

CHAPTER 3-2

ASSAULTS

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The instructions in this chapter are intended to cover the crimes set forth in §§ 18-3-201 through -208, C.R.S.

3-2:01 ASSAULT - FIRST DEGREE - DEADLY WEAPON

The elements of the crime of assault in the first degree are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. with intent to cause serious bodily injury to another person,
4. caused serious bodily injury to any person,
5. by means of a deadly weapon.
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 assault in the first degree.

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

NOTES ON USE

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

SOURCE & AUTHORITY

§18-3-202(1)(a), C.R.S.

COLJI-Crim. No. 10:1 (1983).

People v. Saleh, 43 P.3d 1272 (Colo. 2002) (deadly weapon need not actually and directly cause the victim's injuries; it is sufficient if the weapon is used to set in motion, an unbroken, foreseeable series of events causing the injury).

CLASSIFICATION OF OFFENSE

F3

F5, if provoked passion present

**3-2:02 ASSAULT - FIRST DEGREE - PERMANENT
DISFIGUREMENT**

The elements of the crime of assault in the first degree are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. [with intent to disfigure another person seriously and permanently,]

-or-

[with intent to destroy, amputate or disable permanently a member or organ of another person's body,]

4. caused such an injury to any person.

5. [without the affirmative defense in instruction number _____.]

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

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

NOTES ON USE

Delete the inapplicable bracketed materials.

SOURCE & AUTHORITY

§18-3-202(1)(b), C.R.S.

COLJI-Crim. No. 10:02

CLASSIFICATION OF OFFENSE

F3

F5, if provoked passion present

**3-2:03 ASSAULT - FIRST DEGREE - EXTREME
INDIFFERENCE**

The elements of the crime of assault in the first degree are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. under circumstances manifesting extreme indifference to the value of human life,

4. knowingly engaged in conduct which created a grave risk of death to another person, and

5. thereby caused serious bodily injury to any person.

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 assault in the first degree.

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

NOTES ON USE

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

See *People v. Marcy*, 628 P.2d 69 (Colo. 1981); *People v. Jefferson*, 748 P.2d 1223 (Colo. 1988)

SOURCE & AUTHORITY

§18-3-202(1)(c), C.R.S.

COLJI-Crim. No. 10:03 (1983).

CLASSIFICATION OF OFFENSE

F3

F5, if provoked passion present

**3-2:04 ASSAULT - FIRST DEGREE - PEACE OFFICER OR
FIREFIGHTER**

The elements of the crime of assault in the first degree are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. with intent to cause serious bodily injury,
4. to a [peace officer] [firefighter],
5. threatened with a deadly weapon a [peace officer] [firefighter],
6. while the [peace officer] [firefighter] threatened was engaged in the performance of his or her duties, and
7. the defendant knew or reasonably should have known that the victim was a [peace officer] [firefighter] engaged in the performance of his duties.
8. [without the affirmative defense in instruction number _____.]

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

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

NOTES ON USE

Delete inapplicable bracketed material. When this instruction is used, the applicable definitions of "serious bodily injury," "deadly weapon," "peace officer," "firefighter," and "engaged in the performance of his duties" must be given.

SOURCE & AUTHORITY

§18-3-202(1)(e), C.R.S.

COLJI-Crim. No. 10:05.

CLASSIFICATION OF OFFENSE

F3

F5, if provoked passion present

3-2:05 ASSAULT - FIRST DEGREE - JUDGE OR OFFICER OF COURT

The elements of the crime of assault in the first degree are:

1. That the Defendant,
2. in the State of Colorado, at or about the date and place charged,
3. with intent to cause serious bodily injury,
4. to [a judge] [an officer],
5. of a court of competent jurisdiction,
6. threatened him or her with a deadly weapon,
7. and the Defendant knew or reasonably should have known,
8. that the victim was [a judge] [an officer] of a court of competent jurisdiction.
9. [without the affirmative defense in instruction number _____.]

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

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

NOTES ON USE

Definitions of "with intent", "serious bodily injury" and "deadly weapon" should be given with this instruction.

