

## CHAPTER G1

### CULPABILITY

#### MENS REA STRICT LIABILITY BEHAVIOR OF ANOTHER CORPORATE CONDUCT COMPLICITY

- G1:01 REQUIREMENTS FOR CRIMINAL LIABILITY-IN  
GENERAL
- G1:02 ABSENCE OF CULPABILITY FOR CRIMINAL  
LIABILITY-STRICT LIABILITY CRIMES
- G1:03 LIABILITY FOR BEHAVIOR OF ANOTHER (INOCENT  
PERSON)
- G1:04 CRIMINAL LIABILITY OF A CORPORATION
- G1:05 CRIMINAL LIABILITY OF AN INDIVIDUAL FOR  
CORPORATION CONDUCT
- G1:06 COMPLICITY-GENERAL
- G1:07 COMPLICITY (CRIMINAL NEGLIGENCE)
- G1(1-2) SPECIAL RULES

The instructions in this chapter are designed to cover all culpable mental states in the Criminal Pattern Jury Instructions in § 18-1-501 and 502; § 18-1-601 through 607; § 18-1-804, C.R.S.

#### G1:01 REQUIREMENTS FOR CRIMINAL LIABILITY - IN GENERAL

A crime is committed when the defendant has committed a voluntary act prohibited by law, together with a particular state of mind. "Voluntary act" means an act performed consciously as a result of effort or determination. The state(s) of mind required is/are [after deliberation and with intent] [intentionally, or with intent] [knowingly] [recklessly] [with criminal negligence], as explained in this instruction. Proof of the act alone is insufficient to prove that the defendant had the required state of mind. The state of mind is as much an element of the crime as the act itself and must be proven beyond a reasonable doubt, either by direct or circumstantial evidence.

[A person acts "after deliberation and with intent" when both of these conditions are satisfied:

1. After deliberation: The term "after deliberation" means not only intentionally, but also that the decision to commit the act has been made after the exercise of reflection and judgment concerning the act. An act committed after deliberation is never one which has been committed in a hasty or impulsive manner.

2. With intent: A person acts "intentionally" or "with intent" when his conscious objective is to cause the specific result proscribed by the statute defining the offense. It is immaterial whether the result actually occurred.]

-or-

[A person acts "intentionally" or "with intent" when his conscious objective is to cause the specific result proscribed by the statute defining the offense. It is immaterial whether or not the result actually occurred.]

-or-

[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" with respect to a result of his conduct when he is aware that his conduct is practically certain to cause the result.]

-or-

[A person acts "recklessly" when he consciously disregards a substantial and unjustified risk that a result will occur or that a circumstance exists.]

-or-

[A person acts "with criminal negligence" when, through a gross deviation from the standard of care that a reasonable person would exercise, he fails to perceive a substantial and unjustified risk that a result will occur or that a circumstance exists.]

**NOTES ON USE**

Delete inapplicable bracket material.

**SOURCE & AUTHORITY**

§§ 18-1-501(3), (5), (6-9), C.R.S.

§18-1-502, C.R.S.

§18-3-101(3), C.R.S.

*People v. Madison*, 176 P.3d 793 (Colo.App. 2007).

**G1:02 ABSENCE OF CULPABILITY FOR CRIMINAL LIABILITY  
- STRICT LIABILITY CRIMES**

The crime(s) of \_\_\_\_\_ is/are established by conduct which includes a voluntary act or the omission to perform an act which the defendant is physically capable of performing. Intent to commit the crime need not be shown, but the act must be voluntary.

**NOTES ON USE**

When this instruction is used, the applicable definitions of "conduct," "voluntary," and "omission" must be given.

**SOURCE & AUTHORITY**

§18-1-502, C.R.S.

**G1:03 LIABILITY FOR BEHAVIOR OF ANOTHER (INNOCENT  
PERSON)**

A person is legally accountable for the behavior of another person if he acts with the mental state required for the commission of the offense and he causes an innocent person to engage in such behavior.

An innocent person includes any person who is not guilty of the offense in question, despite his behavior, because of [duress] [legal incapacity or exemption] [unawareness of the criminal nature of the conduct in question or of the defendant's criminal purpose], or any other factor precluding the mental state required for the offense in question.

#### **SOURCE & AUTHORITY**

§§18-1-601,-602, C.R.S.

§ 18-1-604(1), C.R.S. (exemptions)

#### **G1:04 CRIMINAL LIABILITY OF A CORPORATION**

A corporation is guilty of an offense if [the conduct constituting the offense consists of an omission to discharge a specific duty of affirmative performance imposed on corporations by law] [the conduct constituting the offense is engaged in, authorized, solicited, requested, commanded, or knowingly tolerated by the governing body, individual authorized to manage the affairs of the business entity, or by a high managerial agent acting within the scope of his employment or in behalf of the corporation].

