

## CHAPTER 3-1

### HOMICIDE AND RELATED OFFENSES

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The instructions in this chapter are designed to cover the offenses in §§ 18-3-101 to 107, C.R.S.

#### 3-1:01 MURDER IN THE FIRST DEGREE (AFTER DELIBERATION)

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

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

3. after deliberation, and with intent

a. to cause the death of a person other than himself,

b. caused the death of \_\_\_\_\_.

4. [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 murder 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 murder in the first degree.

#### **NOTES ON USE**

Delete inapplicable bracketed material. When this instruction is used, the applicable definition of "after deliberation", "intent" and "person" must be given. See § 18-3-107, C.R.S. for first degree murder of a peace officer or firefighter engaged in the performance of his or her duties.

*People v. Candelaria*, 148 P.3d 178 (Colo. 2006) (distinction between after deliberation and extreme indifference murder).

#### **SOURCE & AUTHORITY**

§18-3-102(1)(a), C.R.S.

COLJI-Crim. No. 9:01 (1983).

**CLASSIFICATION OF OFFENSE**

F1

**3-1:02 MURDER IN THE FIRST DEGREE (FELONY MURDER)**

The elements of the crime of murder in the first degree (felony murder) are:

1. that the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. acting alone or with one or more persons,
4. committed or attempted to commit the crime of \_\_\_\_\_ as defined in instruction (insert applicable felony) \_\_\_\_\_ , and
5. in the course of or in furtherance of the \_\_\_\_\_ he/she was committing or (insert applicable felony) attempting to commit, or of immediate flight therefrom
6. the death of a person, other than one of the participants, was caused by anyone.
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 murder 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 murder in the first degree.

**NOTES ON USE**

Delete inapplicable bracketed material. The complete elemental definition of the applicable offense or offenses in paragraph 4 and 5 must be given. *People v. Auman*, 109 P.3d 647 (Colo. 2005). See § 18-3-107, C.R.S. for first degree murder of a peace officer or firefighter engaged in the performance of his or her duties.

**SOURCE & AUTHORITY**

§18-3-102(1)(b), C.R.S.

COLJI-Crim. No. 9:02 (1983).

**3-1:03 AFFIRMATIVE DEFENSE FELONY MURDER**

It is an affirmative defense to the charge of murder in the first degree (felony murder) that the defendant:

1. was not the only participant in the \_\_\_\_\_ ; and  
(insert underlying crime)
2. did not commit the homicidal act or in any way solicit, request, command, importune, cause, or aid the commission thereof; and
3. was not armed with a deadly weapon; and
4. had no reasonable ground to believe that any other participant was armed with such a weapon, instrument, article, or substance; and
5. did not engage himself in or intend to engage in and had no reasonable ground to believe that any other participant intended to believe that any other participant intended to engage in conduct likely to result in death or serious bodily injury; and
6. endeavored to disengage himself from the commission of \_\_\_\_\_ or flight therefrom  
(insert underlying crime)

immediately upon having reasonable grounds to believe that another participant is armed with a deadly weapon, instrument, article, or substance, or intended to engage in conduct likely to result in death or serious bodily injury.

In addition to proving all the elements of the crime charged beyond a reasonable doubt, the prosecution also has the burden to disprove any one or more of the elements of the affirmative defense beyond a reasonable doubt.

After considering the evidence concerning the affirmative defense, with all the other evidence in this case, if you are not convinced beyond a reasonable doubt that the prosecution has proven each of the elements of the crime charged, and disproven the affirmative defense beyond a reasonable doubt, you must return a verdict of not guilty.

#### **SOURCE & AUTHORITY**

§18-3-102(2), C.R.S.

#### **3-1:04 MURDER IN THE FIRST DEGREE (EXECUTION BASED UPON PERJURY)**

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

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. procured the conviction and execution,
4. of any innocent person,
5. [by [perjury] [subornation of perjury].
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 murder 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 murder in the first degree.

#### **NOTES ON USE**

Delete inapplicable bracketed material. When this instruction is given, the applicable definitions of "person", "perjury" and "subornation of perjury" must be given.

#### **SOURCE & AUTHORITY**

§18-3-102(1)(c), C.R.S.

COLJI-Crim. No. 9:03 (1983).

#### **CLASSIFICATION OF OFFENSE**

F1

#### **3-1:05 MURDER IN THE FIRST DEGREE (EXTREME INDIFFERENCE)**

The elements of the crime of murder 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 evidencing an attitude of universal malice manifesting extreme indifference to the value of human life generally,
4. knowingly,

5. engaged in conduct which created a grave risk of death to a person or persons other than himself, and

6. thereby caused the death of another.

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 murder 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 murder in the first degree.

#### **NOTES ON USE**

Delete inapplicable bracketed material. When this instruction is given, the applicable definitions of "person", "universal malice", and "extreme indifference" must be given. See *People v. Jefferson*, 748 P.2d 1223 (Colo. 1988). *People v. Candelaria*, 148 P.3d 178 (Colo. 2006) (distinction between after deliberation and extreme indifference murder). See § 18-3-107, C.R.S. for first degree murder of a peace officer or firefighter engaged in the performance of his or her duties.

#### **SOURCE & AUTHORITY**

§18-3-102(1)(d), C.R.S.

COLJI-Crim. No. 9:04 (1983).

#### **CLASSIFICATION OF OFFENSE**

F1

**3-1:06 MURDER IN THE FIRST DEGREE (DISTRIBUTION OF CONTROLLED SUBSTANCE ON SCHOOL GROUNDS)**

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

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. committed unlawful distribution, dispensation or sale of a controlled substance,
4. to a person under the age of eighteen years,
5. on school grounds,
6. and the death of such person,
7. was caused by the use of such controlled substance.
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 murder 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 murder in the first degree.

