

CHAPTER 7-7

MORALS: SEXUAL CONDUCT IN PENAL INSTITUTIONS

- 7-7:01 SEXUAL CONDUCT IN PENAL INSTITUTION
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7-7:01 SEXUAL CONDUCT IN PENAL INSTITUTION

The elements of the crime of Sexual Conduct in a Penal Institution are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. was an [employee of] [volunteer in] a criminal justice facility, and
4. knowingly,
5. engaged in [sexual contact][sexual intrusion][sexual penetration],
6. with a person who was in lawful custody and confinement in a criminal justice facility
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 sexual conduct in a penal institution.

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 sexual conduct in a penal institution.

NOTES ON USE

Delete inapplicable bracketed material. When this instruction is used, the applicable definitions of "criminal justice facility", "sexual contact", "sexual intrusion", or "sexual penetration" must be used. If sexual contact is set forth in the same instruction as sexual intrusion or penetration, a special verdict form must be given.

SOURCE AND AUTHORITY

§18-7-701, C.R.S.

CLASSIFICATION OF OFFENSE

If the defendant was a volunteer and the offensive behavior is sexual contact, the offense classification is M1.

If the defendant was an employee or contract employee of a criminal justice facility or an employee or contract employee or a person who performs work functions at a criminal justice facility or for the department of corrections and the offensive behavior is sexual contact or the act was committed by a volunteer and the offensive behavior is sexual intrusion or sexual penetration, the offense classification is F6.

If the defendant was an employee or contract employee of the department of corrections or is an employee or contract employer or performs work functions in a criminal justice facility or for the department of corrections the offensive behavior is sexual intrusion or sexual penetration, the offense classification is F5.

7-7:02 INTERROGATORY SEXUAL CONDUCT IN PENAL INSTITUTION

If you find the defendant not guilty of sexual conduct in a penal institution, you should disregard this instruction and fill out the verdict form reflecting your not guilty verdict. If, however, you find the defendant guilty of sexual conduct in a penal institution, you should

fill out the verdict form reflecting your guilty verdict and then answer the following questions:

1. Was the defendant at the time of the sexual conduct alleged in the complaint an employee or contract employee of a criminal justice facility or an employee or contract employer or a person who performs work functions in a criminal justice facility or for the department of corrections? (yes or no).

2. Did the defendant commit sexual intrusion or sexual penetration? (yes or no).

It is the prosecutor's burden to establish elements 1 and 2 beyond a reasonable doubt.

After considering all of the evidence, if you decide the prosecution has proven 1 or 2 above beyond a reasonable doubt, you should indicate "Yes" to each item that has been proved 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

When this instruction is given, the definition of "criminal justice facility" must be given.

SOURCE & AUTHORITY

§ 18-7-701(3), C.R.S.

CLASSIFICATION OF OFFENSE

If the answer to 1 and 2 is "Yes" the classification is F5. If the answer to 1 is "Yes" and 2 is "No," the classification is F6. If the answer to 1 is "No" and 2 is "Yes" the classification is M1.

DEFINITIONS

7(1) CRIMINAL JUSTICE FACILITY

"CRIMINAL JUSTICE FACILITY" means a "correctional facility" under § 17-1-102(1.7), C.R.S., to wit: any facility under the supervision of the department of corrections which persons are or may be lawfully held in custody as a result of conviction of crime, or a correctional facility operated by or under contract with the department of corrections or a jail.