

## **CHAPTER A**

### **GENERAL DIRECTIONS FOR USE OF THESE JURY INSTRUCTIONS**

#### **GENERAL DIRECTIONS FOR USE OF COLJI-Crim.**

##### **GENERAL PRINCIPLES**

These instructions must be used with discretion, keeping in mind the following principles:

(a) Colorado Jury Instructions-Criminal is neither a restatement nor an encyclopedia of the prevailing law. The intent is to provide forms of instructions which are clear, unambiguous, impartial and free from argument. As nearly as possible, these instructions represent a neutral statement of the law.

(b) The major effort of this project has been to update the previous Colorado Jury Instructions-Criminal published in 1983. Statutory changes in Colorado have caused that edition and its supplements to be out of date. Further, the language of the old instructions has been simplified as much as possible so that jurors may more easily understand and follow the instructions.

(c) These instructions are not all-inclusive and do not cover every possible principle of criminal law even as to the subjects which are covered herein. The Notes on Chapter Use and Notes on Use for each instruction discuss the cautions to be exercised in using the instructions.

(d) The Colorado Criminal Code, Title 18 C.R.S. is the prevailing law reflected in these instructions. The instructions apply to the provisions of Title 18 and other selected criminal statutes in C.R.S. All amendments and case law have been accounted for as of May 1, 2008. As the criminal law becomes more refined and modified by statute or appellate decision, these instructions must be modified.

## DEFINITIONS

Every effort has been made at the end of each instruction to refer the user to each term requiring definition. However, the user should review and be familiar with the terms set forth in the definitions chapter.

## PERSONALIZATION AND IDENTIFICATION OF PARTIES

It is strongly encouraged that the proper names of parties, e.g. "Ms., Mr. or Mrs. \_\_\_\_\_" including the defendant, witnesses and any victim(s) be used and inserted wherever possible in place of "he," "she," "the defendant," "the victim," etc., where appropriate, although not necessarily in elemental instructions. The use of the term "victim" is discouraged.

## BRACKETED MATERIALS

In many instances, alternatives or probable omissions are no longer included in brackets. Nevertheless, where such alternatives are indicated, the more appropriate one(s), in the light of the evidence and the theory of the case, should be elected and the rest deleted. Indicated omissions should be treated in a similar manner. Depending on the facts and the nature of the bracketed material, it may be appropriate to include more than one bracketed item.

**Alternative elements.** In many cases, it will be clear that only one alternative element should be submitted to the jury. For example, in a prosecution for vehicular assault under § 18-3-205, evidence at trial may support one, but not both, of these charged alternatives:

- Operated or drove a motor vehicle [in a reckless manner]
- Operated or drove a motor vehicle [while under the influence of any drug or intoxicant]

But in other cases, the evidence may support instruction on more than one alternative element. In such cases, it is preferable to use a special verdict form so that the jury can identify the alternative that it relied upon for conviction. See *People v. Dunaway*, 88 P.3d 619 (Colo. 2004) (while the

better practice is to remove from an instruction a theory of liability not supported by the evidence, the failure to do so does not violate due process if sufficient evidence supports the other theory).

**Alternative ways of satisfying an element.** Similarly, it will often be clear that the jury should be instructed on only one of various statutory ways to satisfy a single element. For example, in a prosecution for burglary under § 18-4-203, evidence at trial may support only one of these charged alternatives:

- [Unlawfully broke an entrance into] a building or occupied structure
- [Unlawfully entered] a building or occupied structure
- [Unlawfully remained in] a building or occupied structure

But in other cases, the evidence may support an instruction on more than one alternative. Although a special verdict form may be used, a general verdict form is also appropriate. See *People v. Pineda*, 40 P.3d 60, 66 (Colo. App. 2001) (The pre-*Dunaway* rule prohibiting general verdict does not apply where there are two methods of establishing a single element, as opposed to two alternative elements), citing *People v. Hanson*, 928 P.2d 776 (Colo. App. 1996).

#### **ELEMENTS AND SENTENCE ENHANCERS**

In general, sentence enhancers are presented by way of interrogatory (see the general form which is provided in the next chapter, as well as specific interrogatories throughout the book), and elements are presented in the instruction defining the offense. However, in certain instances, it may be appropriate to include a sentence enhancer in an elemental instruction. Conversely, it may be appropriate to present an element by way of interrogatory.

## **NOTES ON USE**

"Notes on Use" following each instruction contain key cross references, directions or cautions with respect to the use thereof. They may not contain all potentially applicable cross-references for a given instruction. Every effort has been made at the end of each instruction to refer the user to each term requiring definition. However, the user should review and be familiar with the terms set forth in the definitions chapter.

## **THEORY OF THE CASE**

These instructions do not contain "defendant's theory of the case" instructions. These obviously vary with the facts of each case and must be given when the evidence supports such an instruction and the law supports it as a defense. Additionally, in a substantial number of criminal cases, concepts of civil law become applicable. In those cases, the Committee recommends the use, insofar as possible, of the Colorado Jury Instructions - Civil.

## **JUROR COPIES**

When instructions are given to the jury, the subject and title, notes on use, source and authority, and research references must be omitted.

## **CITATION**

This work may be cited as follows: COLJI-Crim. (2008). Individual instructions may be cited as COLJI-Crim. No. \_\_\_\_ (2008).