

CHAPTER F

DEFINITIONS

NOTE ON CHAPTER USE

Many of these definitions apply only to specific crimes.

F(1) ABANDON

"Abandon" means the leaving of an animal without adequate provisions for the animal's proper care by its owner, the person responsible for the animal's care or custody, or any other person having possession of such animal. [§18-9-201(1), C.R.S.]

F(2) ACCESS DEVICE

"Access device" means any card, plate, code, account number, or other means of access that can be used, alone or in conjunction with another access device, to obtain telecommunications service. [§18-9-309(1)(a), C.R.S.]

F(3) ACCOUNT HOLDER

"Account holder" means the person or business entity named on the face of a financial transaction device to whom or for whose benefit the financial transaction device is issued by an issuer. [§18-5-701(1), C.R.S.]

F(4) ACT

"Act" means a bodily movement, and includes words or possession of property. [§18-1-501(1), C.R.S.]

F(5) ACTOR

"Actor" means the person accused of a criminal sexual offence pursuant to §18-3-401 et. seq., C.R.S.

F(6) ADMINISTER

"Administer", unless the context otherwise requires, means to apply a controlled substance, whether by injection, inhalation, ingestion, or any other means, directly to the body of a patient or research subject by:

- (a) A practitioner (or, in the practitioner's presence, by the practitioner's authorized agent); or
- (b) The patient or research subject at the direction and in the presence of the practitioner.

[§18-18-102(1), C.R.S.]

F(7) ADULT

"Adult" means any person eighteen years of age or older. [§18-12-101(1)(a), C.R.S.]

F(8) 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. [§18-3-101(3), C.R.S.]

F(9) AGENT

"Agent" means an authorized person who acts on behalf of or at the direction of a person licensed or otherwise authorized under this article or under part 3 of article 22 of title 12, C.R.S. "Agent" does not include a common or contract carrier, a public warehouseman, or an employee of a carrier or warehouseman. [§18-18-102(2), C.R.S.]

F(10) AID OR TO ASSIST

"To aid" or "to assist" includes knowingly to give or lend money or extend credit to be used for, or to make possible or available, or to further the activity thus aided or assisted. [§18-1-901(3)(a), C.R.S.]

F(11) ANABOLIC STEROID

"Anabolic steroid" means any material, drug, hormonal compound, salt, isomer or salts of isomers of testosterone, or synthetic or natural derivatives of testosterone having pronounced anabolic properties, which is used primarily to promote growth of muscle tissue, which includes, but is not limited to any of the following:

- (I) Boldenone;
- (II) Chlorotestosterone;
- (III) Clostebol;
- (IV) Dehydrochlormethyltestosterone;
- (V) Dihydrotestosterone;
- (VI) Drostanolone;
- (VII) Ethylestronal;
- (VIII) Fluoxymesterone;
- (IX) Formebolone;
- (X) Human chorionic gonadotropin;
- (XI) Human growth hormone;
- (XII) Mesterolone;
- (XIII) Methandienone;
- (XIV) Methandranone;
- (XV) Methandriol;
- (XVI) Methandrestenolone;
- (XVII) Methenolone;
- (XVIII) Methyltestosterone;
- (XIX) Mibolerone;
- (XX) Nandrolone;
- (XXI) Norethandrolone;
- (XXII) Oxandrolone;
- (XXIII) Oxymesterone;
- (XXIV) Oxymetholone;
- (XXV) Stanolone;
- (XXVI) Stanozolol;
- (XXVII) Testolactone;
- (XXVIII) Testosterone;
- (XXIX) Trenbolone;
- (XXX) Any salt, ester, or isomer of a drug or substance described or listed in this

paragraph (a) if that salt, ester, or isomer promotes muscle growth.

(b)(I) Except as provided in subparagraph (II) of this paragraph (b), such term does not include an anabolic steroid which is expressly intended for administration through implants to cattle or other non-human species and which has been approved by the secretary of health and human services for such administration.

(II) If any person prescribes, dispenses, or distributes a steroid described in subparagraph (I) of this paragraph (b) for human use, such person shall be considered to have prescribed, dispensed, or distributed an anabolic steroid within the meaning of paragraph (a) of this subsection (3).

[§18-18-102(3)(a), C.R.S.]

F(12) ANAL INTERCOURSE

"Anal intercourse" means contact between human beings of the genital organs of one and the anus of another. [§18-7-201(2)(d), 401(1), C.R.S.]

F(13) ANIMAL

"Animal" means any living dumb creature. [§18-9-201(2), C.R.S.]

F(14) BUILDING OF ANOTHER

If a building is divided into units for separate occupancy, any unit not occupied by the defendant is a "building of another". [§18-4-101(4), C.R.S.]

F(15) PROPERTY OF ANOTHER

Property is that of "another" if anyone other than the defendant has a possessory or proprietary interest therein. [§18-4-101(3), C.R.S.]

F(16) ASSIST OR RENDER ASSISTANCE

"Assist" means to:

(a) harbor or conceal the other; or

(b) harbor or conceal the victim or a witness to the crime; or

(c) warn such person of impending discovery or apprehension; except that this does not apply to a warning given in an effort to bring such person into compliance with the law; or

(d) provide such person with money, transportation, weapon, disguise, or other thing to be used in avoiding discovery or apprehension; or

(e) by force, intimidation or deception, obstruct anyone in the performance of any act which might aid in discovery, detection, apprehension, prosecution, conviction, or punishment of such person, or

(f) conceal, destroy or alter any physical or testimonial evidence that might aid in the discovery, detection, apprehension, prosecution, conviction, or punishment of such person.

[§§18-8-105, 201(3), C.R.S.]

F(17) AT-RISK ADULT

"At-risk adult" means any person who is [sixty years of age or older] [any person who is eighteen years of age or older and is a person who is (insert applicable disability from 18-6.5-102(3))]

[§18-6.5-102(1), C.R.S.]

NOTES ON USE

When the "at-risk adult" is a person with a disability, the applicable definition of "developmentally disabled," "mentally ill," "mentally impaired," and "blind" also must be given. [§§18-4-401(1)(a), 18-6.5-103(5), C.R.S.]

F(18) AT-RISK JUVENILE

"At-risk juvenile" means any person who is under the age of eighteen years and is a person who is (insert applicable disability from 18-6.5-102(3)). [§18-6.5-102(1.5), C.R.S.]

NOTES ON USE

When using this instruction, the applicable definition of "developmentally disabled," "mentally ill," "mentally impaired," and "blind" also must be given. [§§18-4-401(1)(a), 18-6.5-103(5), C.R.S.]

F(19) ATTEMPT

A person commits criminal attempt if, acting with the kind of culpability otherwise required for commission of an offense, s/he engages in conduct constituting a substantial step toward the commission of the offense. A substantial step is any conduct, whether act, omission, or possession, which is strongly corroborative of the firmness of the actor's purpose to complete the commission of the offense. Factual or legal impossibility of committing the offense is not a defense if the offense could have been committed had the attendant circumstances been as the actor believed them to be, nor is it a defense that the crime attempted was actually perpetrated by the accused. [§18-2-101(1), C.R.S.] See also: *People v. Lehnert*, 163 P.3d 1111 (Colo. 2007)(discussion of substantial step)

F(20) AURAL TRANSFER

"Aural transfer" means a transfer containing the human voice at any point between and including the point of origin and the point of reception. [§18-9-301(1.5), C.R.S.]

F(21) AUTOMATED BANKING DEVICE

"Automated banking device" means any machine which, when properly activated by a financial transaction device or a personal identification code, may be used for any of the purposes for which a financial transaction device may be used. [§18-5-701(2), C.R.S.]

F(22) BALLISTIC KNIFE

"Ballistic knife" means any knife that has a blade which is forcefully projected from the handle by means of a spring-loaded device or explosive charge. [§18-12-101(1)(a.3), C.R.S.]

F(23) BEARING TREE

"Bearing tree" means any tree in the vicinity of a survey monument, the relative location of which is used to help perpetuate the location of a monument.

NOTES ON USE

Use with reference to §§ 18-4-501 through -513, C.R.S.

Note that a "bearing tree" is an "accessory" as defined in §38-53-103(1), C.R.S.

F(24) BENEFIT

"Benefit" means any gain or advantage to the beneficiary including any gain or advantage to [another][a third] person pursuant to the desire or consent of the beneficiary. [§§18-1-901(3)(b), 18-8-301(1), C.R.S.]

F(25) BLACKJACK

"Blackjack" includes any billy, sand club, sandbag, or other hand-operated striking weapon consisting, at the striking end, of an encased piece of lead or other heavy substance and, at the handle end, a strap or springy shaft which increases the force of impact. [§18-12-101(1)(a.5), C.R.S.]

F(26) BLIND

"Blind" means having not more than ten percent visual acuity in the better eye with correction, or not more than 20/200 central visual acuity in the better eye with correction, or a limitation in the fields of vision such that the widest diameter of the visual field subtends an angle no greater than twenty degrees. [§26-2-103, C.R.S.]

F(27) BOARD

See §18-18-103, C.R.S.

F(28) BODILY INJURY

"Bodily injury" means physical pain, illness, or any impairment of physical or mental condition. [§18-1-901(3)(c), C.R.S.]

F(29) BOMB

"Bomb" means any explosive or incendiary device or molotov cocktail, or any chemical device which causes or can cause an explosion, which is not specifically designed for lawful and legitimate use in the hands of its possessor. [§18-12-101(1)(b), C.R.S.]

NOTES ON USE

Where appropriate, the definition of molotov cocktail should be given.

F(30) BUILDING

"Building" means a structure which has the capacity to contain, and is designed for the shelter of man, animal, or property, and includes a ship, trailer, sleeping car, airplane, or other vehicle or place adapted for overnight accommodations of persons or animals, or for carrying on of business therein, whether or not a person or animal is actually present. [§18-4-101(1), C.R.S.]

NOTES ON USE

See also "building of another," "separate building", and "occupied structure".

F(31) BUILDING OF ANOTHER

If a building is divided into units for separate occupancy, any unit not occupied by the defendant is a "building of another". [§18-4-101(4), C.R.S.]

NOTES ON USE

Use with reference to §§18-4-101 through 18-4-513, C.R.S.

F(32) CAUSE

"Cause" means that act or failure to act which in natural and probable sequence produced the claimed injury. [CJI 2d Civil, 9:26. p.40 (1976); *People v. Stewart*, 55 P.3d 107 (Colo. 2002)]

NOTES ON USE

Use with reference to § 18-3-106, C.R.S.

This instruction is taken in part from the civil instruction. The remainder of the civil instruction, which

includes a reference to intervening and multiple causes, may be given in the appropriate case.

See "proximate cause".

F(33) CELLULAR PHONE

"Cellular phone" means a radio telecommunications device that may be used to obtain telecommunications services and that is programmed with an electronic serial number by or with the consent of the cellular phone manufacturer. [§18-9-309(1)(a.5), C.R.S.]

F(34) CHECK

"Check" means a written, unconditional order to pay a sum certain in money, drawn on a bank, payable on demand, and signed by the drawer, and also includes a negotiable order of withdrawal and a share draft. [§18-5-205(1)(a), C.R.S.]

NOTES ON USE

The language "and also includes a negotiable order of withdrawal and a share draft", set forth in the definition of check, in §18-5-205(1)(a), C.R.S., applies only to the section in which that definition is contained.

