2024)—Mens Rea—Knowingly—Intentionally—§ 18-1-501, C.R.S. (2024)—§ 18-1-503, C.R.S. (2024)—*People v. Emerterio*, 819 P.2d 516 (Colo. App. 1991), *rev'd on other grounds sub nom. People v. San Emerterio*, 839 P.2d 1161 (Colo. 1992)—*People v. Ross*, 2019 COA 79, 482 P.3d 452, *aff'd on other grounds*, 2021 CO 9, 479 P.3d 910.

The supreme court holds that the applicable mens rea for the crime of soliciting for child prostitution under section 18-7-402(1)(a), (1)(b), C.R.S. (2024) ("subsections (1)(a) and (1)(b)"), is "knowingly" or "willfully," not "intentionally" or "with intent." In so doing, the court rejects appellant's contention that the phrase "for the purpose of" in subsections (1)(a) and (1)(b) is its own culpable mental state (something resembling intentionally or with intent). In the process, the court also disavows the holding in *People v. Ross*, 2019 COA 79, 482 P.3d 452, that the phrase "for the purpose of" in subsections (1)(a) and (1)(b) is synonymous with intentionally or with intent. Because the division of the court of appeals below reached the same conclusions, the court affirms its judgment.

The Supreme Court of the State of Colorado
2 East 14th Avenue • Denver, Colorado 80203

2025 CO 44

Supreme Court Case No. 23SC167
Certiorari to the Colorado Court of Appeals
Court of Appeals Case No. 20CA174

Petitioner:

Deshawn Lynn Randolph,

v.

Respondent:

The People of the State of Colorado.

Judgment Affirmed
en banc
June 23, 2025

Attorneys for Petitioner:
Megan A. Ring, Public Defender
Andrea R. Gammell, Deputy Public Defender
Denver, Colorado

Attorneys for Respondent:
Philip J. Weiser, Attorney General
Katharine Gillespie, Senior Assistant Attorney General
Denver, Colorado

JUSTICE SAMOUR delivered the Opinion of the Court, in which **CHIEF JUSTICE MÁRQUEZ**, **JUSTICE BOATRIGHT**, **JUSTICE HOOD**, **JUSTICE GABRIEL**, **JUSTICE HART**, and **JUSTICE BERKENKOTTER** joined.

JUSTICE SAMOUR delivered the Opinion of the Court.

¶1 Section 18-7-402, C.R.S. (2024), the statute proscribing soliciting for child prostitution, takes center stage before us yet again today. It was just four years ago that we were confronted with it in *People v. Ross*, 2021 CO 9, ¶ 1, 479 P.3d 910, 912 ("*Ross II*"), where the prosecution asked us to decide whether the phrase "for the purpose of" in section 18-7-402(1)(a) and (1)(b) ("subsection (1)(a)" and "subsection (1)(b)," respectively), the same subsections under which Deshawn Lynn Randolph was charged in this case, describes a culpable mental state. The prosecution in *Ross II* argued that a division of the court of appeals had mistakenly equated that phrase with the culpable mental state of "intentionally" or "with intent." ¶ 1, 479 P.3d at 912. Rather than describe a culpable mental state, contended the prosecution, the phrase "for the purpose of" merely qualifies the prohibited conduct—soliciting another or arranging (or offering to arrange) a meeting of persons—by specifying the reason for which such conduct must be undertaken: for the purpose of prostitution of or by a child. *Id.* The prosecution urged us to hold that, although subsections (1)(a) and (1)(b) are silent as to a culpable mental state, they nevertheless warrant imputing the culpable mental state of "knowingly" or "willfully."[1] *Id.* at ¶ 2, 479 P.3d at 912.

[1] In the interest of brevity, throughout this opinion, we generally refer to "intentionally" and "knowingly" as shorthand for the culpable mental states

¶2 But alas, we ultimately declined to address the culpable mental state question in *Ross II* because the answer didn't impact the outcome of the prosecution's appeal. *Id.* at ¶ 26, 479 P.3d at 916. Therefore, in the exercise of judicial restraint, we left the "dispute for another day." *Id.* That day is today.

¶3 Although we haven't spoken on the issue before, we do not stand on fallow ground. The court of appeals has wrestled with the applicable culpable mental state in section 18-7-402(1) on a couple of occasions. The first time was in a case that reigned supreme in Colorado for almost three decades. *See People v. Emerterio*, 819 P.2d 516, 518 (Colo. App. 1991), *rev'd on other grounds sub nom. People v. San Emerterio*, 839 P.2d 1161 (Colo. 1992). In *Emerterio*, the division held that the requisite culpable mental state in subsection (1)(a) is knowingly. Then, during the last decade, a different division concluded that intentionally, not knowingly, is the requisite culpable mental state in subsections (1)(a) and (1)(b). *See People v. Ross*, 2019 COA 79, ¶ 30, 482 P.3d 452, 456 ("*Ross I*"), *aff'd on other grounds*, *Ross II*, ¶ 36, 479 P.3d at 917. And because we tabled the issue in *Ross II*, the conflict remains.

¶4 At long last, the time has come to settle the dust. We now hold that the culpable mental state of soliciting for child prostitution under subsections (1)(a) and (1)(b) is knowingly (the same culpable mental state expressly designated in

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defined in section 18-1-501(5)–(6), C.R.S. (2024) (listing "'[i]ntentionally' or 'with intent'" and "'[k]nowingly' or 'willfully,'" respectively).

section 18-7-402(1)(c) ("subsection (1)(c)")).[2] Because the division below also landed in the knowingly camp, we affirm its judgment.

I. Facts and Procedural History

¶5 As pertinent here, Randolph was charged with two counts of soliciting for child prostitution, in violation of subsections (1)(a) and (1)(b). The former proscribes soliciting another "*for the purpose of* prostitution" of or by a child, and the latter proscribes arranging (or offering to arrange) a meeting of persons "*for the purpose of* prostitution" of or by a child. § 18-7-402(1)(a)–(b) (emphases added).

¶6 The charges arose from a series of exchanges Randolph had with an investigator from the Arapahoe County Sheriff's Office who had created a fake profile by the name of "Nicole" on a social networking platform that's often used to recruit girls into a life of prostitution. Randolph offered to arrange sex work for Nicole even though she had told him she was just shy of her eighteenth birthday.