SOURCE & AUTHORITY

§18-3-202(e.5), C.R.S.

CLASSIFICATION OF OFFENSE

F3

F5, if provoked passion present

3-2:06 ASSAULT- FIRST DEGREE - WHILE CONFINED

The elements of the crime of assault in the first degree are:

1. That the Defendant,
2. in the State of Colorado, at or about the date and place charged,
3. while lawfully confined or in custody,
4. as a result of being [charged with or convicted of a crime] [charged or adjudicated as a delinquent child],
5. with intent to cause serious bodily injury to a person [employed by or under contract with a detention facility] [employed by the division in the department of human services responsible for youth services and who is a youth services counselor or is in the youth services worker classification series],
6. threatened such person with a deadly weapon,

7. while such person was engaged in the performance of his duties,

8. and the Defendant knew or reasonably should have known that such person was engaged in the performance of his duties while employed by [or under contract with a detention facility] [the division in the department of human services responsible for youth services],

9. [without the affirmative defense in instruction number _____.]

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

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

NOTES ON USE

Definitions of "with intent," "serious bodily injury," and "deadly weapon" should be given with this instruction. When applicable, the definition of "detention facility", as set forth in §18-8-203(3), C.R.S., shall be given with this instruction.

Delete inapplicable bracketed material.

SOURCE & AUTHORITY

§18-3-202(1)(f), C.R.S.

CLASSIFICATION OF OFFENSE

F3

F5, if provoked passion present

**3-2:07 INTERROGATORY - ASSAULT - FIRST DEGREE -
PROVOCATION**

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

Was the defendant acting upon provoked passion? (Yes or no)

The defendant was acting under provoked passion if:

1. The act causing the injury was performed upon a sudden heat of passion, and

2. the sudden heat of passion was caused by a serious and highly provoking act of the intended victim, and

3. the intended victim's act of provocation was sufficient to excite an irresistible passion in a reasonable person, and

4. between the provocation and the assault, there was an insufficient interval of time between the provocation and the injury for the voice of reason and humanity to be heard.

It is the prosecution's burden to prove beyond a reasonable doubt that the defendant was *not* acting upon provoked passion. The prosecution must prove beyond a reasonable doubt that one or more of these elements did not exist in this case.

After considering all of the evidence, if you decide the prosecution has proven beyond a reasonable doubt that the defendant was not acting upon provoked passion, you should indicate "No" on the verdict form that is 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.

SOURCE & AUTHORITY

§18-3-202(2)(a), C.R.S.

COLJI-Crim. No. 10:20 (1983).

Rowe v. People, 856 P.2d 486 (Colo. 1993).

People v. Villarreal, 131 P.3d 1119 (Colo. App. 2005)(provoked passion is neither an element nor a sentence enhancer).

3-2:08 ASSAULT - SECOND DEGREE - DEADLY WEAPON

The elements of the crime of assault in the second degree are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. with intent to cause bodily injury to another person,
4. caused bodily injury to any person,
5. by means of a deadly weapon.
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 assault in the second degree.

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

NOTES ON USE

When this instruction is used, the applicable definitions of "with intent", "deadly weapon", "bodily injury" and "person" must be given.

SOURCE & AUTHORITY

§18-3-203(1)(b), C.R.S.

COLJI- Crim. No. 10:08 (1983).

People v. Saleh, 43 P.3d 1272 (Colo. 2002) (deadly weapon need not actually and directly cause the victim's injuries; it is sufficient if the weapon is used to set in motion, an unbroken, foreseeable series of events causing the injury).

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

CLASSIFICATION OF OFFENSE

F3, if serious bodily injury occurred to the victim during the commission or attempted commission of or flight from the commission or attempted commission of murder, arson, burglary, escape, first degree kidnapping, sexual assault or class 3 felony sexual assault on a child.