F(35) CHILD

"Child" means a person under the age of [sixteen] [eighteen] [twenty-one] years. [§18-6-302, 401-403, C.R.S.]

F(36) CLONED CELLULAR PHONE

"Cloned cellular phone" means a cellular phone, the electronic serial number of which has been altered without the consent of the cellular phone's manufacturer. [§18-9-309(1)(a.7), C.R.S.]

F(37) CLONING EQUIPMENT

"Cloning equipment" means any instrument, apparatus, equipment, computer hardware, computer software, operating procedure or code, or device, whether used separately or in combination, that is designed or adapted and is used, is intended to be used, or is capable of being used:

(I) To intercept signals, including signals transmitted to or from cellular phones, between a telecommunications provider and persons using telecommunications services or between persons using telecommunications services; or

(II) To create cloned cellular phones.

[§18-9-309(1)(a.8), C.R.S.]

F(38) COCAINE

"Cocaine" means coca leaves, except coca leaves and extracts from which cocaine, ecgonine, and derivatives of ecgonine or their salts have been removed; cocaine, its salts, optical and geometric isomers, and salts of isomers; ecgonine, its derivatives, their salts, isomers, and salts of isomers; or any compound, mixture, or preparation which contains any quantity of any of the substances referred to in this subsection (4). [§18-18-102(4), C.R.S.]

F(39) COMMON CARRIER

"Common Carrier" means any person engaged as a common carrier for hire in intrastate, interstate, or foreign communication by wire or radio or in intrastate, interstate, or foreign radio transmission of energy. [§ 18-9-301(2), C.R.S.]

F(40) COMPLETE WRITTEN INSTRUMENT

"Complete written instrument" means one which purports to be a genuine written instrument fully drawn with respect to every essential feature thereof. [§18-5-101(1), C.R.S.]

NOTES ON USE

See definition of "incomplete written instrument."

F(41) CONDUCT

"Conduct" means an act or omission and its accompanying state of mind or, where relevant, a series of acts or omissions. [§18-1-501(2), C.R.S.] (See also Conduct "in Connection With")

F(42) CONDUCT "IN CONNECTION WITH"

See "In Connection With"

F(43) CONSENT

"Consent" means cooperation in act or attitude pursuant to an exercise of free will and with knowledge of the nature of the act. A current or previous relationship shall not be sufficient to constitute consent. Submission under the influence of fear shall not constitute consent. [§18-3-401(1.5), C.R.S.]

F(44) CONTENTS

"Contents", when used with respect to any wire, oral, or electronic communication, includes any information concerning the substance, purport, or meaning of that communication. [§18-9-301(3), C.R.S.]

F(45) CONTRABAND

"Contraband" means any of the following, but does not include a dangerous instrument, malt, vinous or spirituous liquor, fermented malt beverage, a controlled substance, marihuana or marihuana concentrate:

- (a) Any key, key pattern, key replica or lock pick, or
- (b) Any tool or instrument which could be used to cut fence or wire, dig, pry or file, or

(c) Any money or coin of the United States or foreign currency or any written instrument of value, or

(d) Any uncanceled postage stamp or implement of the United States Postal Service, or

(e) Any counterfeit or forged identification card, or

(f) Any combustible material other than safety matches, or

(g) Any drug, other than a controlled substance, in quantities other than those authorized by a physician, or

(h) Any mask, wig, disguise, or other means of altering normal physical appearance which could hinder ready identification, or

(i) Any drug paraphernalia, or

(j) Any material which is "obscene"

(k) Any chain, rope or ladder, or

(l) Any article or thing that poses or may pose a threat to the security of the detention facility as determined by the administrative head of the detention facility if reasonable notice is given that such article or thing is contraband.

[§18-8-204, C.R.S.]

NOTES ON USE

Where subsection (g) may apply, the appropriate definition of controlled substance, from §12-22-303(7), C.R.S., should be given. Where subsection (i) may apply, the appropriate definition of drug paraphernalia, from §18-18-426, C.R.S., should be given. Where subsection (j) may apply, the appropriate definition of obscene, from §18-7-101, C.R.S., should be given.

F(46) CONTROL CORNER

" Control corner " means any land survey monument the position of which controls the location of the boundaries of a tract or parcel of land. [§ 38-53-103(6), C.R.S.]

NOTES ON USE

Use with reference to § 18-4-508, C.R.S.

F(47) CONTROLLED SUBSTANCE

"Controlled substance" means a drug, substance, or immediate precursor which has been listed in the Uniform Controlled Substances Act [§18-18-102(5), C.R.S.]

NOTES ON USE

This is not the definition used in the definition of contraband, which definition is found in §12-22-303(7), C.R.S. (See also "Controlled Substance Analog")

F(48) CONTROLLED SUBSTANCE ANALOG

(a) "Controlled substance analog" means a substance the chemical structure of which is substantially similar to the chemical structure of which is substantially similar to the chemical structure of a controlled substance in or added to schedule I or II and:

(I) Which has a stimulant, depressant, or hallucinogenic effect on the central nervous system substantially similar to the stimulant, depressant, or hallucinogenic effect on the central nervous system of a controlled substance included in schedule I or II; or

(II) With respect to a particular individual, which the individual represents or intends to have a stimulant, depressant, or hallucinogenic effect on the central nervous system substantially similar to the stimulant, depressant, or hallucinogenic effect on the central nervous system of a controlled substance included in schedule I or II.

(b) The term does not include:

(III) A controlled substance;

(IV) A substance for which there is an approved drug application, so long as such substance is in its intended and unconverted form;

(V) A substance with respect to which an exemption is in effect for investigational use by a particular person under section 505 of the federal "Food, Drug, and Cosmetic Act", 21 U.S.C. sec. 355, to the extent conduct with respect to the substance is pursuant to the exemption; or

(VI) Any substance to the extent not intended for human consumption before an exemption takes effect with respect to the substance.

[§18-18-102(6), C.R.S.]

F(49) CONVERSATION OR DISCUSSION

See "Oral Communication".

NOTES ON USE

In *People v. Blehm*, 44 Colo. App. 472, 623 P.2d 411 (1980) the Colorado Court of Appeals held that "conversation" or "discussion" are terms synonymous with the term "oral communication." See § 18-9-301(8), C.R.S.

F(50) COPY (MEDICAL RECORDS)

"Copy" means any facsimile, replica, photograph, sound recording, magnetic or electronic recording, or other reproduction of a medical record and any note, drawing or sketch made of or from a medical record. [§18-4-412(2)(d), C.R.S.]

F(51) COPY (TRADE SECRETS)

"Copy" means any facsimile, replica, photograph, or other reproduction of an article, and any note, drawing, or sketch made of or from an article. [§18-4-408(2)(d), C.R.S.]

F(52) CREDIBLE THREAT

"Credible threat" means a threat, physical action, or repeated conduct that would cause a reasonable person to be in fear for the person's safety or the safety of his or her immediate family or of someone with whom the person has or has had a continuing relationship. Such threat need not be directly expressed if the totality of the conduct would cause a reasonable person such fear. [§18-9-111(4)(c)(2), C.R.S.]

F(53) CREDIT CARD NUMBER

"Credit card number" means the card number appearing on a credit card which is an identification card or plate issued to a person by any supplier of telecommunications service which permits the person to whom the card has been issued to obtain telecommunications service on credit. The term includes the number or description of the card or plate even if the card or plate itself is not produced at the time of obtaining telecommunications service. [§ 18-9-309(1)(b), C.R.S.]

F(54) CRIME

See "Offense". §18-1-104(1), C.R.S.

F(55) CRIMINAL NEGLIGENCE

A person acts with "criminal negligence" when, through a gross deviation from the standard of care that a reasonable person would exercise, s/he fails to perceive a substantial and unjustifiable risk that a result will occur or that a circumstance exists. [§18-1-501(3), C.R.S.]

F(56) CULPABLE MENTAL STATE

"Culpable mental state" means intentionally, or with intent, or knowingly, or willfully, or recklessly, or with criminal negligence. [§18-1-501(4), C.R.S.]

NOTES ON USE

The terms "intentionally or with intent", "knowingly", "willfully", "recklessly" and "with criminal negligence" must be defined when given.

F(57) CUNNILINGUS

"Cunnilingus" means any act of oral stimulation of the vulva or clitoris. [§18-7-401(3), C.R.S.]

F(58) DANGEROUS INSTRUMENT

"Dangerous instrument" means a firearm, explosive device or substance, (including ammunition), knife or sharpened instrument, poison, acid, bludgeon, or projective device, or any other device, instrument, material or substance which is readily capable of causing or inducing fear of death or serious bodily injury, the use of which is not specifically authorized. [§18-8-203(4), C.R.S.]

NOTES ON USE

This definition is limited to use with §§18-8-203 and -204.1, C.R.S.

F(59) DANGEROUS WEAPON

"Dangerous weapon" means a firearm silencer, machine gun, short shotgun, short rifle, or ballistic knife.

NOTES ON USE

This definition is to be used with §18-12-102, C.R.S., defining possessing a dangerous or illegal weapon. It

should also be used when appropriate for crimes charged pursuant to §18-1.3-406(7)(a).

F(60) DEADLY PHYSICAL FORCE

"Deadly physical force" means force, the intended, natural, and probable consequence of which is to produce death, and which does, in fact, produce death. [§18-1-901(3)(d), C.R.S.]

F(61) DEADLY WEAPON

"Deadly weapon" means any of the following which in the manner it is used or intended to be used is capable of producing death or serious bodily injury:

- (I) A firearm, whether loaded or unloaded;
- (II) A knife;
- (III) A bludgeon; or
- (IV) Any other weapon, device, instrument, material, or substance, whether animate or inanimate.

[§18-1-901(3)(e), C.R.S.]

F(62) DEFACE

"Deface" means to alter the appearance of something by removing, distorting, adding to, or covering all or part of the thing. [§18-1-901(3)(f), C.R.S.]

F(63) DELIVER or DELIVERY

"Deliver" or "delivery", unless the context otherwise requires, means to transfer or attempt to transfer a substance, actually or constructively from one person to another, whether or not there is an agency relationship. [§18-18-102(7), C.R.S.]

F(64) DEPARTMENT

"Department" means the department of public health and environment. [§18-18-102(8), C.R.S.]

F(65) DESCENDANT

"Descendant" includes a child by adoption and a stepchild, but only if the person is not legally married to the child by adoption or the stepchild. [§18-6-301, C.R.S.]

F(66) DESTRUCTIVE DEVICE

"Destructive device" means any material, substance, or mechanism capable of being used, either by itself or in combination with any other substance, material, or mechanism, to cause sudden and violent injury, damage, destruction, or death. [§18-9-101(2), C.R.S.]

F(67) DETENTION FACILITY

"Detention facility" means any building, structure, enclosure, vehicle, institution, or place, whether permanent or temporary, fixed or mobile, where persons are or may be lawfully held in custody or confinement under the authority of the United States, the State of Colorado, or any political subdivision of the State of Colorado. [§18-8-203(3), C.R.S.]

ALTERNATE

"Detention facility" means any building, structure, enclosure, vehicle, institution, or place, whether permanent or temporary, fixed or mobile, where persons are or may be lawfully held in custody or confinement under the authority of the State of Colorado, or any political subdivision of the State of Colorado. [§18-3-203(1)(f.5)(III)(A), §18-8-211(4), C.R.S.]