¶7 At trial, Randolph's theory of defense was that he never actually intended to arrange sex work for Nicole; instead, he asserted that his promises of obtaining sex work for her were nothing but bravado and bluster, meant to string her along until she turned eighteen, at which point he would attempt to have sex with her.

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[2] Subsection (1)(c) proscribes "[d]irect[ing] another to a place knowing such direction is for the purpose of" prostitution of or by a child. The prosecution didn't charge Randolph pursuant to this subsection.

Although Randolph acknowledged that such conduct might be morally reprehensible, he argued that it didn't amount to soliciting for child prostitution because it was not undertaken "for the purpose of" prostitution of or by a child.

¶8 Consistent with this theory, Randolph proposed a jury instruction that defined the phrase "for the purpose of" as "conduct performed with an anticipated result that is intended or desired." In support of this definition, he cited *Colorado Ethics Watch v. City & County of Broomfield*, 203 P.3d 623, 625 (Colo. App. 2009), a civil appeal in which a division of the court of appeals leaned on a dictionary definition of the word "purpose" to define the phrase "for the purpose of." The district court rejected Randolph's tendered instruction. Relying on *Emerterio*, 819 P.2d at 518, it determined that the applicable mens rea of soliciting for child prostitution was knowingly. And because the proffered instruction could have conveyed to the jury that the applicable mens rea was intentionally, the court refused to give it.

¶9 The jury, therefore, was ultimately instructed as follows regarding the elements of the two soliciting charges:

> (1) That Randolph,
>
> (2) in the State of Colorado, at or about the date and place charged,
>
> (3) knowingly,

(4) solicited another[3] or arranged or offered to arrange a meeting of persons,[4]

(5) for the purpose of prostitution of a child or by a child.

The jury found Randolph guilty of both charges, and the district court sentenced him to two concurrent nine-year terms in the Department of Corrections.

¶10 Randolph appealed, arguing, as relevant here, that the district court had improperly instructed the jury regarding the mens rea of the soliciting charges. He maintained that "for the purpose of" was the equivalent of intentionally, and as such, the district court had mistakenly refused to give the jury his proposed instruction. A division of the court of appeals was unpersuaded and affirmed his convictions. *People v. Randolph*, 2023 COA 7, ¶ 31, 528 P.3d 917, 923. Randolph timely sought our review, and we granted his petition.[5]

¶11 Before turning to the merits of the parties' contentions, we consider the standard of review that governs our analysis.

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[3] *See* § 18-7-402(1)(a).

[4] *See* § 18-7-402(1)(b).

[5] We agreed to review the following question:

> Whether the trial court reversibly erred in instructing the jury that "knowingly" was the culpable mental state for soliciting child prostitution.

II. Standard of Review

¶12 The Colorado Constitution vests our General Assembly with the "power to define criminal conduct and to establish the legal components of criminal liability." *Gorman v. People*, 19 P.3d 662, 665 (Colo. 2000) (citing Colo. Const. art. V, § 1). To give effect to a defendant's constitutional right to the presumption of innocence, the trial court must properly instruct the jury as to each element of the crime charged. *Garcia v. People*, 2022 CO 6, ¶ 15, 503 P.3d 135, 140.

¶13 We review de novo whether a jury instruction is an accurate and clear recitation of the law. *Riley v. People*, 266 P.3d 1089, 1092 (Colo. 2011). This task requires us to interpret the statute defining the charged offense, which is likewise subject to de novo review. *See McCoy v. People*, 2019 CO 44, ¶ 37, 442 P.3d 379, 389.

¶14 Our primary purpose when interpreting a statute is to ascertain and give effect to the legislature's intent, looking first to the plain and ordinary meaning of the words used. *Id.* We must read a statute as a whole, aiming to give consistent, harmonious, and sensible effect to all its parts. *Id.* at ¶ 38, 442 P.3d at 389. A reading that renders any words or phrases in a statute superfluous or leads to an absurd result is disfavored. *Id.*

¶15 If, based on our interpretation of the relevant statute, we determine that an instruction was a correct and clear statement of the law, we review the trial court's decision to give it to the jury for an abuse of discretion. *Garcia*, ¶ 18, 503 P.3d at

140. When we conclude that a jury instruction was provided in error and that the error was properly preserved, our reversal-determining standard is constitutional harmless error, which requires us to reverse unless the prosecution proves that the error was harmless beyond a reasonable doubt. *Id.*

III. Analysis

¶16 We begin by setting forth the statute proscribing soliciting for child prostitution. Then, looking back in our rearview mirror, we review Colorado's jurisprudence addressing the applicable culpable mental state in subsections (1)(a) and (1)(b). Specifically, we dissect the conflicting decisions from the court of appeals in *Emerterio* and *Ross I*. On the heels of that discussion, we explore in some detail the road taken by the division in this case. We proceed to discern the legislature's intent and hold that, although subsections (1)(a) and (1)(b) do not explicitly provide a culpable mental state, the legislature meant for knowingly to be the culpable mental state in each of them. Applying that holding here, we conclude that the district court did not err in instructing the jury.

A. The Statute Proscribing Soliciting for Child Prostitution

¶17 Section 18-7-402(1) sets out three methods of committing the crime of soliciting for child prostitution. The crime is committed when a person:

> (a) Solicits another for the purpose of prostitution of a child or by a child;

(b) Arranges or offers to arrange a meeting of persons for the purpose of prostitution of a child or by a child; or

(c) Directs another to a place knowing such direction is for the purpose of prostitution of a child or by a child.

§ 18-7-402(1). We focus on subsections (1)(a) and (1)(b) because, as relevant here, Randolph was charged only pursuant to those two subsections. But because we're duty bound to interpret section 18-7-402 as a whole and to give harmonious, consistent, and sensible effect to all its parts, we account for subsection (1)(c) in our analysis.