F4

F6, if provoked passion present

3-2:09 ASSAULT - SECOND DEGREE - PEACE OFFICER OR FIREFIGHTER

The elements of the crime of assault in the second degree are:

1. That the defendant,

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

3. with intent to prevent one whom the defendant knew or reasonably should have known to be a [peace officer] [firefighter] from performing a lawful duty,

4. intentionally caused bodily injury to any person.

5. [without the affirmative defense in instruction number _____.]

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

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

NOTES ON USE

Delete inapplicable bracketed material. When this instruction is used, the applicable definitions of "bodily injury," "peace officer," and "firefighter," must be given.

SOURCE & AUTHORITY

§18-3-203(1)(c), C.R.S.

COLJI-Crim. No. 10:09 (1983).

People v. Montoya, 104 P.3d 303 (Colo. App. 2004) (firefighter solely working as a paramedic is a firefighter).

CLASSIFICATION OF OFFENSE

F3, if serious bodily injury occurred to the victim during the commission or attempted commission of or flight from the commission or attempted commission of murder, arson, burglary, escape, first degree kidnapping, sexual assault or class 3 felony sexual assault on a child.

3-2:10 ASSAULT - SECOND DEGREE - RECKLESS

The elements of the crime of assault in the second degree are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. recklessly caused serious bodily injury to another person,
4. by means of a deadly weapon.
5. [without the affirmative defense in instruction number _____.]

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

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

NOTES ON USE

When this instruction is used, the applicable definitions of "recklessly", "deadly weapon" and "serious bodily injury" must be given.

SOURCE & AUTHORITY

§18-3-203(1)(d), C.R.S

COLJI-Crim. No. 10:10 (1983).

People v. Stewart, 55 P.3d 107 (Colo. 2002)
(reasonable distinction between vehicular assault and
second degree reckless assault).

CLASSIFICATION OF OFFENSE

F3, if serious bodily injury occurred to the victim during the commission or attempted commission of or flight from the commission or attempted commission of murder, arson, burglary, escape, first degree kidnapping, sexual assault or class 3 felony sexual assault on a child.

3-2:11 ASSAULT - SECOND DEGREE - UNLAWFUL ADMINISTRATION OF DRUGS

The elements of the crime of assault in the second degree are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. for a purpose other than lawful medical or therapeutic treatment,
4. intentionally,
5. caused stupor, unconsciousness, or other physical or mental impairment or injury to another person,
6. by administering to that person a drug, substance, or preparation capable of producing the intended harm,
7. without the consent of the person to whom the drug was administered.
8. [without the affirmative defense in instruction number _____.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a

reasonable doubt, you should find the defendant guilty of assault in the second degree.

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

NOTES ON USE

The definition of "intentionally" and "person" must be given with this instruction.

SOURCE & AUTHORITY

§18-3-203(1)(e), C.R.S.

COLJI-Crim. No. 10:11 (1983).

CLASSIFICATION OF OFFENSE

F3, if serious bodily injury occurred to the victim during the commission or attempted commission of or flight from the commission or attempted commission of murder, arson, burglary, escape, first degree kidnapping, sexual assault or class 3 felony sexual assault on a child.

3-2:12 ASSAULT - SECOND DEGREE - WHILE CONFINED

The elements of the crime of assault in the second degree are:

1. That the Defendant,
2. in the State of Colorado, at or about the date and place charged,
3. [while lawfully confined or in custody,
4. as a result of being [charged with or convicted of a crime] [charged or adjudicated as a delinquent child],
5. knowingly,

6. violently applied physical force against

7. [the person of a [peace officer] [fireman] engaged in the performance of his or her duties,

8. and the Defendant knew or reasonably should have known that the victim was a [[peace officer] [fireman] engaged in the performance of his or her duties].]

-or-

7. [a judge or officer of a court of competent jurisdiction,

8. and the Defendant knew or reasonably should have known that the victim was a judge or officer of a court of competent jurisdiction.]

-or-

7. [a person engaged in the performance of his or her duties while employed by [or under contract with a detention facility] [the division in the department of human services responsible for youth services and who is a youth services counselor or is in the youth services classification series],

8. and the Defendant knew or reasonably should have known that the victim was a person engaged in the performance of his or her duties while [employed by or under contract with a detention facility] [employed by the division in the department of human services responsible for youth services].]