NOTES ON USE

This definition, omitting "the United States", is to be used with §18-3-203, assault in the second degree and §18-8-211, C.R.S., riots in detention facility.

F(68) DEVELOPMENTALLY DISABLED

A person is "developmentally disabled" who has a disability that is manifested before the person reaches twenty-two years of age, which constitutes a substantial disability to the affected individual, and is attributable to mental retardation or related conditions which include cerebral palsy, epilepsy, autism, or other neurological conditions when such conditions result in impairment of general intellectual functioning or adaptive behavior similar to that of a person with mental retardation.

[§27-10.5-102(11)(a), C.R.S.]

NOTES ON USE

Unless otherwise specifically stated, the federal definition of "developmental disability" found in 42 U.S.C. §6000 et.seq., shall not apply.

F(69) DISEASED OR DEFECTIVE IN MIND

"Diseased or defective in mind" does not refer to an abnormality manifested only by repeated criminal or otherwise antisocial conduct.

[§16-8-101.5, C.R.S.]

NOTES ON USE

This instruction shall be given in every trial where insanity is an issue when the act is committed on or after July 1,1995.

F(70) DISPENSE

"Dispense" means to deliver a controlled substance to an ultimate user, patient, or research subject by or pursuant to the lawful order of a practitioner, including the prescribing, administering, packaging, labeling, or compounding necessary to prepare the substance for that delivery. [§18-18-102(9), C.R.S.]

F(71) DISPENSER

"Dispenser" means a practitioner who dispenses. [§18-18-102(10), C.R.S.]

F(72) DISTRIBUTE

"Distribute" means to deliver other than by administering or dispensing a controlled substance, with or without remuneration. [§18-18-102(11), C.R.S.]

ALTERNATE

"Distribute" means the actual, constructive, or attempted transfer, delivery or dispensing to another of an imitation controlled substance, with or without remuneration. [§18-18-420(2), C.R.S.]

F(73) DISTRIBUTOR

"Distributor" means a person who distributes. [§18-18-102(12), C.R.S.]

F(74) DOCUMENT-MAKING IMPLEMENT

"Document-making implement" means any implement or impression, including but not limited to a template or a computerized template or form, specifically designed or primarily used for making identification documents, false identification documents, or another document-making implement." [§18-5-101(1.5), C.R.S.]

F(75) DOMESTIC VIOLENCE

"Domestic violence" means an act or threatened act of violence upon a person with whom the actor is or has been involved in an intimate relationship. "Domestic violence" also includes any other crime against a person or against property, when used as a method or coercion, control, punishment, intimidation, or revenge directed against a person with whom the actor is or has been involved in an intimate relationship. [§18-6-800.3(1), C.R.S.]

F(76) DRAWEE

"Drawee" means the bank upon which a check is drawn or a bank, savings and loan association, industrial bank, or credit union on which a negotiable order of withdrawal or a share draft is drawn. [§18-5-205(1)(b), C.R.S.]

F(77) DRAWER

"Drawer" means a person, either real or fictitious, whose name appears on a check as the primary obligor, whether the actual signature is that of himself or of a person authorized to draw the check on himself. [§18-5-205(1)(c), C.R.S.]

F(78) DRUG

"Drug" means:

(I) Substances recognized as drugs in the official United States pharmacopoeia, national formulary, or the official homeopathic pharmacopoeia of the United States, or any supplement to any of them;

(II) Substances intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in individuals or animals;

(III) Substances (other than food) intended to affect the structure or any function of the body of individuals or animals; and

(IV) Substances intended for use as a component of any substance specified in subparagraph (I), (II), or (III) above.

The term does not include devices or their components, parts, or accessories.

[§18-18-102(13), C.R.S.]

F(79) DRUG ENFORCEMENT ADMINISTRATION

"Drug enforcement administration" means the drug enforcement administration in the United States Department of Justice, or its successor agency. [§18-18-102(14), C.R.S.]

F(80) DUTY OF FIDELITY

A "Duty of Fidelity" is a duty of loyalty to which one is subject as:

- (a) Agent or Employee; or
- (b) Trustee, guardian, or other fiduciary; or
- (c) Lawyer, physician, accountant, appraiser, or other professional advisor; or
- (d) Officer, director, partner, manager, or other participant in the direction of the affairs of an incorporated or unincorporated association; or
- (e) Duly elected or appointed representative or trustee of a labor organization or employee welfare trust fund; or
- (f) Arbitrator or other purportedly disinterested adjudicator or referee.

[§18-5-401(1), C.R.S.]

F(81) DUTY OF LOYALTY

See "Duty of Fidelity". §18-5-401(1), C.R.S; *People v. Lee*, 717 P.2d 493, 496 (Colo. 1986).

F(82) DWELLING

"Dwelling" means a building which is used, intended to be used, or usually used by a person for habitation. [§18-1-901(3)(g), C.R.S.]

F(83) EAVESDROPPING

"Eavesdropping " occurs when any person not visibly present during a conversation or discussion:

(a) Knowingly overhears or records such conversation or discussion without the consent of at least one of the principal parties thereto, or attempts to do so; or

(b) Intentionally overhears or records such conversation or discussion for the purpose of committing, aiding, or abetting the commission of an unlawful act; or

(c) Knowingly uses for any purpose, discloses, or attempts to use or disclose to any other person the contents of any such conversation or discussion while knowing or having reason to know the information was obtained as set forth in (a) or (b) above; or

(d) Knowingly aids, authorizes, agrees with, employs, permits, or intentionally conspires with any person to commit any of the above acts.

[§ 18-9-304(1), C.R.S.]

F(84) ELECTRONIC COMMUNICATION

"Electronic communication" means any transfer of signs, signals, writing, images, sounds, data, or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photoelectronic, or photooptical system that affects interstate or foreign commerce but does not include :

- (a) any wire or oral communication;
- (b) any communication made through a tone-only paging device; or
- (c) any communication from a tracking device.

[§ 18-9-301(3.3), C.R.S.]

F(85) ELECTRONIC COMMUNICATION SERVICE

"Electronic communication service" means any service which provides to users thereof the ability to send or receive wire or electronic communications. [§ 18-9-301(3.5), C.R.S.]

F(86) ELECTRONIC COMMUNICATIONS SYSTEM

"Electronic communications system" means any wire, radio, electromagnetic, photooptical, or photoelectronic facilities for the transmission of electronic communications and any computer facilities or related electronic equipment for the electronic storage of such communications.[§ 18-9-301(3.7), C.R.S.]

F(87) ELECTRONIC, MECHANICAL, OR OTHER DEVICE

" Electronic, mechanical, or other device " means any device or apparatus which can be used to intercept a wire, oral, or electronic communication, other than:

- (a) Any telephone or telegraph instrument, equipment, or facility, or any component thereof, furnished to the subscriber or user by a provider of wire or electronic communication service in the ordinary course of its business and being used by the subscriber or user in the ordinary course of its business, or furnished by such subscriber or user for connection to the facilities of such service and being used in the ordinary course of its business, or being used by a provider of wire or electronic communication service in the ordinary course of its business or by an investigative or law enforcement officer in the ordinary course of his duties;

(b) A hearing aid or similar device being used to correct subnormal hearing to not better than normal hearing.

[§ 18-9-301(4)(a),(b), C.R.S.]

F(88) ELECTRONIC SERIAL NUMBER

"Electronic Serial Number" means an electronic number that is programmed into a cellular phone by or with the consent of the manufacturer, transmitted by the cellular phone, and used by cellular phone telecommunications providers to validate radio transmissions as having been made by cellular phones authorized or approved by telecommunications providers. [§18-9-309(1)(b.7), C.R.S.]

F(89) ELECTRONIC STORAGE

"Electronic storage " means:

(a) Any temporary, intermediate storage of a wire or electronic communication incidental to the electronic transmission thereof; and

(b) Any storage of such communication by an electronic communication service for purposes of backup protection of such communication.

[§ 18-9-301(4.5), C.R.S.]

F(90) ENGAGED IN THE PERFORMANCE OF HIS OR HER DUTIES

A peace officer or firefighter is "engaged in the performance of his or her duties" if s/he is engaged or acting in, or is present for the purpose of engaging in or acting in, the performance of any duty, service, or function imposed, authorized, required or permitted by law to be performed by such peace officer or firefighter, whether or not such peace officer or firefighter is within the territorial limits of his jurisdiction, if the peace officer or firefighter is in uniform, or the person committing the assault upon or offense against or otherwise acting toward such peace officer or fireman knows or

reasonably should know that the victim is a peace officer or firefighter.

[§18-3-201(2), C.R.S.]

NOTES ON USE

When this instruction is used, the applicable definition of "peace officer" or "firefighter" must be given.

F(91) ENTER OR REMAIN

See "Unlawfully Enter or Remain".

F(92) EROTIC FONDLING

"Erotic fondling" means touching a person's clothed or unclothed genitals or pubic area, developing or undeveloped genitals or pubic area (if the person is a child), buttocks, breast, or developing or undeveloped breast area (if the person is a child), for the purpose of real or simulated overt sexual gratification or stimulation of one or more of the persons involved. "Erotic fondling" shall not be construed to include physical contact, even if affectionate, which is not for the purpose of real or simulated overt sexual gratification or stimulation of one or more of the persons involved. [§18-6-403(2)(c), C.R.S.]

F(93) EROTIC NUDITY

"Erotic nudity" means the display of the human male or female genitals or pubic area, the undeveloped or developing genitals or pubic area of the human male or female child, the human breasts, or the undeveloped or developing breast area of the human child, for the purpose of real or simulated overt sexual gratification or stimulation of one or more of the persons involved. [§18-6-403(2)(d), C.R.S.]

F(94) ESCAPE

"Escape" is deemed to be a continuing activity commencing with the conception of the design to escape and continuing until the escapee is returned to custody or the attempt to escape is thwarted or abandoned. [§18-8-201(2), C.R.S.]

NOTES ON USE

This definition is contained in the section defining "Aiding Escape" and caution should be used in implementing this definition elsewhere. See also "Escape from a Home Detention Program".

F(95) ESCAPE FROM A HOME DETENTION PROGRAM

Escape from custody includes failing to remain within the extended limits of a home detention program as ordered by a sentencing judge. "Home detention" means an alternative correctional sentence or term of probation supervision wherein a defendant convicted of any felony, other than a class 1 or a violent felony, is allowed to serve his sentence or term of probation, or a portion thereof, within his home or other approved residence. Such sentence or term of probation shall require the offender to remain within his approved residence at all times except for approved employment, court-ordered activities, and medical needs.

[§17-27.8-102, C.R.S.] The committee has determined that this definition is more appropriate than one based on sub§§ 104 and 106.

F(96) EXPLICIT SEXUAL CONDUCT

"Explicit sexual conduct" means sexual intercourse, erotic fondling, erotic nudity, masturbation, sadomasochism, or sexual excitement. [§18-6-403(2)(e), C.R.S.]