B. Relevant Colorado Jurisprudence (*Emerterio* vs. *Ross I*) and the Division's Decision in This Case

¶18 Thirty-four years ago, a division of the court of appeals upheld a trial court's instruction informing the jury that the applicable culpable mental state in subsection (1)(a) is knowingly. *Emerterio*, 819 P.2d at 518. The division in *Emerterio* concluded that, although subsection (1)(a) does not expressly contain a culpable mental state, one is nevertheless required based on the proscribed conduct: "The gist of the crime of solicitation is that the defendant is aware of what he is doing, within the definition of the term 'knowingly.'" *Id.*; *see also* § 18-1-503(2), C.R.S. (2024) (stating that even when "no culpable mental state is expressly designated in a statute defining an offense, a culpable mental state may nevertheless be required . . . if the proscribed conduct necessarily involves such a culpable mental

state"). The focus of the crime, explained the *Emerterio* division, is "the initial solicitation, not the ultimate sexual act which might occur." 819 P.2d at 518.

¶19 The division's decision in *Emerterio* remained king of the hill in Colorado for many years. Then, in 2019, a different division of the court of appeals threatened its imperium. *See Ross I*, ¶ 44, 482 P.3d at 458. The *Ross I* division parted company with *Emerterio* because it disagreed with the premise that subsection (1)(a) fails to expressly designate a culpable mental state. *Id.* Instead, reasoned the *Ross I* division, "for the purpose of" in subsections (1)(a) and (1)(b) supplies the culpable mental state of "specific intent" or "intentionally." ¶¶ 30, 44, 482 P.3d at 456, 458. Further, the *Ross I* division was critical of the *Emerterio* division for not addressing "what effect the 'for the purpose of' language might have . . . on the applicable culpable mental state." ¶ 44, 482 P.3d at 458.

¶20 In clearing a different path, the *Ross I* division noted that there appeared to be a new debate about *Emerterio*'s "application of the 'knowing' culpable mental state to the crime of soliciting for child prostitution." ¶ 28, 482 P.3d at 456. Continuing, the division stated that the Colorado Supreme Court Model Criminal Jury Instructions Committee (the "Committee") had done an about-face on its position regarding the applicable culpable mental state in subsections (1)(a) and (1)(b). *Id.* at ¶ 29, 482 P.3d at 456. In 1991, when *Emerterio* was announced, the Committee had concluded that knowingly is the applicable culpable mental

state in those subsections. *Id.* at ¶ 28, 482 P.3d at 456 (citing CJI-Crim. 24:03 (1983)). But by 2019, when *Ross I* was decided, the Committee had changed its tune, writing that it was now of the view that the language of subsections (1)(a) and (1)(b) describes a culpable mental state "by requiring that the solicitation be for the purpose of child prostitution." *Id.* at ¶ 29, 482 P.3d at 456 (quoting COLJI-Crim. 7-4:01 cmt. 3 (2018) ("comment 3")); *see also* COLJI-Crim. 7-4:02 cmt. 3 (2018).

¶21 The *Ross I* division was persuaded by comment 3. Like the Committee, it homed in on the phrase "for the purpose of." It then turned to the Model Penal Code's ("MPC") most culpable mental state, purposely, which it regarded as comparable to the Colorado Criminal Code's most culpable mental state, intentionally. *Ross I*, ¶¶ 32, 34–36, 482 P.3d at 457. Relying on a couple of dictionary definitions and case law from both Colorado and foreign jurisdictions, the *Ross I* division equated "for the purpose of" with intentionally and treated the two terms as interchangeable. *Id.* at ¶¶ 31–38, 482 P.3d at 456–58.

¶22 We granted the prosecution's petition for certiorari in *Ross II* but ultimately declined to resolve the division split, withholding judgment "on the soundness of the division's conclusion that the phrase 'for the purpose of' in subsections [(1)(a) and (1)(b)] describes the culpable mental state of with intent." ¶ 6 n.2, 479 P.3d at 913 n.2. We did, however, decide that subsections (1)(a) and (1)(b) require a culpable mental state and that this mental state—be it intentionally or

knowingly—modifies every element of each offense, "including that the purpose of the defendant's conduct was the prostitution of or by a child." *Id.* at ¶ 19, 479 P.3d at 915.

¶23 That brings us to the division in this case. It found itself at a crossroads: In one direction was *Emerterio*; in the other, *Ross I*.[6] The division was bound by neither, so it had a choice to make. *Campbell v. People*, 2020 CO 49, ¶ 41, 464 P.3d 759, 767 ("[O]ne division of the court of appeals is not bound by another division . . . ." (citation omitted)). It ultimately took the road more traveled—the older road bulldozed by *Emerterio*—and held that the requisite mens rea of soliciting for child prostitution under subsections (1)(a) and (1)(b) is knowingly.[7] *Randolph*, ¶ 31, 528 P.3d at 923.

¶24 The *Randolph* division declined to fall in with *Ross I* for a handful of reasons. First, although acknowledging the Committee's change of heart between 1991, when *Emerterio* saw the light of day, and 2009, when *Ross I* came into existence, it pointed out that model jury instructions are not binding law. *Id.* at ¶ 22, 528 P.3d

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[6] *Ross I* was not yet on the books when the district court rejected Randolph's tendered jury instruction.

[7] Recently, a different division of the court of appeals followed *Randolph*'s lead with no analysis and held that knowingly, not intentionally, is the applicable culpable mental state of soliciting for child prostitution under subsection (1)(a). *People v. Dominguez*, 2024 COA 32, ¶ 10, 551 P.3d 1205, 1208, *cert. granted in part*, No. 24SC319, 2024 WL 5229031 (Dec. 23, 2024).

at 922. Particularly where, as here, the Committee didn't cite any authority in support of its position, the division was unwilling to overlook "the fact that the model jury instructions and the accompanying commentary are forged neither in the furnace of the legislative process nor the crucible of the adversarial judicial arena." *Id.*

¶25 Second, the *Randolph* division rejected *Ross I*'s reliance on dictionary definitions instead of the legislature's own express definition of "culpable mental state," which is limited to four mental states—"intentionally," "knowingly," "recklessly," and "criminal negligence"—none of which is "purposely" or "for the purpose of." *Id.* at ¶ 23, 528 P.3d at 922; § 18-1-501(4), C.R.S. (2024) (defining "[c]ulpable mental state"). "It is not for us to supplement that list," remarked the division. *Randolph*, ¶ 23, 528 P.3d at 922.