#### **NOTES ON USE**

When this instruction is used, the applicable definitions of "agent", "business entity" and "high managerial agent" must be given. See § 18-1-606(2), C.R.S.

As used in this instruction:

"Agent" means any director, officer, or employee of a business entity, or any other person who is authorized to act in behalf of the business entity.

"High managerial agent" means an officer of a business entity or any other agent in a position of comparable authority with respect to the formulation of the business entity's policy or the supervision in a managerial capacity of subordinate employees.

"Business entity" means a corporation or other entity that is subject to the provisions of title 17, C.R.S.;

foreign corporations qualified to do business in this state pursuant to article 115 of title 7, C.R.S., specifically including federally chartered or authorized financial institutions; a corporation or other entity that is subject to the provisions of title 11, C.R.S.; or a sole proprietorship or other association or group of individuals doing business in the state.

#### **SOURCE & AUTHORITY**

§18-1-606, C.R.S.

### **G1:05 CRIMINAL LIABILITY OF AN INDIVIDUAL FOR CORPORATION CONDUCT**

A person is liable for a crime that he commits in the name of or on behalf of a corporation, to the same extent as if the crime(s) were committed in his own name or on his own behalf.

#### **SOURCE & AUTHORITY**

§18-1-607, C.R.S.

### **G1:06 COMPLICITY - GENERAL**

A person is guilty of an offense committed by another person if he is a complicitor. To be guilty as a complicitor, the following must be established beyond a reasonable doubt:

1. The crime(s) must have been committed,
2. another person must have committed [all or part of] the crime(s),

3. the defendant must have had knowledge that the other person intended to commit [all or part of] the crime(s) of

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(Insert name of crime(s))



*People v Rodriguez*, 914 P.2d 230 (Colo. 1996); *People v. Wheeler*, 772 P.2d 101 (Colo. 1989); *People v. R.V.*, 635 P.2d 892 (Colo.1981); *People v. Larson*, 572 P.2d 815 (Colo.1977). *Grisson v. People*, 115 P.3d 1280 (Colo. 2005)(in common enterprise cases the defendant may be held liable for unintended crimes including recklessness and criminal negligence)

### **G1:07 COMPLICITY (CRIMINAL NEGLIGENCE)**

A person is guilty of an offense committed by another person if he is a complicitor. To be guilty as a complicitor, the following must be established beyond a reasonable doubt:

1. The crime must have been committed,
2. another person must have committed [all or part of] the crime,
3. the defendant had knowledge that the other person was engaging in conduct required for the commission of \_\_\_\_\_,  
(Insert name of crime(s))
4. the defendant aided, abetted, advised or encouraged the other person in the commission or planning of that crime,
5. the defendant promoted or facilitated the commission of the crime(s) of \_\_\_\_\_, and  
(Insert name of crime(s).)
6. a reasonable person in the defendant's position would have recognized a substantial and unjustified risk that \_\_\_\_\_,  
(Insert statutory circumstance or result.)
7. without the affirmative defense in instruction number \_\_\_\_\_.

## NOTES ON USE

The language contained in the brackets should be included in the complicity instruction only in those cases in which two or more persons, possibly including the defendant, together committed the essential elements of the underlying crime. If another person committed all essential elements of the crime with which the defendant is charged under a complicity theory, the language in brackets should be omitted from the instructions. There may be circumstances where an instruction on the affirmative defense under Section 18-1-604 will be needed.

For a discussion of mental states required for attempt, complicity and conspiracy, see *Palmer v. People*, 964 P.2d 524 (Colo. 1998).

## SOURCE & AUTHORITY

§18-1-603, C.R.S.

*Bogdanov v. People*, 941 P.2d 247 (Colo.), amended, 955 P.2d 997 (Colo. 1997), *disapproved of on other grounds by Griego v. People*, 19 P.3d 1 (Colo. 2001) (the complicity instruction requires two mental states—the mens rea of the underlying crime and the intent to promote and facilitate); *People v. Bass*, 155 P.3d 547 (Colo. App. 2006) (same).

*People v Rodriguez*, 914 P.2d 230 (Colo. 1996); *People v. Wheeler*, 772 P.2d 101 (Colo. 1989); *People v. R.V.*, 635 P.2d 892 (Colo.1981); *People v. Larson*, 572 P.2d 815 (Colo.1977). *Grison v. People*, 115 P.3d 1280 (Colo. 2005)(in common enterprise cases the defendant may be held liable for unintended crimes including recklessness and criminal negligence)

## SPECIAL RULES

### G1(1) LIABILITY BASED ON BEHAVIOR OF ANOTHER—NO DEFENSE

If the defendant's criminal liability is based upon the behavior of another, it is no defense to the crime of \_\_\_\_\_ [that the other person has not been



intoxication is not a defense to a general intent crime.  
*People v. Vigil*, 127 P.3d 916 (Colo. 2006).

**SOURCE & AUTHORITY**

§18-1-804(1) and (3), C.R.S.