F(97) EXPLOSIVE OR INCENDIARY DEVICE

"Explosive or incendiary device" means:

(a) Dynamite and all other forms of high explosives, including, but not limited to water gel, slurry, military C-4 (plastic explosives), blasting agents to include nitro-carbon-nitrate, and ammonium nitrate and fuel oil mixtures, cast primers and boosters, R.D.X., P.E.T.N., electric and nonelectric blasting caps, exploding cords commonly called detonating cord or det-cord or primacord, picric acid explosives, T.N.T. and T.N.T. mixtures, and nitroglycerin and nitroglycerin mixtures;

(b) Any explosive bomb, grenade, missile, or other device; and

(c) Any incendiary bomb or grenade, fire bomb, or similar device, including any device, except kerosene lamps, which consists of or include a breakable container including a flammable liquid or compound and a wick composed of any material which, when ignited, is capable of igniting such flammable liquid or compound and can be carried or thrown by one individual acting alone;

(d) "Explosive or incendiary device" shall not include rifle, pistol or shotgun ammunition, or the components for handloading rifle, pistol or shotgun ammunition.

§18-12-109(1)(a), C.R.S. See also "Explosive or Incendiary Parts"

F(98) EXPLOSIVE OR INCENDIARY PARTS

"Explosive or incendiary parts" means any substances or materials or combinations thereof which have been prepared or altered for use in the creation of an explosive or incendiary device. Such substances or materials may include, but shall not be limited to, any:

(a) Timing device, clock or watch which has been altered in such a manner as to be used as the arming device in an explosive;

(b) Pipe, end caps, or metal tubing which has been prepared for a pipe bomb;

(c) Mechanical timers, mechanical triggers, chemical time delays, electronic time delays, or commercially made or improvised items which, when used singly or in combination, may be used in the construction of a timing delay mechanism, booby trap, or activating mechanism for any explosive or incendiary device.

"Explosive or incendiary parts" shall not include rifle, pistol or shotgun ammunition, or the components for handloading rifle, pistol or shotgun ammunition, or any signaling device customarily used in the operation of railroad equipment.

§18-12-109(1)(b), C.R.S.

F(99) FACILITY

"Facility" means any place or thing which provides seclusion, privacy, opportunity, protection, comfort, or assistance to or for a person or persons engaging or intending to engage in sexual intercourse or deviate sexual intercourse. [§18-7-208(2), C.R.S.]

NOTES ON USE

Set forth in the section defining promoting sexual immorality.

F(100) FALSELY ALTER

To "falsely alter" means to change a [written instrument] [financial transaction device] without the authority of anyone entitled to grant such authority, whether it be in complete or incomplete form, by means of erasure, obliteration, deletion, insertion of new matter, transposition of matter, or any other means, so that such [instrument] [device] in its thus altered form falsely appears or purports to be in all respects an authentic

creation of or fully authorized by its ostensible maker.
[§§18-5-101(2), -707, C.R.S.]

F(101) FALSELY COMPLETE (FINANCIAL TRANSACTION DEVICE)

To "falsely complete" means:

To transform an incomplete financial transaction device into a complete one by adding or inserting, or changing matter without the authority of anyone entitled to grant that authority, so that the complete device falsely appears or purports to be in all respects an authentic creation of or fully authorized by its ostensible issuer; or

[§18-5-707, C.R.S.]

F(102) FALSELY COMPLETE (WRITTEN INSTRUMENT)

To "falsely complete" means:

(a) To transform an incomplete written instrument into a complete one by adding or inserting, or changing matter without the authority of anyone entitled to grant that authority, so that the complete written instrument falsely appears or purports to be in all respects an authentic creation of or fully authorized by its ostensible maker; or

(b) To transform an incomplete written instrument into a complete one by adding or inserting materially false information or adding or inserting a materially false statement. A material false statement is a false assertion that affects the action, conduct, or decision of the person who receives or is intended to receive the asserted information in a manner that directly or indirectly benefits the person making the assertion. Whether information or a statement is material is a question of law.

[§18-5-101(3), C.R.S.]

F(103) FALSELY MAKE (FINANCIAL TRANSACTION DEVICE)

To "falsely make" a financial transaction device means to make or manufacture a device, whether complete or incomplete, which purports to be an authentic creation of its ostensible issuer, but which is not, either because the ostensible issuer is fictitious, or because, if real, s/he did not authorize the making or the manufacturing thereof. [§18-5-707, C.R.S.]

F(104) FALSELY MAKE (WRITTEN INSTRUMENT)

To "falsely make" a written instrument means to manufacture a written instrument, whether complete or incomplete, which purports to be an authentic creation of its ostensible maker, but which is not, either because the ostensible maker is fictitious or because, if real, he did not authorize the making or the drawing thereof. [§18-5-101(4), C.R.S.]

F(105) FELLATIO

"Fellatio" means any act of oral stimulation of the penis. [§18-7-201(2)(a), -401(4), C.R.S.]

F(106) FERMENTED MALT BEVERAGE

"Fermented malt beverage" means any beverage obtained by the fermentation of any infusion or decoction of barley, malt, hops or any similar product or combination thereof in water containing not less than one-half of one percent alcohol by volume and not more than three and two-tenths percent alcohol by weight or four percent alcohol by weight.

NOTES ON USE

"Fermented malt beverage" shall not include confectionary containing alcohol within the limits prescribed by §25-5-410, C.R.S.

F(107) FINANCIAL TRANSACTION DEVICE

"Financial transaction device" means any instrument or device whether known as a credit card, banking card, debit card, electronic fund transfer card, or guaranteed check card, or account number representing a financial account or affecting the financial interest, standing, or obligation of or to the account holder, that can be used to obtain cash, goods, property, or services or to make financial payments, but shall not include a "check", a "negotiable order of withdrawal", and a "share draft". [§18-5-701(3), C.R.S.]

NOTES ON USE

When applicable, give definition of check, negotiable order of withdrawal and share draft.

F(108) FIREARM

"Firearm" means any handgun, automatic, revolver, pistol, rifle, shotgun, or other instrument or device capable or intended to be capable of discharging bullets, cartridges, or other explosive charges. [§18-1-901(3)(h), C.R.S.]

F(109) FIREARM SILENCER

"Firearm silencer" means any instrument, attachment, weapon, or appliance for causing the firing of any gun, revolver, pistol, or other firearm to be silent or intended to lessen or muffle the noise of the firing of any such weapon. [§18-12-101(1)(c), C.R.S.]

F(110) FIREFIGHTER

"Firefighter" means an officer or member of a fire department or fire protection or fire fighting agency of the state, or any municipal or quasi-municipal corporation in this state, whether that person is a volunteer or

receives compensation for services rendered as such firefighter. [§18-3-201(1), C.R.S.]

NOTES ON USE

See also "peace officer or firefighter engaged in the performance of his or her duties".

F(111) FORGED INSTRUMENT

"Forged instrument" means a written instrument that has been falsely made, completed, or altered. [§18-5-101(5), C.R.S.]

NOTES ON USE

The definitions of "falsely made," "falsely completed," and "falsely altered" should be given where applicable.

F(112) GAS GUN

"Gas gun" means a device designed for projecting gas-filled projectiles which release their contents after having been projected from the device and includes projectiles designed for use in such a device. [§18-12-101(1)(d), C.R.S.]

F(113) GOVERNMENT

"Government" includes the United States, any state, county, municipality, or other political unit, any branch, department, agency, or subdivision of any of the foregoing, and any corporation or other entity established by law to carry out any governmental function.

[§18-1-901(3)(i), C.R.S.] See also "Government (Forgery)."

F(114) GOVERNMENT (FORGERY)

"Government" means the United States, any state, county, municipality, or other political unit, any department, agency, or subdivision of any of the foregoing, or any corporation or other entity established by law to carry out governmental functions. [§18-5-101(6), C.R.S.]

F(115) GOVERNMENTAL FUNCTION

"Governmental function" includes any activity which a public servant is legally authorized to undertake on behalf of government. [§18-1-901(3)(j), C.R.S.]

F(116) GRAVITY KNIFE

"Gravity knife" means any knife that has a blade released from the handle or sheath thereof by the force of gravity or the application of centrifugal force, that when released is locked in place by means of a button, spring, lever, or other device. [§18-12-101(1)(e), C.R.S.]

F(117) GREAT BODILY INJURY

See "serious bodily injury."

F(118) HANDGUN

"Handgun" means a pistol, revolver, or other firearm of any description, loaded or unloaded, from which any shot, bullet, or any other missile can be discharged; and the length of the barrel, excluding any revolving, detachable, or magazine breech, does not exceed twelve inches. [§18-12-101(1)(e.5), C.R.S.]

F(119) HOMICIDE

"Homicide" means the killing of a person by another. [§18-3-101(1), C.R.S.]

F(120) IDENTIFICATION DOCUMENT

"Identification document" means a document made or issued by or under the authority of the United States Government, a state, a political subdivision of a state, a foreign government, a political subdivision of a foreign government, an international governmental, or an international quasi-governmental organization which, when completed with information concerning a particular individual, is of a type intended or commonly accepted for the purpose of identification of individuals. [§18-5-101(6.5), C.R.S.]

F(121) ILLEGAL TELECOMMUNICATIONS EQUIPMENT

"Illegal telecommunications equipment" means any instrument, apparatus, equipment, computer hardware, computer software, mechanism, operating procedure or code, or device, whether used separately or in combination, that is designed or adapted and is used or is intended to be used to evade the lawful charges for any telecommunications service or for concealing from any telecommunications provider or lawful authority the existence, place of origin, or destination of any telecommunication. Illegal telecommunications equipment includes cloned cellular phones. [§18-9-309(1)(c), C.R.S.]

F(122) ILLEGAL WEAPON

"Illegal weapon" means a blackjack, gas gun, metallic knuckles, gravity knife, or switchblade knife. [§18-12-102(2), C.R.S.]

NOTES ON USE

The definition of the specific weapon should be given where applicable.

F(123) IMMEDIATE FAMILY

"Immediate family" includes the person's spouse and the person's parent, grandparent, sibling, or child. [§18-9-111(4)(c)(III), C.R.S.]

F(124) IMMEDIATE PRECURSOR

"Immediate precursor" means a substance which is a principal compound commonly used or produced primarily for use, and which is an immediate chemical intermediary used, or likely to be used, in the manufacture of a controlled substance. [§18-18-102(15), C.R.S.]

F(125) IMPAIRED MENTAL CONDITION (BEFORE JULY 1, 1995)

"Impaired mental condition" means a condition of mind, caused by mental disease or defect that prevents the person from forming the culpable mental state that is an essential element of any crime charged. "Mental disease or defect" includes only those severely abnormal mental conditions which grossly and demonstrably impair a person's perception or understanding of reality, and which are not attributable to the voluntary ingestion of alcohol or any other psychoactive substance; except that it does not include an abnormality manifested only by repeated criminal or otherwise antisocial conduct. [§16-8-102(2.7)(a), C.R.S.]

F(126) CONDUCT "IN CONNECTION WITH"

Conduct "in connection with" a credible threat means acts which further, advance, promote, or have a continuity of purpose, and may occur before, during, or after the credible threat. [§18-9-111(4)(c)(I), C.R.S.]

F(127) INCAPABLE OF DISTINGUISHING RIGHT FROM WRONG

"Incapable of distinguishing right from wrong" means the cognitive inability, due to mental disease or defect, to distinguish right from wrong as measured by a societal standard of morality, even though the person may be aware that the conduct in question is criminal. The phrase "incapable of distinguishing right from wrong" does not include a purely personal and subjective standard of morality.