¶26 Third, the *Randolph* division disagreed with equating the most culpable mental state in the MPC (purposely) with the most culpable mental state in Colorado's Criminal Code (intentionally) because purposely is defined by the MPC so as to include the nature of the conduct, the attendant circumstances, and the result, while intentionally is defined in our Criminal Code only in terms of a result. *Randolph*, ¶¶ 24–26, 528 P.3d at 922–23. Thus, concluded the division, *Ross I* erred by considering the two culpable mental states substitutable. *Id.*

¶27 Fourth, the *Randolph* division cautioned that treating "for the purpose of" in subsections (1)(a) and (1)(b) as denoting the culpable mental state of intentionally would lead to an illogical interpretation of subsection (1)(c), which makes it unlawful to direct another to a place "*knowing* such direction is *for the purpose of*" prostitution of or by a child. ¶ 28, 528 P.3d at 923 (quoting § 18-7-402(1)(c)). The *Randolph* division pointed out that if, pursuant to *Ross I*, "for the purpose of" were construed to mean intentionally, then subsection (1)(c) would require the prosecution to prove that an accused "*knew* that *his intent*" was to cause prostitution of or by a child, "an illogical conflation of two mental states." *Id.*

¶28 Lastly, the *Randolph* division observed that, when interpreting other statutes lacking an express designation of the mens rea, this state's appellate courts have generally imputed knowingly "in the absence of a clear reason" to impute "a more stringent mental state." ¶ 30, 528 P.3d at 923 (first citing *Gorman*, 19 P.3d at 666; then citing *People v. Moore*, 674 P.2d 354, 358 (Colo. 1984); and then citing *People v. Lawrence*, 55 P.3d 155, 163 (Colo. App. 2001), *abrogated on other grounds by Crawford v. Washington*, 541 U.S. 36 (2004)). The division saw neither a clear reason to impute a more culpable mental state than knowingly nor a basis to treat subsections (1)(a) and (1)(b) differently than other statutory provisions that are silent on the applicable culpable mental state. *See id.* at ¶¶ 30–31, 528 P.3d at 923.

¶29 With that background in mind, we are at the moment of truth. Who got it right: *Emerterio* or *Ross I*? We conclude that *Emerterio* did and thus overrule *Ross I* and affirm the division below. As we explain next, our legislature meant for the culpable mental state of knowingly, which is expressly designated in subsection (1)(c), to apply in subsections (1)(a) and (1)(b).

C. Discerning the Legislature's Intent

¶30 We start at the beginning. In decrypting our legislature's pertinent intent, our first order of business is to review some foundational tenets vis-à-vis criminal culpability.

1. Foundational Tenets Regarding Criminal Culpability

¶31 "The minimum requirement for criminal liability is the performance by a person of conduct which includes a voluntary act or the omission to perform an act which he is physically capable of performing." § 18-1-502, C.R.S. (2024). If such conduct is all that the commission of an offense requires, then "the offense is one of 'strict liability.'" *Id.* The vast majority of offenses, however, are *not* strict liability offenses; rather, a defendant must typically act with a culpable mental state to be criminally liable. *See Gorman*, 19 P.3d at 665. As we have observed, to subject someone to criminal liability, there must generally be "concurrence of the actus reus, an unlawful act, and the mens rea, a culpable mental state." *Id.*

¶32 When a crime requires proof of a particular culpable mental state, it is "ordinarily designated" in the statute defining the offense by the use of one of the following terms: "intentionally," "knowingly," "recklessly," or "criminal negligence." § 18-1-503(1).[8] Section 18-1-501(4), in turn, defines "[c]ulpable mental state" as "intentionally," "knowingly," "recklessly," or "criminal negligence."

2. The Legislature Did Not Expressly Designate One of the Four Ordinary Culpable Mental States in Subsections (1)(a) and (1)(b)

¶33 Neither subsection (1)(a) nor subsection (1)(b) includes any of the four terms our legislature has selected to ordinarily define culpable mental states in Colorado. And, correspondingly, neither section 18-1-501(4) nor section 18-1-503(1) identifies "for the purpose of" as a culpable mental state.

¶34 Randolph insists, however, that subsections (1)(a) and (1)(b) *do* expressly designate a culpable mental state. Taking a page from comment 3, he hitches his

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[8] The legislature has indicated that the culpable mental state of a particular offense may also be designated by the phrases "*with intent* to defraud" or "*knowing* it to be false." § 18-1-503(1) (emphases added). These are not additional culpable mental states. Rather, they merely require "a specific kind of *intent*" or a "specific kind of . . . *knowledge*." *Id.* (emphases added). In other words, these phrases reflect the culpable mental states of intentionally and knowingly, respectively, in a more restrictive form. There is no support for Randolph's assertion that the legislature meant "for the purpose of" to be considered "a specific kind of intent." And without such support, we decline his invitation to embrace this interpretation.

wagon to the phrase "for the purpose of" and maintains that it is, itself, a culpable mental state.[9] And, borrowing from a court of appeals opinion affirming an administrative law judge's plain-meaning interpretation of "for the purpose of" in a civil statute, Randolph maintains that the phrase "indicates an anticipated *result* that is intended or desired." *Colo. Ethics Watch*, 203 P.3d at 625 (emphasis added).[10]

¶35 We reject Randolph's contention. Had the legislature meant to designate "for the purpose of" as the applicable culpable mental state in subsections (1)(a) and (1)(b), it presumably would have done so either by identifying the phrase as a "culpable mental state" in sections 18-1-501(4) and 18-1-503(1) or by otherwise making its intent known in section 18-7-402(1). It did neither.

¶36 "Words and phrases," such as culpable mental state, "that have acquired a technical or particular meaning . . . *by legislative definition* . . . shall be construed accordingly." § 2-4-101, C.R.S. (2024) (emphasis added). Adhering to this precept, a conviction of any crime, other than a strict liability crime, generally requires proof that the defendant acted with one of the four culpable mental states

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[9] This is a slightly different tack from the one Randolph took before the division. There, he argued that "for the purpose of" refers to the culpable mental state of "intentionally," not that it constitutes its own culpable mental state.