9. without the affirmative defense in instruction number _____.]

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

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

NOTES ON USE

Delete inapplicable bracketed material. Where applicable, the definitions of "knowingly", "peace officer", "firefighter", "engaged in the performance of his or her duties" and "detention facility" must be given. It may be necessary to define "in custody" (see e.g. *People v. Weider*, 693 P.2d 1006 (Colo. App. 1984), aff'd, 722 P.2d 396 (Colo. 1986); *People v. Ortega*, 899 P.2d 236 (Colo. App. 1994)).

SOURCE & AUTHORITY

§18-3-203(1)(f), C.R.S.

COLJI-Crim. No. 10:12 (1983).

CLASSIFICATION OF OFFENSE

F3, if serious bodily injury occurred to the victim during the commission or attempted commission of or flight from the commission or attempted commission of murder, arson, burglary, escape, first degree kidnapping, sexual assault or class 3 felony sexual assault on a child.

3-2:13 ASSAULT - SECOND DEGREE - WHILE CONFINED - FLUIDS

The elements of the crime of assault in the second degree are:

1. That the Defendant,
2. in the State of Colorado, at or about the date and place charged,
3. while lawfully confined in a detention facility within this state,
4. with the intent,
5. to infect, injure, harm, harass, annoy, threaten, or alarm a person in a detention facility,

6. whom the defendant knew or reasonably should have known to be an employee of a detention facility,

7. caused such employee to come into contact with [blood, seminal fluid, urine, feces, saliva, mucus, or vomit] [any toxic, caustic, or hazardous material],

8. by any means, including but not limited to throwing, tossing or expelling such fluid or material

9. [without the affirmative defense in instruction number _____.]

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

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

NOTES ON USE

When this instruction is given, it may be necessary to define the terms "intent", "detention facility" and "employee of a detention facility". See §18-3-203(1)(f.5)(III)(A) & (B), C.R.S.

SOURCE & AUTHORITY

§18-3-203(1)(f.5), C.R.S.

People v. Miller, 97 P.3d 171 (Colo. App. 2003).

CLASSIFICATION OF OFFENSE

F3, if serious bodily injury occurred to the victim during the commission or attempted commission of or flight from the commission or attempted commission of murder, arson, burglary, escape, first degree kidnapping, sexual assault or class 3 felony sexual assault on a child.

3-2:14 ASSAULT - SECOND DEGREE - INTENT TO CAUSE BODILY INJURY - CAUSE SERIOUS BODILY INJURY

The elements of the crime of assault in the second degree are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. with intent to cause bodily injury to another person,
4. caused serious bodily injury to any person,
5. [without the affirmative defense in instruction number _____.]

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

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

NOTES ON USE

When this instruction is used, the applicable definitions of "with intent" and "bodily injury" and "serious bodily injury" must be given.

SOURCE & AUTHORITY

§18-3-203(1)(g), C.R.S.

CLASSIFICATION OF OFFENSE

F3, if serious bodily injury occurred to the victim during the commission or attempted commission of or flight from the commission or attempted commission of murder, arson, burglary, escape, first degree kidnapping, sexual assault or class 3 felony sexual assault on a child.

**3-2:15 INTERROGATORY ASSAULT - SECOND DEGREE
(PROVOCATION)**

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

Was the defendant acting upon provoked passion? (Yes or no)

The defendant was acting under provoked passion if:

1. The act causing the injury was performed upon a sudden heat of passion, and

2. the sudden heat of passion was caused by a serious and highly provoking act of the intended victim, and

3. the intended victim's act of provocation was sufficient to excite an irresistible passion in a reasonable person, and

4. between the provocation and the assault, there was an insufficient interval of time between the provocation and the injury for the voice of reason and humanity to be heard.

It is the prosecution's burden to prove beyond a reasonable doubt that the defendant was not acting upon

provoked passion. The prosecution must prove beyond a reasonable doubt that one or more of these elements did not exist in this case.