SOURCE & AUTHORITY

§16-8-101, C.R.S.

§16-8-101.5, C.R.S.

§16-8-102, C.R.S.

People v. Serravo, 823 P.2d 128 (Colo. 1992)

People v. Galimanis, 944 P.2d 626 (Colo.App. 1997)

F(128) INCOMPLETE WRITTEN INSTRUMENT

"Incomplete written instrument" means one which contains some matter by way of content or authentication but which requires additional matter in order to render it a complete written instrument. [§18-5-101(7), C.R.S.]

NOTES ON USE

See definition of "complete written instrument."

F(129) INSANITY (ON OR AFTER JULY 1, 1995)

A person is not accountable for an offense if he or she is insane at the time of the act. A person is insane if:

(1) he or she was so diseased or defective in mind at the time of the commission of the act as to be incapable of distinguishing right from wrong with respect to that act, or

(2) he or she suffered from a condition of mind caused by a mental disease or defect that prevented him or her from forming a culpable mental state that is an essential element of a crime charged.

Care should be taken not to confuse mental disease or defect with moral obliquity, mental depravity, or passion growing out of anger, revenge, hatred, or other motives and kindred evil conditions because, when the act is induced by

any of these causes, the person is accountable to the law.
[§16-8-101.5, C.R.S.]

F(130) INSUFFICIENT FUNDS

"Insufficient funds" means a drawer has insufficient funds with the drawee to pay a check when the drawer has no checking account, negotiable order of withdrawal account, or share draft account with the drawee or has funds in such an account with the drawee in an amount less than the amount of the check plus the amount of all other checks outstanding at the time of issuance; and a check dishonored for "no account" shall also be deemed to be dishonored for "insufficient funds. [§18-5-205(1)(d), C.R.S.]

NOTES ON USE

Definitions of applicable terms should be given where appropriate.

F(131) INTENTIONALLY or 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 or not the result actually occurred. [§18-1-501(5), C.R.S.]

F(132) INTERCEPT (SEE ALSO "INTERCEPT SIGNALS")

" Intercept" means the aural or other acquisition of the contents of any wire, electronic, or oral communication through the use of any electronic, mechanical, or other device. [§ 18-9-301(5), C.R.S.]

F(133) INTERCEPT SIGNALS

To "intercept signals" means to electronically capture, record, reveal, or otherwise access signals, including data, electronic serial numbers, and mobile identification numbers, that are emitted, transmitted, or received by a telecommunications provider without consent

of the telecommunications provider or the person receiving or initiating the signal. [§ 18-9-309(1)(c.5), C.R.S.]

F(134) INTIMATE PARTS

"Intimate parts" means the external genitalia, perineum, anus, buttocks, pubes, or breast of any person. [§18-3-401(2), C.R.S.]

NOTES ON USE

Where appropriate, the definition of perineum should be given.

F(135) INTIMATE RELATIONSHIP

"Intimate relationship" means a relationship between spouses, former spouses, past or present unmarried couples, or persons who are both the parents of the same child regardless of whether the persons have been married or have lived together at any time. [§18-6-800.3(2), C.R.S.]

F(136) INTOXICATION

"Intoxication" means a disturbance of mental or physical capacities resulting from the introduction of any substance into the body. [§18-1-804(4), C.R.S.]

NOTES ON USE

See also "self-induced intoxication."

F(137) INVESTIGATIVE OR LAW ENFORCEMENT OFFICER (OFFENSES INVOLVING COMMUNICATIONS)

"Investigative or law enforcement officer" means any officer of the United States or of the State of Colorado or a political subdivision thereof who is empowered by law to conduct investigations of, or to make arrests for

(insert offense enumerated in §18-9-301)

and any attorney authorized by law to prosecute or participate in the prosecution of such offenses. [§18-9-301(6), C.R.S.]

F(138) ISSUE

"Issue" means to make, draw, deliver, or pass a check, or cause it to be made, drawn, delivered, or passed. [§18-5-205(1)(e), C.R.S.]

NOTES ON USE

The definition of "check" shall be given.

F(139) ISSUER

"Issuer" means any person banking, financial, or business institution, corporation, or other business entity that assigns financial rights by acquiring, distributing, controlling, or canceling a financial transaction device. [§18-5-701(4), C.R.S.]

F(140) JUDGE OF COMPETENT JURISDICTION (OFFENSES INVOLVING COMMUNICATIONS)

"Judge of competent jurisdiction" means any justice of the supreme court or a judge of any district court of the state of Colorado. [§18-9-301(7), C.R.S.]

F(141) JUROR

"Juror" means any person who is a member of any jury or grand jury impaneled by any court of this state or by any public servant authorized by law to impanel a jury, and includes any person who has been drawn or summoned to attend as a prospective juror. [§18-8-601(1), C.R.S.]

F(142) JUVENILE

"Juvenile" means any person under the age of eighteen years. [§18-12-101(1)(e.7), C.R.S.]

F(143) KNIFE

"Knife" means any dagger, dirk, knife, or stiletto with a blade over three and one half inches in length, or any other dangerous instrument capable of inflicting cutting, stabbing, or tearing wounds, but does not include a hunting or fishing knife carried for sports use. [§18-12-101(1)(f), C.R.S.]

NOTES ON USE

The issue that a knife is a hunting or fishing knife must be raised as an affirmative defense. As to "dangerous instrument", see *A.P.E. v. People*, 20 P.3d 1179 (Colo. 2001), *People v. Gross*, 830 P.2d 933 (Colo. 1992).

F(144) KNOWINGLY OR WILLFULLY

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 a circumstance exists. A person acts "knowingly" or "willfully", with respect to a result of his conduct, when he is aware that his conduct is practically certain to cause the result. [§18-1-501(6), C.R.S.]

F(145) LOADED (HANDGUN)

A handgun is "loaded" if (1) there is a cartridge in the chamber of the handgun, or (2) there is a cartridge in the cylinder of the handgun, if the handgun is a revolver, or (3) the handgun, and the ammunition for such handgun, is carried on the person of a person under the age of eighteen years, or is in such proximity to such person that such person could readily gain access to the handgun and the

ammunition and load the handgun. [§18-12-108.5(3), C.R.S.]

F(146) MACHINE GUN

"Machine gun" means any firearm, whatever its size and usual designation, that shoots automatically more than one shot, without manual reloading, by a single function of the trigger. [§18-12-101(1)(g), C.R.S.]

F(147) MALT LIQUORS

"Malt liquors" includes beer and shall be construed to mean any beverage obtained by the alcoholic fermentation of any infusion or decoction of barley, malt, hops, or any other similar product, or any combination thereof, in water containing more than three and two-tenths alcohol by weight or four percent alcohol by volume. [§12-47-103(19), C.R.S.]

F(148) MANUFACTURE

"Manufacture" means to produce, prepare, propagate, compound, convert, or process a controlled substance, directly or indirectly, by extraction from substances of natural origin, chemical synthesis, or a combination of extraction and chemical synthesis, and includes any packaging or repackaging of the substance or labeling or relabeling of its container. [§18-18-102(17), C.R.S.]

NOTES ON USE

The term does not include the preparation, compounding, packaging, repackaging, labeling, or relabeling of a controlled substance:

(a) By a practitioner as an incident to the practitioner's administering or dispensing of a controlled substance in the course of the practitioner's professional practice; or

(b) By a practitioner, or by the practitioner's authorized agent under the practitioner's supervision, for

the purpose of, or as in incident to, research, teaching, or chemical analysis and not for sale.

See "Manufacture (Imitation Controlled Substance)

F(149) MANUFACTURE (IMITATION CONTROLLED SUBSTANCE)

"Manufacture" means the production, preparation, compounding, processing, encapsulating, packaging or repackaging, or labeling or relabeling of an imitation controlled substance. [§18-18-420(4), C.R.S.]

F(150) MARIJUANA

"Marijuana" means all parts of the plant cannabis sativa L., whether growing or not, the seeds thereof, the resin extracted from any part of the plant, and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or its resin. It does not include fiber produced from the stalks, oil or cake made from the seeds of the plant, or sterilized seed of the plant which is incapable of germination. [§18-18-102(18), C.R.S.]

F(151) MARIJUANA CONCENTRATE

"Marijuana concentrate" means hashish, tetrahydrocannabinols, or any alkaloid, salt, derivative, preparation, compound, or mixture, whether natural or synthesized, of tetrahydrocannabinols. [§18-18-102(19), C.R.S.]

F(152) MASTURBATION

"Masturbation" means stimulation of the genital organs by manual or other bodily contact, or by any object, exclusive of sexual intercourse.

[§18-7-401(5), C.R.S.] (See also "Masturbation (Sexual Exploitation of Children)"

F(153) MASTURBATION (SEXUAL EXPLOITATION OF CHILDREN)

"Masturbation" means the real or simulated touching, rubbing, or otherwise stimulating a person's clothed or unclothed genitals or pubic area, developing or undeveloped genitals or pubic area (if the person is a child), buttocks, breasts, or developing or undeveloped breast area (if the person is a child), by manual manipulation or self induced or with an artificial instrument, for the purpose of real or simulated overt sexual gratification or arousal of the person. [§18-6-403(2)(f), C.R.S.]

F(154) MATERIALLY FALSE STATEMENT (Perjury)

"Materially false statement" means any false statement, regardless of its admissibility under the rules of evidence, which could have affected the course or outcome of an official proceeding, or the action or decision of a public servant, or the performance of a governmental function. [§18-8-501(1), C.R.S.]

F(155) MEDICAL EXAMINATION

"Medical Examination" means an examination performed for bona fide medical purposes if such examination is performed in a manner which is not inconsistent with reasonable medical practices. § 18-3-410, C.R.S., et. seq., § 18-3-405.5, C.R.S., et. seq.

F(156) MEDICAL INFORMATION

"Medical information" means any information contained in the medical records or any information pertaining to the medical and health care services performed at the direction of a physician or other licensed health care provider which is protected by the physician patient privilege. [§18-4-412(2)(b), C.R.S.]

NOTES ON USE

Use with reference only to the crime of theft of medical records or medical information.

F(157) MEDICAL RECORD

"Medical record" means the written or graphic documentation, sound recording, or computer record of services pertaining to medical and mental health care which are performed at the direction of a physician or other licensed health care provider on behalf of a patient by physicians, dentists, nurses, technicians, or other health care providers. "Medical record" includes such diagnostic documentation as X-rays, electrocardiograms, electroencephalograms, and other test results. [§18-4-412(2)(a), C.R.S.]

NOTES ON USE

Use with reference only to the crime of theft of medical records or medical information.

F(158) MENTAL DISEASE OR DEFECT (ON OR AFTER JULY 1, 1995)

"Mental disease or defect" means only those severely abnormal mental conditions that grossly and demonstrably impair a person's perception or understanding of reality and that are not attributable to the voluntary ingestion of alcohol or any other psychoactive substance; except that it does not include an abnormality manifested only by repeated criminal or otherwise antisocial conduct. [§16-8-102(4.7), C.R.S.]

F(159) MENTALLY ILL

"Person with a mental illness" means a person with one or more substantial disorders of the cognitive, volitional, or emotional processes that grossly impairs judgment or capacity to recognize reality or to control behavior. Developmental disability is insufficient to either justify or exclude a finding of mental illness within the provisions of this article.