[10] The definition Randolph plucks out of *Colorado Ethics Watch* imitates the definition of the culpable mental state of intentionally. *See* § 18-1-501(5) ("A person acts 'intentionally' . . . when his conscious objective is to cause the specific result proscribed by the statute defining the offense.").

ordinarily designated by our legislature. *People v. Hall*, 999 P.2d 207, 217 (Colo. 2000). If the legislature had intended subsections (1)(a) and (1)(b) to fall within the extraordinary category of statutes that may contain a culpable mental state that is not designated by one of the four terms used in sections 18-1-501(4) and 18-1-503(1), we trust that it would have made that intent clear.

¶37 We impliedly recognized in *Ross II* that the legislature did not sanction "for the purpose of" in subsections (1)(a) and (1)(b) as a culpable mental state. While *Ross II* shelved the question we meet head-on today, it made clear that the culpable mental state of soliciting for child prostitution under subsections (1)(a) and (1)(b) must apply to every element of the crime, including the element of "for the purpose of prostitution of a child or by a child." *Ross II*, ¶ 4, 479 P.3d at 912; § 18-7-402(1)(a)–(b). We reasoned that "there is no basis for exempting any part of the purpose element from application of such culpable mental state." *Ross II*, ¶ 27, 479 P.3d at 916. If the mens rea must *apply* to the element of "for the purpose of prostitution of a child or by a child," then the legislature could not have meant "for the purpose of" to be the mens rea itself.

¶38 Significantly, when our General Assembly overhauled the Colorado Criminal Code in 1971, one of its goals was to eliminate the confusion stemming from the wide array of ambiguous terms defining the culpable mental state requirements for criminal offenses. *People v. Vigil*, 127 P.3d 916, 931 (Colo. 2006).

Such terms included "general criminal intent," "mens rea," "presumed intent," "malice," "willfulness," and "scienter." *Id.* Our General Assembly put an end to the practice of willy-nilly labeling culpable mental states: It proclaimed that, moving forward, a culpable mental state would ordinarily be designated by the terms "intentionally," "knowingly," "recklessly," or "criminal negligence." § 18-1-503(1). Further, it defined each of the newly minted culpable mental states. § 18-1-501(3), (5), (6), (8). As relevant here, it pronounced:

> A person acts "*intentionally*" or "*with intent*" when his conscious objective is to cause the specific result proscribed by the statute defining the offense. . . .
>
> A person acts "*knowingly*" or "*willfully*" with respect to conduct or to a circumstance described by a statute defining an offense when he is aware that his conduct is of such nature or that such circumstance exists. A person acts "knowingly" or "willfully," with respect to a result of his conduct, when he is aware that his conduct is practically certain to cause the result.

§ 18-1-501(5)–(6) (emphases added). And the legislature declared that all offenses with a culpable mental state of intentionally would be specific intent crimes, while all offenses with a culpable mental state of knowingly would be general intent crimes. *Id.*

¶39 In revamping our Criminal Code, the legislature drew heavily from the MPC, which made its own substantial modifications surrounding the culpable mental state requirements for criminal offenses. *See Vigil*, 127 P.3d at 931; Model Penal Code § 2.02, at 225–27, 229–30 (Am. L. Inst., Off. Draft and Revised

Comments 1985). The MPC, however, designated purposely as the most culpable of four mens rea—the other three being knowledge, recklessness, and negligence. *See* Model Penal Code § 2.02(2)(a)–(d), at 225–26. Yet, despite being aware of the MPC's use of purposely as a culpable mental state, our General Assembly did not incorporate it into our Criminal Code. This was clearly a deliberate choice, and one we must respect. *Dep't of Revenue v. Agilent Techs., Inc.*, 2019 CO 41, ¶ 16, 441 P.3d 1012, 1016 ("[W]e must respect the legislature's choice of language . . . .").

¶40 But not only did our General Assembly deviate from the MPC by using intentionally instead of purposely as the most culpable mental state, it ultimately defined the former more narrowly than the MPC defined the latter. Our General Assembly defined intentionally only in terms of a required result; the MPC, by contrast, defined purposely in terms of conduct, attendant circumstances, and/or a required result:

> A person acts purposely with respect to a material element of an offense when: (i) if the element involves *the nature of his conduct* or *a result thereof*, it is his conscious object to engage in conduct of that nature or to cause such a result; and (ii) if the element involves the *attendant circumstances*, he is aware of the existence of such circumstances or he believes or hopes that they exist.

Model Penal Code § 2.02(2)(a), at 225 (emphases added).

¶41 Hence, the MPC's purposely is by no means an analogue of our Criminal Code's intentionally. Rather, the MPC's most culpable mental state appears to be a hybrid of our Criminal Code's intentionally and knowingly.

¶42 The *Ross I* division was therefore wrong to consider the MPC's purposely and our Criminal Code's intentionally as fungible. And, relatedly, it was a leap too far for that division to suggest that the General Assembly expressly designated the culpable mental state of intentionally through the phrase "for the purpose of" in subsections (1)(a) and (1)(b). *Ross I*, ¶¶ 8, 30, 482 P.3d at 454, 456. If the legislature meant for the culpable mental state of intentionally to apply in those subsections, why didn't it just say, "intending the prostitution of a child or by a child," instead of "for the purpose of prostitution of a child or by a child"? Alternatively, why didn't it otherwise indicate that it used "for the purpose of" in subsections (1)(a) and (1)(b) to designate the culpable mental state of intentionally?

¶43 Our decision in *Vigil* supports our conclusion that, absent evidence of a contrary legislative intent, "for the purpose of" doesn't reflect our legislature's designation of the culpable mental state of intentionally. The crime charged there, sexual assault on a child, was defined by two statutory provisions, section 18-3-405(1), C.R.S. (2024), and section 18-3-401(4), C.R.S. (2024). The ambiguity arose from the use of "knowingly" in the former and "knowing" and "for the purposes of" in the latter. *Vigil*, 127 P.3d at 931. Vigil contended, and a division of the court of appeals had agreed, that "for the purposes of" demonstrated that the legislature meant to categorize sexual assault on a child as a *specific intent crime* and that, therefore, the defense of voluntary intoxication should have been

available to him at trial. *Id.* at 930–31; *see also* § 18-1-804(1), C.R.S. (2024) (providing that voluntary intoxication is a defense to specific intent crimes but not to general intent crimes). We, however, were unmoved by that proposition and held that sexual assault on a child was a *general intent crime*. *Vigil*, 127 P.3d at 931. In so doing, we relied on: the use of knowingly and knowing in the statutes defining the offense; the omission of the term intentionally in those statutes; and the statutory definitions of intentionally and knowingly, which we perceived provided "a strong basis" for our decision. *Id.* In light of these clues, the phrase "for the purposes of" ultimately played no meaningful role in our quest to discern the legislature's intent. *Id.*