After considering all of the evidence, if you decided the prosecution has proven beyond a reasonable doubt that the defendant was not acting upon provoked passion, you should indicate "No" on the verdict form that is 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.

SOURCE & AUTHORITY

§18-3-203(2)(a), C.R.S.

COLJI-Crim. No. 10:20 (1983).

People v. Howard, 89 P.3d 441 (Colo. App. 2003).

3-2:16 INTERROGATORY ASSAULT - SECOND DEGREE DURING ANOTHER SPECIFIED FELONY

If you find the defendant not guilty of second degree assault, [or you find the defendant guilty of second degree assault with provocation according to instruction no. ____,] you should disregard this instruction. If, however, you find the defendant guilty of second degree assault, [and you also find that the defendant did not commit that second degree assault with provocation according to instruction no. ____,] you should fill out the verdict form reflecting your verdict and then answer the following question:

Was the second degree assault committed under the following additional circumstances:

1. _____ suffered serious bodily injury, and
(name of victim)

2. the injury occurred during the commission or attempted commission of or flight from the commission or attempted commission of _____ , and
(insert specified felony)

3. _____ was not a participant in the
(name of victim)

(insert specified felony)

It is the prosecution's burden to prove beyond a reasonable doubt each of the additional circumstances.

After considering all of the evidence, if you decide the prosecution has proven beyond a reasonable doubt each of these additional circumstances, you should indicate "Yes" on the verdict form that is 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

When this instruction is used, the applicable definition of "attempt" and "serious bodily injury" must be given.

See §18-3-203(2)(b.5), C.R.S. for applicable felonies.

If the defendant is not separately charged with the other specified felony, the elemental instruction of the other specified felony except for the concluding paragraphs should be used.

SOURCE & AUTHORITY

§18-3-203(2)(b.5), C.R.S.

3-2:17 ASSAULT - THIRD DEGREE

The elements of the crime of assault in the third degree are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. [knowingly or recklessly,
4. caused bodily injury to another person.]

-or-

3. [with criminal negligence,
4. caused bodily injury to another person,
5. by means of a deadly weapon.]

[5. or 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 assault in the third degree.

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

NOTES ON USE

When this instruction is used, the applicable definitions of "knowingly", "recklessly", "criminal negligence", "bodily injury" and "deadly weapon" must be given. Delete inapplicable bracketed material. If the victim is a peace officer or firefighter engaged in the performance of his or her duties or a mental health professional employed or under contract with the department of human services, see §18-1.3-501, C.R.S.

SOURCE & AUTHORITY

§18-3-204, C.R.S

COLJI-Crim. No. 10:13 (1983).

CLASSIFICATION OF OFFENSE

M1

3-2:18 VEHICULAR ASSAULT

The elements of the crime of vehicular assault are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. operated or drove a motor vehicle,
4. [in a reckless manner, and]

-or-

[while under the influence of [alcohol] [one or more drugs], or a combination of both alcohol and one or more drugs, and]

5. this conduct was the proximate cause of serious bodily injury to another person.

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 vehicular assault.

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 vehicular assault.

NOTES ON USE

When this instruction is used, the applicable definitions of "motor vehicle", "proximate cause", and "serious bodily injury" must be given. Definitions of "in a reckless manner" (see definition of "recklessly"), "one or more drugs", and "under the influence" must be given must be given where appropriate.

With reference to driving under the influence of drugs or alcohol, vehicular assault is a strict-liability offense. As such, the instruction on strict liability should be given.

See §18-3-205(2), C.R.S. and the following instruction, as to inferences to be drawn from the defendant's blood alcohol level. While the term "presumption" is used in the statute, presumptions are illegal in criminal cases, and the term "inference" is better used.

SOURCE & AUTHORITY

§18-3-205, C.R.S.

COLJI-Crim. No. 10:14 (1983).