[§27-10-102(8.5), C.R.S.]

NOTES ON USE

The terms "at-risk adult" and "at-risk juvenile" include persons with a disability. When using this instruction, the applicable definitions of "at-risk adult," "at-risk juvenile," and "person with a disability" must be given. Additionally, if the victim is a person with a disability, the applicable definitions of "developmentally disabled," "mentally ill," "mentally impaired," and "blind" also must be given. [§§18-4-401(1)(a), 18-6.5-103(5), C.R.S.]

F(160) MENTALLY IMPAIRED

"Mentally impaired" means to have any mental or psychological disorder such as developmental disability, organic brain syndrome, mental illness, or specific learning disabilities. [§24-34-301(2.5)(b)(III), C.R.S.] This section is repealed effective July 1, 2009, by § 24-34-304, C.R.S.

F(161) MISTREATMENT (CRUELTY TO ANIMALS)

"Mistreatment" means every act or omission, which causes or unreasonably permits the continuation of unnecessary or unjustifiable pain or suffering. [§18-9-201(3), C.R.S.]

F(162) MOBILE IDENTIFICATION NUMBER

"Mobile identification number" means the cellular phone number assigned to a cellular phone by the cellular phone telecommunications provider. [§18-9-309(1)(c.7), C.R.S.]

F(163) MOLOTOV COCKTAIL

"Molotov cocktail" means a breakable container containing an explosive or flammable liquid or other substance, having a wick or similar device capable of being ignited, and may be described as either an explosive or incendiary device.

A Molotov cocktail is not a device commercially manufactured primarily for the purpose of illumination or other such uses.

[§9-7-103(5), C.R.S.]

F(164) MORAL OBLIQUITY

"Moral obliquity" refers to an act committed by person who is capable of distinguishing moral right from wrong, but nevertheless acts out a perverse and culpable rejection of prevailing moral standards. "Moral obliquity" does not include an act committed by a person in a state of mental illness that renders the person incapable of distinguishing right from wrong with respect to the act.

§16-8-101, C.R.S.

§16-8-101.5, C.R.S.

§16-8-102, C.R.S.

People v. Serravo, 823 P.2d 128 (Colo. 1992)

People v. Galimanis, 944 P.2d 626 (Colo.App. 1997)

NOTES ON USE

The definitions of "diseased or defective in mind" and "mental disease or defect" should be given in all cases where sanity is an issue. The definitions of "moral obliquity" and "incapable of distinguishing right from wrong" may be given at the discretion of the court.

F(165) MOTOR VEHICLE

"Motor vehicle" includes any self-propelled device by which persons or property may be moved, carried, or transported from one place to another by land, water, or air, except devices operated on rails, tracks, or cables fixed to the ground or supported by pylons, towers or other structures. [§18-1-901(3)(k), C.R.S.]

NOTES ON USE

See below, §42-1-102(58), C.R.S. and Title 42 in general, inter alia, for other definitions of this term.

ALTERNATE (MOTOR VEHICLE THEFT)

"Motor vehicle" means all vehicles of whatever description propelled by any power other than muscular, except vehicles running on rails. [§18-4-409(1)(a), C.R.S.]

F(166) NARCOTIC DRUG

"Narcotic drug" means any of the following, however manufactured:

(a) Opium, opium derivative, and any derivative of either including any salts, isomers, and salts of isomers of them that are theoretically possible within the specific chemical designation, but not isoquinoline alkaloids of opium;

(b) Synthetic opiate and any derivative of synthetic opiate, including any isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, of them that are theoretically possible within the specific chemical designation;

(c) Poppy straw and concentrate of poppy straw;

(d) Coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives of ecgonine or their salts have been removed;

(e) Cocaine, or any salt, isomer, or salt of isomer of cocaine;

(f) Cocaine base;

(g) Ecgonine, or any derivative, salt, isomer, or salt of isomer of ecgonine;

(h) Any compound, mixture, or preparation containing any quantity of a substance listed above.

[§18-18-102(20), C.R.S.]

F(167) NEGLECT (AT-RISK)

"Neglect" occurs when adequate food, clothing, shelter, psychological care, physical care, medical care or supervision is not secured for the at-risk adult or is not provided by a caretaker in a timely manner and with the degree of care that a reasonable person in the same situation would exercise.

"Caretaker" means a person who is responsible for the care of an at-risk adult, as a result of a family or legal relationship or who has assumed responsibility for the care of an at-risk adult.

"Person" means one or more individuals, limited liability companies, partnerships, associations, corporations, legal representatives, trustees, receivers, or the State of Colorado, and all political subdivisions thereof.

[§§18-6.5-102(2), 26-3.1-101(2), (4)(b) and (5), C.R.S.]

NOTES ON USE

The withholding of artificial nourishment under the "Colorado Medical Treatment Decision Act", §§15-18-101, et.seq., C.R.S., shall not be considered as abuse.

F(168) NEGLECT (CRUELTY TO ANIMALS)

"Neglect" means failure to provide food, water, protection from the elements, or other care generally considered to be normal, usual, and accepted for an animal's health and well-being consistent with the species, breed and type of animal. [§18-9-201(4), C.R.S.]

F(169) NEGLIGENCE

See "criminal negligence".

F(170) NEGOTIABLE ORDER OF WITHDRAWAL

"Negotiable order of withdrawal" and "share draft" mean negotiable or transferable instruments drawn on negotiable order of withdrawal account or a share draft account, as the case may be, for the purpose of making payments to third persons or otherwise. [§18-5-205(1)(f), C.R.S.]

NOTES ON USE

See also "Negotiable order of withdrawal account".

F(171) NEGOTIABLE ORDER OF WITHDRAWAL ACCOUNT

"Negotiable order of withdrawal account" means an account in a bank, savings and loan association, or industrial bank, and "share draft account" means an account in a credit union, on which payment of interest or dividends may be made on a deposit with respect to which the bank, savings and loan association, or industrial bank or the credit union, as the case may be, may require the depositor to give notice of an intended withdrawal not less than thirty days before the withdrawal was made, even though in practice such notice is not required and the depositor is allowed to make withdrawal by negotiable order of withdrawal or share draft. [§18-5-205(1)(g), C.R.S.]

F(172) NUNCHAKU

"Nunchaku" means an instrument consisting of two sticks, clubs, bars, or rods to be used as handles connected by a rope, cord, wire or chain, which is in the design of a weapon used in connection with the practice of a system of self defense. [§18-12-106(1)(e), C.R.S.]

F(173) OATH

"Oath" includes an affirmation and every other mode authorized by law of attesting to the truth of that which is stated.

[A written statement is an oath if:

(I) The statement was made on or pursuant to a form of bearing notice, authorized by law, to the effect that false statements made therein are punishable; or

(II) The statement recites that it was made under oath, the declarant was aware of such recitation at the time he made the statement and intended that the statement should be represented as a sworn statement, and the statement was in fact so represented by its delivery or utterance with the signed jurat of an officer authorized to administer oaths appended thereto; or

(III) The statement is made, used, or offered with the intent that it be accepted as compliance with a statute, rule or regulation which requires a statement under oath or other like form of attestation to the truth of the matter contained in the statement.]

[§18-8-501(2), C.R.S.]

F(174) OCCUPIED STRUCTURE

"Occupied structure" means any area, place, facility, or enclosure which for particular purposes, may be used by persons or animals upon occasion, whether or not it is a "building", and which is in fact occupied by a person or animal, and known by the defendant to be thus occupied at the time of the alleged offense. [§18-4-101(2), C.R.S.]

NOTES ON USE

The definition of "building" should be given with this definition where appropriate.

F(175) OFFENSE

The terms "offense" and "crime" are synonymous and mean a violation of, or conduct defined by, any state statute for which a fine or imprisonment may be imposed. [§18-1-104(1), C.R.S.]

F(176) OFFICIAL PROCEEDING

"Official proceeding" means a proceeding heard before any legislative, judicial, administrative, or other governmental agency, or official authorized to hear evidence under oath, including any magistrate, hearing examiner, commissioner, notary, or other person taking testimony or depositions in any such proceedings. [§18-8-501(3), C.R.S.]

F(177) OMISSION

"Omission" means a failure to perform an act as to which a duty of performance is imposed by law. [§18-1-501(7), C.R.S.]

F(178) OPIATE

"Opiate" means a substance having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having addiction-forming or addiction-sustaining liability. The term includes opium, opium derivatives, and synthetic opiates. [§18-18-102(21), C.R.S.]

NOTES ON USE

When appropriate, the jury should also be instructed as follows: "The term includes the racemic and the laboratory forms of dextromethorphan. The term does not include, unless specifically scheduled as a controlled substance under section 18-18-201, the dextrorotatory isomer of 3-methoxy-n-methomorphinan and its salts (dextromethorphan)."

See also "Opium Poppy."

F(179) OPIUM POPPY

"Opium poppy" means the plant of the species *Papaversomniferum* L., except its seeds. [§18-18-102(22), C.R.S.]

F(180) ORAL COMMUNICATION

"Oral communication" means any oral communication uttered by any person believing that such communication is not subject to interception, under circumstances justifying such belief, but does not include any electronic communication. [§18-9-301(8), C.R.S.]

NOTES ON USE

See *People v. Blehm*, 44 Colo. App. 472, 623 P.2d 411 (1980), in which the Colorado Court of Appeals held that "conversation" or "discussion" are terms synonymous with the term "oral communication."

F(181) ORDER (CONTROLLED SUBSTANCES)

"Order" means:

(a) A prescription order which is any order, other than a chart order, authorizing the dispensing of drugs or devices that is written, mechanically produced, computer generated, transmitted electronically or by facsimile, or other means of communication by a practitioner and that includes the name or identification of the patient, the date, and sufficient information for compounding, dispensing, and labeling; or

(b) A chart order which is an order for inpatient drugs or medications to be dispensed by a pharmacist, or pharmacy intern under the direct supervision of a pharmacist, which is to be administered by an authorized person only during the patient's stay in the hospital facility. It shall contain the name of the patient and of

the medicine order and such directions as the practitioner may prescribe concerning strength, dosage, frequency, and route of administration.

[§18-18-102(33), C.R.S.]

F(182) OVERT ACT

"Overt act" means any act knowingly committed by one of the conspirators, in an effort to accomplish some object or purpose of the conspiracy. The overt act need not be criminal in nature. It must, however, be an act that tends toward accomplishment of a plan or scheme, knowingly done in furtherance of some object or purpose of the charged conspiracy.

NOTES ON USE

The committee suggests the use of this definition, even though the Colorado Criminal Code does not define "overt act".

It is recommended that this definition be used with reference to the elemental instruction on conspiracy.

F(183) PARTY OFFICER

"Party officer" means a person who holds any position or office in a political party, whether by election, appointment, or otherwise. [§18-8-301(2), C.R.S.]

NOTES ON USE

See §18-8-401, C.R.S., which states that the definition applies to §§18-8-402, C.R.S., et.seq., unless a different meaning is plainly required.

F(184) PATTERN OF SEXUAL ABUSE

"Pattern of sexual abuse" means the commission of two or more incidents of sexual contact involving a child when

such offenses are committed by an actor upon the same victim. §§ 18-3-401, C.R.S., et. seq.