¶44 Here, while subsections (1)(a) and (1)(b) do not refer to knowingly or knowing, they do omit intentionally. Further, not only is there a dearth of evidence that the legislature meant the phrase "for the purpose of" in those subsections to designate the culpable mental state of intentionally, there is actually evidence proving just the opposite. Were we to construe "for the purpose of" in subsections (1)(a) and (1)(b) to mean intentionally, as *Ross I* did and as Randolph intimates, it would render subsection (1)(c) nonsensical. Subsection (1)(c) makes it a crime to "[d]irect[] another to a place *knowing* such direction is *for the purpose of* prostitution of a child or by a child." § 18-7-402(1)(c) (emphases added). To consider "for the purpose of" in this subsection as the culpable mental state of

intentionally would thus require proof that an offender directed another to a place *knowing* that the *intent* in providing that direction was prostitution of or by a child. That would be illogical. Because subsection (1)(c) explicitly requires the culpable mental state of knowingly, the phrase "for the purpose of" in that subsection cannot be equated with the culpable mental state of intentionally.

¶45 We may not give the phrase "for the purpose of" one meaning in subsection (1)(c) and a different meaning in subsections (1)(a) and (1)(b) without clear evidence that this is what the legislature had in mind. "Where the legislature has used the 'same words or phrases in different parts of a statute,' we ascribe a consistent meaning to those words unless there is a 'manifest indication to the contrary.'" *Przekurat ex rel. Przekurat v. Torres*, 2018 CO 69, ¶ 8, 428 P.3d 512, 514 (quoting *Colo. Common Cause v. Meyer*, 758 P.2d 153, 161 (Colo. 1988)).

¶46 We now conclude that subsections (1)(a) and (1)(b) are simply mum on a culpable mental state.[11] That both subsections use "for the purpose of" doesn't alter this determination because there is no basis to believe that the legislature meant to use the phrase to commission a new culpable mental state. And, contrary

[11] It is not lost on us that our endorsement of the holding in *Ross I* (that "for the purpose of" means intentionally) or our acceptance of Randolph's position (that "for the purpose of" is a new culpable mental state resembling intentionally) would risk troublesome repercussions by potentially transforming "for the purpose of" in myriad criminal statutory provisions into either a fifth culpable mental state or the culpable mental state of intentionally.

to the division's holding in *Ross I* and Randolph's suggestion, there is also no basis to believe that the legislature meant to designate the culpable mental state of intentionally through that phrase.[12]

3. A Culpable Mental State Must Nevertheless Be Imputed

¶47 Legislative silence on a culpable mental state "is generally not construed as an indication that no culpable mental state is required." *People v. Naranjo*, 612 P.2d 1099, 1102 (Colo. 1980). Thus, even where, as here, statutory provisions do not expressly designate a culpable mental state, one "may nevertheless be required for the commission of th[e] offense, or with respect to some or all of the material elements thereof, if the proscribed conduct necessarily involves such a culpable mental state." § 18-1-503(2); *see also Moore*, 674 P.2d at 358.

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[12] We stop short of categorically stating that the phrase "for the purpose of" in a statute can never be deemed either its own culpable mental state or the culpable mental state of intentionally. We find it wise to heed the "old saw . . . that lawyers and judges 'never say never.'" *United States v. Flores*, 985 F.2d 770, 783 n.27 (5th Cir. 1993). It is possible, we suppose, that the legislature could intend either of those extraordinary scenarios. *See* § 18-1-503(1) (stating that a culpable mental state is "*ordinarily* designated" by using intentionally, knowingly, recklessly, or criminal negligence (emphasis added)). *But see* § 18-1-501(4) (defining "[c]ulpable mental state" as intentionally, knowingly, recklessly, and criminal negligence, without the "ordinarily" qualifier that appears in section 18-1-503(1)). Of course, before a court may infer such an intent, there must be a basis to do so. It suffices here to declare that no such basis exists with respect to the phrase "for the purpose of" in subsections (1)(a) and (1)(b).

¶48 The question, then, is whether the conduct proscribed by subsections (1)(a) and (1)(b) necessarily involves a culpable mental state. We answered this question with a resounding yes in *Ross II*. *See* ¶ 19, 479 P.3d at 915 (deciding that subsections (1)(a) and (1)(b) required a culpable mental state).

¶49 We reiterate what we said four years ago there: Any assertion that soliciting for child prostitution under either subsection (1)(a) or subsection (1)(b) is a strict liability crime doesn't hold water. *Id.* at ¶ 24, 479 P.3d at 915. Further, we continue to be unaware of any basis to infer a culpable mental state of recklessly or criminal negligence from subsections (1)(a) and (1)(b). *Id.* (narrowing the applicable culpable mental state in subsections (1)(a) and (1)(b) to two choices, intentionally or knowingly). Nothing in the language of those subsections is logically tied to recklessness or criminal negligence. *See Lawrence*, 55 P.3d at 163. Not surprisingly, no party here has made a pitch for either of these two culpable mental states. *See Ross II*, ¶ 24, 479 P.3d at 915. Accordingly, that leaves us with only two options: intentionally and knowingly. *See id.* at ¶ 19, 479 P.3d at 915.

4. To Impute Intentionally or to Impute Knowingly—That Is the Question

¶50 Our North Star at this juncture of the analysis remains the legislature's intent. Turning first to the plain language of section 18-7-402(1), the prohibited conduct is soliciting another, arranging (or offering to arrange) a meeting with others, or directing another. § 18-7-402(1)(a)–(c); *Emerterio*, 819 P.2d at 518. Of

course, any of these acts must be undertaken for a particular reason: prostitution of or by a child. This is an attendant circumstance that the prosecution must prove.