CLASSIFICATION OF OFFENSE

F4, if under the influence

F5, if reckless

3-2:19 SPECIAL INSTRUCTION INFERENCES TO BE DRAWN FROM EVIDENCE OF BLOOD ALCOHOL LEVEL

In any prosecution in which the defendant is charged with vehicular assault, the amount of alcohol in the defendant's blood at the time of the commission of the alleged offense, or within a reasonable time thereafter, as shown by chemical analysis of the defendant's blood or breath, gives rise to the following:

(a) If there was at such time 0.05 or less grams of alcohol per one hundred milliliters of blood, or if there was at such time 0.05 or less grams of alcohol per two hundred ten liters of breath, it shall be presumed that the defendant was not under the influence of alcohol.

(b) If there was at such time in excess of 0.05 but less than 0.08 grams of alcohol per one hundred milliliters of blood, or if there was at such time in excess of 0.05 but less than 0.08 grams of alcohol per two hundred ten liters of breath, such fact may be considered with other competent evidence in determining whether or not the defendant was under the influence of alcohol.

(c) If there was at such time 0.08 or more grams of alcohol per one hundred milliliters of blood, or if there was at such time 0.08 or more grams of alcohol per two hundred ten liters of breath, it may be inferred that the defendant was under the influence of alcohol.

You may consider this evidence, together with all the other evidence in this case, in determining whether or not the defendant was under the influence of alcohol.

You must bear in mind that the prosecution always has the burden of proving each element of the offense beyond a reasonable doubt, and that an inference does not shift that burden to the defendant. [The defendant is not required to testify or present evidence.]

NOTES ON USE

This instruction differs from the instruction used in DUI and DWAI cases. In Vehicular Homicide and Vehicular Assault cases, the issue is whether or not the defendant was under the influence. Here, if the defendant's blood alcohol was between 0.05 and 0.08, there is no inference.

The general instruction on inferences is to be given with this instruction.

See *Jolly v. People*, 742 P.2d 891, 897 (Colo. 1987); *Barnes v. People*, 735 P.2d 869, 872 (Colo. 1987) and *People v. Felgar*, 58 P.3d 1122 (Colo. App. 2002) regarding the use of presumptions as opposed to inferences. See also *People v. Stanley*, 170 P.3d 782 (Colo.App. 2007).

SOURCE & AUTHORITY

§18-3-205(2), C.R.S.

3-2:20 MENACING

The elements of the crime of menacing are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. by threat or physical action,
4. knowingly placed or attempted to place another person in fear of imminent serious bodily injury,
5. [without the affirmative defense in instruction number _____.]

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

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 menacing.

NOTES ON USE

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

SOURCE & AUTHORITY

§18-3-206, C.R.S.

COLJI-Crim. No. 10:15 (1983).

People v. Shawn, 107 P.3d 1033 (Colo. App. 2005).

CLASSIFICATION OF OFFENSE

M3

3-2:21 FELONY MENACING

The elements of the crime of menacing are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. by threat or physical action,
4. knowingly placed or attempted to place another person in fear of imminent serious bodily injury,
5. [by the use of a deadly weapon, or any article used or fashioned in a manner to cause a person to reasonably believe that article is a deadly weapon.]

-or-

[by representing verbally or otherwise that he or she is armed with a deadly weapon.]

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 menacing.

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 menacing.

NOTES ON USE

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

SOURCE & AUTHORITY

§18-3-206, C.R.S.

COLJI-Crim. No. 10:16 (1983).

CLASSIFICATION OF OFFENSE

F5

3-2:22 INTERROGATORY - MENACING - DEADLY WEAPON

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

Did the defendant commit Menacing by the use of a deadly weapon? (Yes or No)

It is the prosecution's burden to prove beyond a reasonable doubt that the defendant committed Menacing by the use of a deadly weapon. After considering all of the evidence, you should indicate on the verdict form that is provided whether or not you find that the prosecution has proven that the defendant committed Menacing by the use of a deadly weapon.

NOTES ON USE

This interrogatory may be used instead of the first alternative 5 in the instruction 3-2:21..