**NOTES ON USE**

When this instruction is used, the applicable definition of "school grounds" and "controlled substance" must be given. The elements of unlawful distribution, dispensation and sale of a controlled substance must be given with this instruction. See §18-1-503.5, C.R.S. as to affirmative defense relating to defendant's knowledge of age of victim.

**SOURCE & AUTHORITY**

§18-3-102(1)(e), C.R.S.

**CLASSIFICATION OF OFFENSE**

F1

**3-1:07 MURDER IN THE FIRST DEGREE (CHILD UNDER  
TWELVE)**

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

1. that the defendant,
2. in the State of Colorado at or about the date and place charged,
3. knowingly
4. caused the death of a child who has not attained twelve years of age, and
5. the defendant was in a position of trust with respect to the victim.
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 murder 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 murder in the first degree.

**NOTES ON USE**

When this instruction is given the applicable definition of "position of trust" must be given.

**SOURCE & AUTHORITY**

§18-3-102(1)(f), C.R.S.

**CLASSIFICATION OF OFFENSE**

F1

**3-1:08 MURDER IN THE SECOND DEGREE**

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

1. that the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. knowingly,
4. caused the death of another 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 murder 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 murder in the second degree.

## NOTES ON USE

The definitions of "knowingly" and "person" must be given with this instruction.

## SOURCE & AUTHORITY

§18-3-103, C.R.S.

COLJI-Crim. No. 9:05 (1983).

*People v. Sepulveda*, 65 P.3d 1002 (Colo. 2003).

*People v. Ramirez*, 56 P.3d 89 (Colo. 2002).

## CLASSIFICATION OF OFFENSE

F2

F3, if provoked passion found

## 3-1:09 INTERROGATORY (PROVOKED PASSION)

If you find the defendant not guilty of second degree murder, 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 murder, 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 upon provoked passion if:

1. the act causing the death 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 killing, there was an insufficient interval of time 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 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 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.

#### **SOURCE & AUTHORITY**

§18-3-103(3)(b), C.R.S.

*Cassels v. People*, 92 P.3d 951 (Colo. 2004)(duty to instruct on provoked passion discussed).

*People v. Garcia*, 28 P.3d 340 (Colo. 2001)(burden on prosecution to disprove provoked passion when raised.)

*People v. Garcia*, 826 P.2d 1259, 1262 (Colo. 1992)

*People v. Valdez*, 183 P.3d 720 (Colo. App. 2008)

#### **3-1:10 MANSLAUGHTER (RECKLESS)**

The elements of the crime of manslaughter are:

1. That the defendant,

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

3. recklessly,

4. caused the death of another 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 manslaughter.

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 manslaughter.

#### **NOTES ON USE**

When this instruction is given, the definitions of "recklessly" and "person" must be given.

#### **SOURCE & AUTHORITY**

§18-3-104(1)(a), C.R.S.

COLJI-Crim. No. 9:06 (1983).

#### **CLASSIFICATION OF OFFENSE**

F4

#### **3-1:11 MANSLAUGHTER (CAUSED OR AIDED SUICIDE)**

The elements of the crime of manslaughter are:

1. that the defendant,

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

3. intentionally,

4. caused or aided another person to commit suicide,

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 manslaughter.

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 manslaughter.

#### **NOTES ON USE**

§18-3-104(3), C.R.S. specifies those circumstances under which this section "shall not apply". When this instruction is given, the definitions of "intentionally and "person" must be given.

#### **SOURCE & AUTHORITY**

§18-3-104(1)(b), (2) and (3), C.R.S.  
COLJI-Crim. No. 9:07 (1983).

#### **CLASSIFICATION OF OFFENSE**

F4

### **3-1:12 CRIMINALLY NEGLIGENT HOMICIDE**

The elements of the crime of criminally negligent homicide are:

1. That the defendant,

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

3. caused the death of another person,

4. by criminal negligence,

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 criminally negligent homicide.

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 criminally negligent homicide.

#### **NOTES ON USE**

When this instruction is given the definitions of "criminal negligence" and "person" must be given. *Mata Medina v. People*, 71 P.3d 973 (Colo. 2003) (distinction between criminally negligent homicide and reckless manslaughter).

#### **SOURCE & AUTHORITY**

§18-3-105, C.R.S.

COLJI-Crim. No. 9:09 (1983).

#### **CLASSIFICATION OF OFFENSE**

F5

### 3-1:13 VEHICULAR HOMICIDE

The elements of the crime of vehicular homicide 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,]

-or-

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

5. and such conduct was the proximate cause
6. of the death of another.

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 vehicular homicide.

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 homicide.

#### NOTES ON USE

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

See §18-3-106(2) and (3), 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**

§18-3-106(1), C.R.S.

COLJI-Crim. No. 9:10 (1983).

#### **CLASSIFICATION OF OFFENSE**

F3, if under the influence

F4, if reckless

#### **3-1:14 SPECIAL INSTRUCTION INFERENCES TO BE DRAWN FROM EVIDENCE OF BLOOD ALCOHOL LEVEL**

As to the charge of vehicular homicide, 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.

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

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

#### **SOURCE & AUTHORITY**

§18-3-106(2), C.R.S.

#### **DEFINITIONS**

##### **3-1(15) ONE OR MORE DRUGS**

"ONE OR MORE DRUGS" shall mean all substances defined as a drug in § 12-22-303(13), C.R.S., and all controlled substances defined in § 12-22-303(7), C.R.S., and glue-sniffing, aerosol inhalation, or the inhalation of any other toxic vapor or vapors as defined in § 18-18-412, C.R.S. This definition is applicable to vehicular homicide § 18-3-106, C.R.S. and vehicular assault § 18-3-205, C.R.S.