F(185) PEACE OFFICER

"Peace officer" means a person included within the provisions of § 16-2.5-101, C.R.S., who has the authority to enforce the laws of the state of Colorado while acting within the scope of his or her authority and in the performance of his or her duties. A law enforcement officer, means a peace officer, unless the statutory content requires otherwise.

SOURCE & AUTHORITY

§ 16-2.5-101, C.R.S.

See also "peace officer or firefighter engaged in the performance of his or her duties", §18-3-201(2), C.R.S.

F(186) PEACE OFFICER OR FIREFIGHTER ENGAGED IN THE PERFORMANCE OF HIS OR HER DUTIES

"Peace Officer Or Firefighter Engaged In The Performance Of His Or Her Duties" means a peace officer as described in section 16-2.5-101, C.R.S., or a firefighter, as defined in section 18-3-201(1), who is engaged or acting in, or who is present for the purpose of engaging or acting in, the performance of any duty, service, or function imposed, authorized, required, or permitted by law to be performed by a peace officer or firefighter, whether or not the peace officer or firefighter is within the territorial limits of his or her jurisdiction, if the peace officer or firefighter is in uniform or the person committing an assault upon or offense against or otherwise acting toward such peace officer or firefighter knows or reasonably should know that the victim is a peace officer or firefighter. For the purposes of this subsection (2) and this part 2, the term "peace officer" shall include county enforcement personnel designated pursuant to section 29-7-101(3), C.R.S.

SOURCE & AUTHORITY

§§ 18-3-201 to 18-3-203, C.R.S.

F(187) PECUNIARY BENEFIT

"Pecuniary benefit" means benefit in the form of money, property, commercial interests, or anything else, the primary significance of which is economic gain. [§18-1-901(3)(m), C.R.S.; §18-8-301(3), C.R.S.]

NOTES ON USE

See also "benefit", and §18-8-401, C.R.S., which states that this definition applies to §§18-8-402, et.seq., C.R.S., unless a different meaning is plainly required.

F(188) PEN REGISTER

"Pen register" means a device which records or decodes electronic or other impulses which identify the numbers dialed or otherwise transmitted on the telephone line to which such device is attached but shall not include any device used by a provider or customer of a wire or electronic communication service for billing, or recording as an incident to billing, for communications services provided by such provider or any device used by a provider or customer of a wire communication service for cost accounting or other like purposes in the ordinary course of its business. [§ 18-9-301(8.3), C.R.S.]

F(189) PERINEUM

"Perineum" means the area between the anus and scrotum in the male, and the area between the anus and vulva in the female.

§18-3-401(2), C.R.S.

Funk & Wagnall's Standard Dictionary, International Edition.

F(190) PERSON (HOMICIDE)

"Person", when referring to the victim of a homicide, means a human being who had been born and was alive at the time of the homicidal act. [§18-3-101(2), C.R.S.]

F(191) PERSON WITH A DISABILITY

"Person with a disability" means any person who:

[is impaired because of the loss of or permanent loss of use of a hand or foot or because of blindness or the permanent impairment of vision of both eyes to such a degree as to constitute virtual blindness (or),]

[is unable to walk, see, hear, or speak (or),]

[is unable to breathe without mechanical assistance.]

[appropriate definition(s) in §27-10.5-102(11) - developmentally disabled; §27-10-102(7) - mentally ill; §24-34-301(2.5)(b)(III) - mentally impaired; §26-2-103(3) - blind.]

NOTES ON USE

Give where appropriate, definitions of blind, developmentally disabled, mentally ill, or mentally impaired.

SOURCE & AUTHORITY

§18-6.5-102, C.R.S.

F(192) PERSONAL IDENTIFICATION CODE

"Personal identification code" means any grouping of letters, numbers, or symbols assigned to the account holder of a financial transaction device by the issuer to permit authorized electronic use of that financial transaction device. [§18-5-701(5), C.R.S.]

F(193) PEYOTE

"Peyote" means all parts of the plant presently classified botanically as *lophophora williamsii lenaire*, whether growing or not, the seeds thereof, any extraction from any part of such plant, and every compound, manufacture, salt, derivative, mixture, or preparation of such plant or its seeds or extracts. [§18-18-102(26), C.R.S.]

F(194) PHARMACY

See §12-22-102(30.2), C.R.S. [§18-18-102(27), C.R.S.]

F(195) PHOTOGRAPH (Sexual Assault)

"Photograph" includes any photograph, motion picture, videotape, print, negative, slide, or other mechanically, electronically or chemically reproduced visual material. [§18-3-404(1.7), C.R.S.]

NOTES ON USE

Use with offenses set forth in §§18-3-404 and 18-7-801, C.R.S.

F(196) PHYSICALLY HELPLESS

"Physically helpless" means unconscious, asleep, or otherwise unable to indicate willingness to act. [§18-3-401(3), C.R.S.]

F(197) POPPY STRAW

"Poppy straw" means all parts, except the seeds, of the opium poppy, after mowing. [§18-18-102(28), C.R.S.]

F(198) POSITION OF TRUST

One in a "position of trust" includes any person who is a parent or acting in the place of a parent and charged with any of a parent's rights, duties, or responsibilities concerning a child, including a guardian or someone

otherwise responsible for the general supervision of a child's welfare, or a person who is charged with any duty or responsibility for the health, education, welfare, or supervision of a child, including foster care, child care, family care, or institutional care, either independently or through another, no matter how brief, at the time of an unlawful act. [§§18-3-101(2.5), 18-3-401(3.5), C.R.S.]

F(199) POSSESSION

"Possession" means actual or physical control of _____.
(insert item possessed)

Possession need not be exclusive. A person is in possession of _____
(insert item possessed)

if he was aware of his physical possession or control thereof for a sufficient period to have been able to have terminated it.

Source & Authority

§18-1-501(9), C.R.S.

People v. Martinez, 780 P.2d 560 (Colo. 1989)

People v. Garcia, 197 Colo. 550, 595 P.2d 228 (1979)

F(200) POTENTIAL CONFLICTING INTEREST

A "potential conflicting interest" exists when the public servant is a director, president, general manager, or similar executive officer, or owns or controls directly or indirectly a substantial interest in any non-governmental entity participating in the transaction. [§ 18-8-308(2), C.R.S.]

F(201) PRACTITIONER

"Practitioner" means a physician, a podiatrist, dentist, optometrist, veterinarian, researcher, pharmacist,

pharmacy, hospital or other person licensed, registered, or otherwise permitted, by this state, to distribute, dispense, conduct research with respect to, administer, or to use in teaching or chemical analysis, a controlled substance in the course of professional practice or research. [§18-18-102(29), C.R.S.]

F(202) PREMISES

"Premises" means any real estate and all improvements erected thereon. [§18-4-201(1), C.R.S.]

ALTERNATE (AS USED IN §§18-4-503 AND -504, C.R.S.)

"Premises" means real property, buildings, and other improvements thereon, and the stream banks and beds of any nonnavigable fresh water streams flowing through such real property. [§18-4-504.5, C.R.S.]

F(203) PRODUCTION

"Production" includes the manufacturing of a controlled substance and the planting, cultivating, growing, or harvesting of a plant from which a controlled substance is derived. [§18-18-102(30), C.R.S.]

F(204) PROPER AUTHORIZATION

"Proper Authorization" means:

1. a written authorization signed by the patient or his or her duly assigned representative, or
2. an appropriate order of court, or
3. authorized possession pursuant to law or regulation for claims processing, possession for medical audit or quality assurance purposes, possession by a consulting physician to the patient, or possession by hospital personnel for record-keeping and billing purposes, or

4. authorized possession pursuant to sections 18-3-415.5, 18-7-201.5, 18-7-205.5, 25-1-122, or 30-10-606(6), C.R.S.

[§18-4-412(2)(c), C.R.S.]

F(205) PROPERTY OF ANOTHER

Property is that "of another" if anyone other than the defendant has a possessory or proprietary interest therein. [§18-4-101(3), C.R.S.]

NOTES ON USE

Use with reference to §§ 18-4-101 through -513, C.R.S.

With respect to property jointly owned, see *People v. Clayton*, 728 P.2d 723 (Colo. 1986); *People ex.rel. Van Meveren v. District Court*, 619 P.2d 494 (Colo. 1980).

F(206) PROSTITUTION

Any person who performs or offers or agrees to perform any act of sexual intercourse, fellatio, cunnilingus, masturbation, or anal intercourse with any person not his spouse in exchange for money, or other thing of value commits prostitution. [§18-7-201(1), C.R.S.]

See also "Prostitution by a Child" and "Prostitution of a Child".

F(207) PROSTITUTION BY A CHILD

"Prostitution by a child" means either a child performing or offering or agreeing to perform any act of sexual intercourse, fellatio, cunnilingus, masturbation, or anal intercourse with any person not the child's spouse in exchange for money or other thing of value or any person performing or offering or agreeing to perform any act of sexual intercourse, fellatio, cunnilingus, masturbation, or anal intercourse with any child not the person's spouse in exchange for money or other thing of value. [§18-7-401(6), C.R.S.]

See also "Prostitution of a Child".

F(208) PROSTITUTION OF A CHILD

"Prostitution of a child" means either inducing a child to perform or offer or agree to perform any act of sexual intercourse, fellatio, cunnilingus, masturbation, or anal intercourse with any person not the child's spouse by coercion or by any threat or intimidation or inducing a child by coercion or by any threat or intimidation or in exchange for money or other thing of value, to allow any person not the child's spouse to perform or offer or agree to perform any act of sexual intercourse, fellatio, cunnilingus, masturbation, or anal intercourse with or upon such child. Such coercion, threat, or intimidation need not constitute an independent criminal offense and shall be determined solely through its intended or its actual effect upon the child. [§18-7-401(7), C.R.S.]

See also "Prostitution by a Child".

F(209) PROXIMATE CAUSE

"Proximate cause" means a cause which in natural and probable sequence produced the claimed injury. It is a cause without which the claimed injury would not have been sustained.

See "Cause".

People v. Stewart, 55 P.3d 107 (Colo. 2002)

F(210) PSYCHOTHERAPIST

"Psychotherapist" means any person who performs or purports to perform psychotherapy, whether or not such person is licensed or certified by the state. § 18-3-405.5, C.R.S., et. seq.

F(211) PSYCHOTHERAPY

"Psychotherapy" means the treatment, diagnosis, or counseling in a professional relationship to assist individuals or groups to alleviate mental disorders,

understand unconscious or conscious motivation, resolve emotional, relationship, or attitudinal conflicts, or modify behaviors which interfere with effective emotional, social, or intellectual functioning. § 18-3-405.5, C.R.S., et. seq.

F(212) PUBES

"Pubes" means the area of the pubic bone, and in which the sex organs are located. § 18-3-401(2), C.R.S.; [Funk & Wagnall's Standard Dictionary, International Edition.]

F(213) PUBLIC LAND SURVEY MONUMENT

"Public land survey monument" means any land boundary monument established on the ground by a cadastral survey of the United States government and any mineral survey monument established by a United States mineral surveyor and made a part of the United States public land records. [§38-53-103(18), C.R.S.]

F(214) PUBLIC PLACE

"Public place" means a place to which the public or a substantial number of the public has access, and includes but is not limited to highways, transportation facilities, schools, places of amusement, parks, playgrounds, and the common area's of public and private buildings and facilities. [§18-1-901(3)(n), C.R.S.]