¶51 Of particular relevance here, however, there is no requirement in section 18-7-402(1) that the offender's conduct have a particular effect or cause a particular result. The crux of the crime is not the ultimate sexual act, which may or may not occur, but the solicitation, meeting arrangement, offer to arrange a meeting, or direction to a place, accompanied by the purpose behind such conduct. *Ross II*, ¶ 32, 479 P.3d at 917; *see also Emerterio*, 819 P.2d at 518 ("The focus of the crime [of soliciting for child prostitution] is the initial solicitation, not the ultimate sexual act which might occur."). Thus, section 18-7-402(1) involves only conduct—soliciting, arranging (or offering to arrange) a meeting, or directing to a place—and an attendant circumstance—the reason for the conduct is prostitution of or by a child.

¶52 This conclusion is buoyed by our jurisprudence on the crime of soliciting for prostitution, section 18-7-202(1), C.R.S. (2024) (as distinguished from the crime of soliciting for prostitution *of or by a child*, section 18-7-402(1)). In *People v. Mason*, 642 P.2d 8, 13 (Colo. 1982), we observed that the criminal character of the crime of soliciting for prostitution "does not depend upon the discretionary acts of third persons." Elucidating, we strongly implied that section 18-7-202(1) doesn't require a result: "The prostitute's subsequent decision to engage or not to engage in a sexual act with her customer is not essential" to the crime. *Id.* Rather, we reasoned,

the crime is complete when the offender engages in the prohibited conduct in the presence of the requisite attendant circumstance, i.e., when the offender solicits another for prostitution, arranges (or offers to arrange) a meeting of persons for prostitution, or directs another to a place knowing that such direction is for prostitution. *Id.* Hence, *Mason*'s interpretation of section 18-7-202(1) is in lockstep with the interpretation of section 18-7-402(1) in *Ross II* and *Emerterio*.

¶53 Given our legislature's decision to describe the crime of soliciting for child prostitution without requiring a result, we conclude that the culpable mental state of knowingly fits subsections (1)(a) and (1)(b) like a glove. Knowingly is a broad concept that may attach to conduct "when [a person] is aware that his conduct is of such nature"; to an attendant circumstance, "when [a person] is aware . . . that such circumstance exists"; and/or to a result, "when [a person] is aware that his conduct is practically certain to cause the result." § 18-1-501(6). By way of example, knowingly may apply to: the physical act of assaulting another ("*conduct*"); the false status of a statement or the stolen nature of property (an attendant "*circumstance*"); and the death or serious bodily injury caused or inflicted (a "*result*"). *People v. Derrera*, 667 P.2d 1363, 1367 (Colo. 1983).

¶54 In stark contrast to the culpable mental state of knowingly, the culpable mental state of intentionally fits like a square peg in a round hole in subsections (1)(a) and (1)(b). We reiterate that intentionally is defined solely in

terms of a required result: The "conscious objective" of the accused must have been to bring about the specific result prohibited by the statute defining the offense.[13] § 18-1-501(5); *see also People v. Krovarz*, 697 P.2d 378, 383 (Colo. 1985) (explaining that "[t]he mental state of intention is defined relative to result but not relative to conduct or circumstances," which makes knowledge "the most culpable state attached to either of these latter two types of elements"); *People v. Childress*, 2015 CO 65M, ¶¶ 24, 29, 363 P.3d 155, 162, 164 (explaining that the legislature limited intentionally "to a culpable mental state defined exclusively in terms of having a conscious objective to cause a particular result," and noting that circumstances attending the required act refer to "those elements of the offense describing the prohibited act itself and the circumstances surrounding its commission," not to an element "requiring that such act have a particular effect, or cause a particular result").

¶55 Because subsections (1)(a) and (1)(b) define soliciting for child prostitution in terms of conduct and an attendant circumstance without requiring that the prohibited act have a particular effect or cause a particular result, applying the culpable mental state of intentionally in those subsections, as *Ross I* did and as

[13] Under the definition of intentionally, whether the result *actually occurs* is immaterial. *See* § 18-1-501(5). But for this culpable mental state to apply, a crime must be *described* in terms of a required result. *Id.*

Randolph impliedly prompts us to do, is ill-suited at best. As we explained in *Krovarz*, attaching intent "to either conduct or circumstances" in a statute is "superfluous." 697 P.2d at 383; *see also McCoy*, ¶ 38, 442 P.3d at 389 (cautioning that we must avoid interpretations that render any statutory term superfluous).

¶56 Our reasoning in this case may be expressed as follows:

- Subsections (1)(a) and (1)(b) proscribe certain conduct when it is accompanied by a particular attendant circumstance, but they do not require a result.
- The culpable mental state of knowingly is defined in terms of conduct, and/or the attendant circumstances, and/or the result of the offense.
- The culpable mental state of intentionally is defined only in terms of the result of the offense.
- Therefore, knowingly is, hands-down, the culpable mental state that best fits in subsections (1)(a) and (1)(b).

¶57 In any event, in the past, the court of appeals and our court alike have generally imputed the culpable mental state of knowingly when non-strict-liability statutory provisions are silent on a culpable mental state and there is no clear reason to resort to a different culpable mental state. *See Gorman*, 19 P.3d at 666 (recognizing that "we have held that the mens rea of knowingly applies to the act enunciated in the statute . . . when the statute does not specify a culpable mental state"); *Moore*, 674 P.2d at 358 (imputing the culpable mental state of knowingly in the counterfeit controlled substances statute); *People v. Bridges*, 620 P.2d 1, 3 (Colo. 1980) (concluding that the culpable mental state of knowingly is implied by the

statute proscribing engaging in a riot), *overruled in part on other grounds by People v. Jeffers*, 690 P.2d 194 (Colo. 1984); *see also Lawrence*, 55 P.3d at 163 (inferring, from a statutory provision proscribing the wasteful destruction of wildlife, the culpable mental state of "knowingly" because "[n]othing in [the statutory] language logically is tied to 'specific intent,' 'recklessness,' or 'neglect'").

¶58 But what about where, as here, such statutory provisions include the phrase "for the purpose of"? This is not our first rodeo at attempting to decipher the legislature's intent in that scenario either. Our decision in *Candelaria v. People*, 2013 CO 47, 303 P.3d 1202, is illustrative.