Article II, Section 19 of the Colorado Constitution prohibits the setting of bond pending sentencing or appeal after conviction, if an actual firearm is used in the commission of a felony. The use of a firearm also has other federal and state collateral consequences for parole and sentencing purposes for later convictions.

When this instruction is given, the definition of "deadly weapon" should also be given.

SOURCE & AUTHORITY

§18-3-206, C.R.S.

3-2:23 CRIMINAL EXTORTION

The elements of the crime of extortion are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. without legal authority,
4. [with intent to induce another person, against that person's will, to give the person money or another item of value and threatens to report to law enforcement officials the immigration status of the threatened person or another person.]

-or-

[with intent to induce another person, against that person's will, to perform an act, or to refrain from performing a lawful act, and]

5. made a substantial threat to [confine or restrain] [cause economic hardship] [cause bodily injury to] [damage the property or reputation of] any person, and

6. [threatened to cause these results by performing or causing an unlawful act to be performed,]

-or-

[threatened to cause these results by invoking action by a third party, [including but not limited to, the State or any of its political subdivisions,] whose interests were not substantially related to the interests pursued by the defendant.]

7. [without the affirmative defense in instruction number _____.]

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

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 extortion.

NOTES ON USE

Delete inapplicable bracketed material.

When this instruction is used, the definition of "with intent" must be given. When this instruction is given, it may be necessary to define "substantial threat" and "bodily injury". See §18-3-207(3), C.R.S.

SOURCE & AUTHORITY

§18-3-207(1), C.R.S.

COLJI-Crim. No. 10:17 (1983).

CLASSIFICATION OF OFFENSE

F4

3-2:24 EXTORTION - AGGRAVATED

The elements of the crime of aggravated criminal extortion are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. without legal authority,
4. [with intent to induce another person, against that person's will, to give the person money or another item of value and threatens to report to law enforcement officials the immigration status of the threatened person or another person.]

-or-

with intent to induce another person against that person's will, to perform an act, or to refrain from performing a lawful act, and

5. made a substantial threat to [confine or restrain] [cause economic hardship] [cause bodily injury to] [damage the property or reputation of] any person, and

6. [threatened to cause these results by performing or causing an unlawful act to be performed, and further,]

-or-

[threatened to cause these results by invoking action by a third party, [including but not limited to, the State or any of its political subdivisions] whose interests were not substantially related to the interests pursued by the defendant, and further,]

7. threatened to cause these results by means of chemical, biological, or harmful radioactive agents, weapons, or poison,

8. [without the affirmative defense in instruction number _____.]

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

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 aggravated extortion.

NOTES ON USE

Delete inapplicable bracketed material.

When this instruction is used, the definition of "with intent" must be given. When this instruction is given, it may be necessary to define "substantial threat. See §18-3-207(3), C.R.S.

SOURCE & AUTHORITY

§18-3-207(2), C.R.S.
COLJI-Crim. No. 10:18 (1983).

CLASSIFICATION OF OFFENSE

F3

3-2:25 RECKLESS ENDANGERMENT

The elements of the crime of reckless endangerment are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. recklessly engaged in conduct,
4. which created a substantial risk of serious bodily injury,
5. to another person.
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 reckless endangerment.

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 reckless endangerment.

NOTES ON USE

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

SOURCE & AUTHORITY

§18-3-208, C.R.S.

COLJI-Crim. No. 10:19 (1983).

CLASSIFICATION OF OFFENSE

M3

3-2:26 UNLAWFUL TERMINATION OF PREGNANCY

The elements of the crime of unlawful termination of pregnancy are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. with the intent to unlawfully terminate the pregnancy of another person,
4. unlawfully terminated the other person's pregnancy,
5. [without the affirmative defense in instruction number _____.]

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

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 unlawful termination of pregnancy.

NOTES ON USE

Delete inapplicable bracketed material. When this instruction is given, the definition of "with intent" must be given. The statute excludes medical treatment including abortion and in utero treatment as long as the pregnant woman consents.

SOURCE & AUTHORITY

§18-3.5-102, C.R.S.

CLASSIFICATION OF OFFENSE

F4