

## **CHAPTER 6.5**

### **CRIMES AGAINST AT-RISK ADULTS AND JUVENILES**

- 6.5:01 CRIME AGAINST AN AT-RISK ADULT OR JUVENILE (NEGLIGENCE)**
- 6.5:02 CRIME AGAINST AN AT-RISK ADULT OR JUVENILE (NEGLECT BY CARETAKER)**
- 6.5:03 CRIME AGAINST AN AT-RISK ADULT OR JUVENILE (INJURIOUS TO PHYSICAL OR MENTAL WELFARE)**
- 6.5:04 INTERROGATORY - AT-RISK ADULT OR JUVENILE**
- 6.5:05 INTERROGATORY - AT-RISK ADULT OR JUVENILE (THEFT)**

**The instructions in this chapter are designed to cover the offenses in § 18-6.5-103, C.R.S.**

#### **6.5:01 CRIME AGAINST AN AT-RISK ADULT OR JUVENILE (NEGLIGENCE)**

The elements of the offense of crime against an at-risk [adult][juvenile] are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. negligently engaged in conduct,
4. that caused [bodily injury] [serious bodily injury] [death],
5. to an at-risk [adult] [juvenile],
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 a crime against an at-risk [adult] [juvenile].

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 a crime against an at-risk [adult] [juvenile].

#### **NOTES ON USE**

When this instruction is used the definition of "criminal negligence", "conduct", "omission", "serious bodily injury" and "bodily injury" should be given. The appropriate definition(s) or "at-risk adult" or "at-risk juvenile" must be given. The definition of "person with a disability" may also need to be given.

#### **SOURCE & AUTHORITY**

§18-6.5-103(2) C.R.S.

See *People v. Lovato*, 179 P.3d 208 (Colo.App. 2007) (separate crime not controlled by *People v. McKinney*, 99 P.3d 1038 (Colo. 2004); *Bostelman v. People*, 162 P.3d 686 (Colo. 2007)

#### **CLASSIFICATION OF OFFENSE**

F4, if death

F5, if serious bodily injury

F6, if bodily injury

### **6.5:02 CRIME AGAINST AN AT-RISK ADULT OR JUVENILE (NEGLECT BY CARETAKER)**

The elements of the crime of crime against an at-risk [adult][juvenile] are:

1. That the defendant,

2. in the State of Colorado, at or about the date and place charged,
3. knowingly,
4. neglected,
5. an [at-risk adult] [at-risk juvenile],
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 a crime against an at-risk [adult] [juvenile].

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 a crime against an at-risk [adult] [juvenile].

#### **NOTES ON USE**

When this instruction is used, the appropriate definition(s) or "at-risk adult" or "at-risk juvenile" must be given. In addition, the definitions of "neglect" and "caretaker" must be given. The definition of "knowingly" should be given with this instruction. The definition of "person with a disability" may also need to be given.

#### **SOURCE & AUTHORITY**

§18-6.5-103(6), C.R.S.

#### **CLASSIFICATION OF OFFENSE**

**6.5:03 CRIME AGAINST AN AT-RISK ADULT OR JUVENILE  
(INJURIOUS TO PHYSICAL OR MENTAL WELFARE)**

The elements of the crime of crime against an at-risk [adult][juvenile] are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. knowingly,
4. acted in a manner likely to be injurious to the physical or mental welfare of another person, and
5. that person was an [at-risk adult] [at-risk juvenile],
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 a crime against an at-risk [adult] [juvenile].

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 a crime against an at-risk [adult] [juvenile].

**NOTES ON USE**

When this instruction is used, the appropriate definitions for "knowingly", "at-risk adult" or "at-risk juvenile" must be given. The definition of "person with a disability" may also need to be given.

**SOURCE & AUTHORITY**

§18-6.5-103(6), C.R.S.

## CLASSIFICATION OF OFFENSE

M1

### **6.5:04 INTERROGATORY - AT-RISK ADULT OR JUVENILE**

If you find the defendant not guilty of \_\_\_\_\_, you should disregard this instruction and fill out the verdict form reflecting your not guilty verdict. If, however, you find the defendant guilty of \_\_\_\_\_, you should fill out the verdict form reflecting your guilty verdict, and then answer the following question:

Did the defendant commit the offense against an at-risk [adult][juvenile]? (Yes or No)

It is the prosecution's burden to prove this element beyond a reasonable doubt.

After considering all the evidence, if you decide the prosecution has proven this element beyond a reasonable doubt, you should indicate "Yes" on the verdict form that has been provided.

This finding must be unanimous.

After considering all the evidence, if you do not unanimously find the prosecution has proven [this element] [any one or more of these elements] beyond a reasonable doubt, you should indicate "No" on the verdict form that has been provided.

### NOTES ON USE

This instruction should be given if the defendant is charged with a predicate crime with the sentence aggravator of against an at-risk person. The defendant needs to be found guilty of the predicate crime before considering the sentence enhancer. *People v. McKinney*, 99 P.3d 1038 (Colo. 2004); *People v. Davis*, 935 P.2d 79 (Colo. 1996) (defendant does not have to know the age of the at-risk adult when defendant acts). The appropriate definition(s) of at-risk adult or juvenile must be given. The definition of "person with a disability" may also need to be given. If the

predicate crime is theft, use the special interrogatory for theft against an at-risk person.

#### **SOURCE & AUTHORITY**

§18-6.5-103, C.R.S.

#### **6.5:05 INTERROGATORY - AT-RISK ADULT OR JUVENILE [THEFT]**

If you find the defendant not guilty of theft, you should disregard this instruction and fill out the verdict form reflecting your not guilty verdict. If, however, you find the defendant guilty of theft, you should fill out the verdict form reflecting your guilty verdict, and then answer the following questions:

1. Did the defendant commit the theft against an at-risk [adult][juvenile]? (Yes or No)
2. Was any part of the theft committed in the presence of the victim?

It is the prosecution's burden to prove these elements beyond a reasonable doubt.

After considering all the evidence, if you decide the prosecution has proven these elements beyond a reasonable doubt, you should indicate "Yes" on the verdict form that has been provided.

This finding must be unanimous.

After considering all the evidence, if you do not unanimously find the prosecution has proven [this element] [any one or more of these elements] beyond a reasonable doubt, you should indicate "No" on the verdict form that has been provided.

#### **NOTES ON USE**

This instruction should be given if the defendant is charged with the predicate crime of theft with the sentence aggravator of against an at-risk person. The appropriate

definition(s) of at-risk adult or juvenile must be given. The definition of "person with a disability" may also need to be given.

It is unsettled whether the defendant must be aware of the presence of the victim.

**SOURCE & AUTHORITY**

§18-6.5-103, C.R.S.