¶59 There, we were called upon to interpret "for the purpose of" in section 18-3-414.5(1)(a)(III), C.R.S. (2024), which is part of the definition of sexually violent predator ("SVP"). The pertinent statutory provision in *Candelaria* defined SVP in part as an offender "[w]hose victim was . . . a person with whom the offender established or promoted a relationship primarily *for the purpose of* sexual victimization." § 18-3-414.5(1)(a)(III) (emphasis added). We noted that a division of the court of appeals had previously determined that this clause "obligate[d] the trial court to find that an offender 'had a *specific intent* in forming the relationship' with the victim for the purposes of sexual victimization." *Candelaria*, ¶ 13, 303 P.3d at 1205 (emphasis added) (quoting *People v. Stead*, 66 P.3d 117, 122 (Colo. App. 2002)).

¶60 We rejected *Stead*'s construction for several reasons, including that "the plain language of the [statute] . . . does not contain a specific intent requirement." *Id.* at ¶ 14, 303 P.3d at 1205. We explained that when the General Assembly wishes to include a specific intent requirement in a statute, it "typically employs the terms 'intentionally' and 'with intent.'" *Id.* Because the legislature hadn't done so in section 18-3-414.5(1)(a)(III), and because the remainder of the SVP statute didn't "otherwise suggest a legislative intent to require a finding of the offender's specific intent as a precursor to SVP designation," we refused to read a specific intent requirement into the statute. *Candelaria*, ¶ 14, 303 P.3d at 1205. We added that endorsing the division's decision in *Stead* would have been tantamount to judicial legislation "to accomplish something the [statute's] plain language does not suggest, warrant, or mandate." *Id.*

¶61 It is no different here. Without the express designation of the culpable mental state of intentionally in subsections (1)(a) and (1)(b) or any indication that our General Assembly meant those subsections to describe specific intent crimes, we are unwilling to engage in judicial legislation and impute the culpable mental state of intentionally.

¶62 We acknowledge that we have said in the past that purpose is synonymous with intent. *See People v. Frysig*, 628 P.2d 1004, 1010 (Colo. 1981). But when we have done so, we have meant the *common meaning* of intent, as distinguished from

the *legal meaning* of *specific* intent. *Id.* (stating that "'purpose' as used in the criminal attempt statute is the equivalent of the common meaning of the word 'intent'"). In *Frysig*, we made note of the legislature's decision in 1977 to revise the definition of "substantial step" in the criminal attempt statute by replacing "'intent' . . . [with] 'purpose,' a word of like purport but without the specific intent definitional consequences which section 18-1-501 . . . attaches to the term 'with intent.'" *Id.* at 1009. Put differently, we equated purpose with the common meaning of intent. *Id.*

¶63 Similarly, in *Childress*, we analogized purpose with "intent, in the commonly understood sense." ¶ 29, 363 P.3d at 164 (stating that the "'dual mental state requirement' of complicitor liability in this jurisdiction is more properly characterized as a requirement that the complicitor have," among other things, "the *intent, in the commonly understood sense of desiring or having a purpose or design*, to aid, abet, advise, or encourage the principal in his criminal act or conduct" (emphasis added)). Here, we understand "for the purpose of," as used in subsections (1)(a) and (1)(b), to refer to the reason why someone does something or to the motivation someone has for doing something—that is, intent, in the commonly understood sense—not to the culpable mental state of intentionally defined in section 18-1-501(5).

¶64 Consistent with our case law, today we infer that the culpable mental state of knowingly applies in subsections (1)(a) and (1)(b). We conclude that, although these subsections do not expressly include a culpable mental state, the culpable mental state of knowingly must nevertheless be imputed.[14]

5. Recap: Proof Required for the Crime of Soliciting for Child Prostitution

¶65 In sum, to be guilty of soliciting for child prostitution, an offender must act knowingly—i.e., be "aware of what he is doing"—in soliciting another for the purpose of prostitution of or by a child, arranging (or offering to arrange) a meeting with others for the purpose of prostitution of or by a child, or directing another to a place for the purpose of prostitution of or by a child. *Emerterio*, 819 P.2d at 518; *see also Ross II*, ¶ 4, 479 P.3d at 912 (stating that, regardless of

[14] That the legislature expressly designated the culpable mental state of knowingly in subsection (1)(c)—and only in subsection (1)(c)—does not compel the conclusion that it meant to apply a different culpable mental state in subsections (1)(a) and (1)(b). Indeed, Randolph does not argue otherwise. The use of "knowing" in subsection (1)(c) as a qualifier for the "direction" to a place was necessary to clarify that what the prosecution must prove is that the offender knew the *direction* to the place was for the purpose of prostitution of or by a child. § 18-7-402(1)(c) ("Directs another to a place *knowing such direction* is for the purpose of prostitution of a child or by a child" (emphasis added)). Had the legislature not included "knowing such direction is" before "for the purpose of," it would have proscribed simply "[d]irect[ing] another to a place for the purpose of prostitution of a child or by a child," which could have been understood as requiring proof that the offender was aware that the *place itself* existed for the purpose of prostitution of or by a child. Regardless, for the reasons we have articulated, knowingly is the only culpable mental state that we can reasonably infer from subsections (1)(a) and (1)(b).

whether the culpable mental state of soliciting for child prostitution is intentionally or knowingly, that culpable mental state applies to every element of the offense); *Gorman*, 19 P.3d at 665 (applying the culpable mental state of knowingly to the act of contributing to the delinquency of a minor because "a person must know that he or she is inducing, aiding or encouraging someone to violate a 'federal or state law,' a 'municipal or county ordinance,' or a 'court order'").

D. Application

¶66 Randolph contends that the district court erred by instructing the jury that the crime of soliciting for child prostitution, as charged here, required proof that he knowingly, rather than intentionally, solicited or arranged (or offered to arrange) a meeting for the purpose of prostitution of or by a child. Because we have now held that the mens rea for the crime of soliciting for child prostitution under subsections (1)(a) and (1)(b) is knowingly, we see no error in the challenged jury instructions.

IV. Conclusion

¶67 For the foregoing reasons, we conclude that the applicable culpable mental state in subsections (1)(a) and (1)(b) is knowingly. Because the division below reached the same determination, we affirm its judgment.