F(215) PUBLIC OR PRIVATE PROPERTY

"Public or Private Property" includes, but is not limited to, the right-of-way of any road or highway, any body of water or water course, including frozen areas thereof, or the shores or beaches thereof, any park, playground or building, any refuge, conservation, or recreation area, and any residential, farm, or ranch properties or timberlands. [§ 18-4-511(3)(b), C.R.S.]

F(216) PUBLIC SERVANT

"Public servant" means any officer or employee of government, whether elected or appointed, and any person participating as an advisor, consultant, process server, or otherwise in performing a governmental function, but the term does not include witnesses.

[§18-1-901(3)(o), C.R.S.; see also §18-8-101(3), C.R.S.]

ALTERNATE

"Public servant" includes persons who presently occupy the position of a public servant as defined in instruction no. (number of instruction setting forth section 18-8-101(3), C.R.S.) or have been elected, appointed, or designated to become a public servant although not yet occupying that position.

[§18-8-301(4), C.R.S. (For use with § §18-8-302 through -308, C.R.S.)]

NOTES ON USE

See also §18-8-401, C.R.S., which states that as to §18-4-402, C.R.S., et.seq., this definition applies unless a different meaning is plainly required. Note that this term is defined twice in Article 8.

ALTERNATE

"Public Servant" means any officer or employee of government, whether elected or appointed, or who has been elected, appointed, or designated to become a public servant although not yet occupying that position, and any person participating as an advisor, or consultant, engaged in the service of process, or otherwise is performing a governmental function, but the term does not include witnesses.

NOTES ON USE

This instruction only applies to "public servants," for use with the crimes in §§ 18-8-401 through -408, C.R.S.

This definition is a combination of §§ 18-1-901(3)(o), 18-8-101(3), and 18-8-301(4), C.R.S. This definition also appears in Chapter 5 of these Instructions in an unrevised form.

F(217) READILY ACCESSIBLE TO THE GENERAL PUBLIC

"Readily accessible to the general public" means, with respect to a radio communication, that such communication is not:

- (a) Scrambled or encrypted,
- (b) Transmitted using modulation techniques having essential parameters withheld from the public with the intention of preserving the privacy of such communication,
- (c) Carried on a subcarrier or other signal subsidiary to a radio transmission,
- (d) Transmitted over a communication system provided by a common carrier, unless the communication is a tone-only paging system communication, or
- (e) Transmitted on frequencies allocated under part 25, subpart D, E, or F of part 74, or part 94 of the rules of the federal communications commission, unless, in the case of a communication transmitted on a frequency allocated under part 74 that is not exclusively allocated to broadcast auxiliary services, the communication is a two-way voice communication by radio.

[§ 18-9-301(8.5), C.R.S.]

F(218) RECKLESSLY

A person acts "recklessly" when he consciously disregards a substantial and unjustifiable risk that a result will occur or that a circumstance exists. [§18-1-501(8), C.R.S.]

NOTES ON USE

The same mens rea applies for driving "in a reckless manner" as found in vehicular assault and vehicular homicide. See *People v. Stewart*, 26 P.3d 17 (Colo.App. 2000), reversed on other grounds, 55 P.3d 107 (Colo. 2002).

F(219) REMUNERATION

"Remuneration" means anything of value, including money, real property, tangible and intangible personal property, contract rights, chooses an action, services, and any rights of use or employment or promises or agreements connected therewith. [§18-18-102(31), C.R.S.]

F(220) RENDER ASSISTANCE

"Render assistance" means to:

- a. harbor or conceal the other; or
- b. harbor or conceal the victim or a witness to the crime; or
- c. warn the person of impending discovery or apprehension, except that this does not apply to a warning given in an effort to bring such person into compliance with the law; or
- d. provide such person with money, transportation, weapon, disguise, or other thing to be used in avoiding discovery or apprehension; or
- e. by force, intimidation, or deception, obstruct anyone in the performance of any act which might aid in the discovery, detection, apprehension, prosecution, conviction or punishment of such person; or
- f. conceal, destroy, or alter any physical or testimonial evidence that might aid in the discovery, detection, apprehension, prosecution, conviction or punishment of such person.

SOURCE & AUTHORITY

§18-8-105(2), C.R.S.

F(221) REPEATED OR REPEATEDLY

"Repeated" or "repeatedly" means on more than one occasion. [§18-9-111(4)(c)(IV), C.R.S.]

F(222) RESEARCHER (CONTROLLED SUBSTANCES)

"Researcher" means any person licensed by the Department of Public Health and Environment to experiment with, study, or test any controlled substance within this state and includes analytical laboratories. [§18-18-102(32), C.R.S.]

F(223) RETALIATE (SEXUAL ASSAULT)

"Retaliate" includes threats of kidnapping, death, serious bodily injury, or extreme pain. [§18-3-402(4)(c), C.R.S.]

F(224) RIOT

"Riot" means a public disturbance involving an assemblage of three or more persons which, by tumultuous and violent conduct, creates grave danger of damage or injury to property or persons or substantially obstructs the performance of any governmental function. [§18-9-101(2), C.R.S.]

F(225) SADOMASOCHISM

"Sadomasochism" means:

(a) Real or simulated flagellation or torture for the purpose of real or simulated sexual stimulation or gratification, or

(b) the real or simulated condition of being fettered, bound, or otherwise physically restrained for sexual stimulation or gratification of a person.

[§18-6-403(2)(g), C.R.S.]

F(226) SALE

"Sale" means a barter, an exchange, or a gift, or an offer therefor, and each such transaction made by any person, whether as the principal, proprietor, agent, servant, or employee. [§18-18-102(33), 403(1), C.R.S.]

F(227) SALES FORM

"Sales form" means any written record of a financial transaction involving use of a financial transaction device. [§18-5-701(6), C.R.S.]

F(228) SECURITY INTEREST (DEFRAUDING A SECURED CREDITOR OR DEBTOR)

"Security Interest" means an interest in personal property or fixtures which secures payment or performance of an obligation. [§18-5-206, C.R.S.]

NOTES ON USE

See §4-1-201(35), C.R.S.; *People v. Armijo*, 197 Colo. 91, 589 P.2d 935 (1979).

See also "Security Interest - Equity Skimming".

F(229) SECURITY INTEREST (EQUITY SKIMMING)

"Security Interest" means an interest in personal property which secures payment or performance of an obligation. [§18-5-801(4), C.R.S.]

F(230) SELF-INDUCED INTOXICATION

"Self-induced intoxication" means intoxication caused by substances that the defendant knows or ought to know have the tendency to cause intoxication and that he knowingly introduced or allowed to be introduced into his body. [§18-1-804(5), C.R.S.]

NOTES ON USE

See also "Intoxication." It is a defense that the substances were introduced pursuant to medical advice. There may be other circumstances that would afford a defense.

F(231) SEPARATE BUILDING

"Separate building" means each unit of a building consisting of two or more units separately secured or occupied. [§18-4-201(2), C.R.S.]

See also "Building" and "Building of Another".

F(232) SERIOUS BODILY INJURY

"Serious bodily injury" means bodily injury which, either at the time of the actual injury or at a later time, involves:

- (a) a substantial risk of death, or
- (b) a substantial risk of serious permanent disfigurement, or
- (c) a substantial risk of protracted loss or impairment of the function of any part or organ of the body, or
- (d) breaks or fractures, or burns of the second or third degree.

[§18-1-901(3)(p), C.R.S.]

NOTES ON USE

The definition of "bodily injury" may be given with this instruction.

"Serious Bodily Injury" and "Great Bodily Injury" are synonymous. *People v. Reed*, 695 P.2d 806 (Colo.App. 1984).

F(233) SEXUAL CONTACT

"Sexual contact" means the knowing touching of the victim's intimate parts by the actor, or of the actor's intimate parts by the victim, or the knowing touching of the clothing covering the immediate area of the victim's or actor's intimate parts if that sexual contact is for the purposes of sexual arousal, gratification, or abuse. [§18-3-401(4), C.R.S.]

NOTES ON USE

The definitions of "actor" and "intimate parts" must be given with this instruction.

F(234) SEXUAL EXCITEMENT (SEXUAL EXPLOITATION OF CHILDREN)

"Sexual Excitement" means the real or simulated condition of human male or female genitals when in a state of real or simulated overt sexual stimulation or arousal. [§18-6-403(2)(h), C.R.S.]

F(235) SEXUAL INTERCOURSE (SEXUAL EXPLOITATION OF CHILDREN)

"Sexual Intercourse" means real or simulated intercourse, whether genital-genital, oral-genital, anal-genital, or oral-anal between persons of the same or opposite sex, or between a human and an animal, or with an artificial genital.

F(236) SEXUAL INTRUSION

"Sexual intrusion" means any intrusion, however slight, by an object or any part of a person's body, except

the mouth, tongue, or penis, into the genital or anal opening of another person's body if that sexual intrusion can reasonably be construed as being for the purposes of sexual arousal, gratification, or abuse. [§18-3-401(5), C.R.S.]

F(237) SEXUALLY EXPLOITATIVE MATERIAL

"Sexually exploitative material" means any photograph, motion picture, videotape, print, negative, slide, or other mechanically, electronically, chemically, or digitally reproduced visual material which depicts a child engaged in, participating in, observing, or being used for explicit sexual conduct. [§18-6-403(2)(j), C.R.S.]

F(238) SEXUAL PENETRATION

"Sexual penetration" means sexual intercourse, cunnilingus, fellatio, analingus, or anal intercourse. Emission need not be proved as an element of any sexual penetration. Any penetration, however slight, is sufficient to complete the crime. [§18-3-401(6), C.R.S.]

NOTES ON USE

The definitions of cunnilingus and fellatio must be given with this instruction.

F(239) SHARE DRAFT

See "negotiable order of withdrawal."

F(240) SHARE DRAFT ACCOUNT

See "negotiable order of withdrawal."

F(241) SHORT RIFLE

"Short rifle" means a rifle having a barrel less than sixteen inches long or an overall length of less than twenty-six inches. [§18-12-101(1)(h), C.R.S.]

F(242) SHORT SHOTGUN

"Short shotgun" means a shotgun having a barrel or barrels less than eighteen inches long or an overall length of less than twenty-six inches. [§18-12-101(1)(i), C.R.S.]

F(243) SPIRITUOUS LIQUORS

"Spirituous liquors" means any alcoholic beverage obtained by distillation, mixed with water and other substances in solution, and includes among other things, brandy, rum, whiskey, gin, and every liquid or solid, patented or not, containing at least one-half of one percent alcohol by volume and which is fit for use for beverage purposes. Any liquid or solid containing beer or wine in combination with any other liquor, shall not be construed to be fermented malt or vinous liquor, but shall be construed to be spirituous liquor. [§12-47-103(36), C.R.S.]

F(244) SPORTS CONTEST

"Sports contest" means any professional or amateur sport or athletic game, race, or contest viewed by the public. [§18-5-403(1)(a), C.R.S.]

F(245) SPORTS OFFICIAL

"Sports official" means any person who acts or expects to act in a sports contest as an umpire, referee, judge or otherwise to officiate at a sports contest. [§ 18-5-403(1)(c), C.R.S.]

F(246) SPORTS PARTICIPANT

"Sports participant" means any person who participates or expects to participate in a sports contest as a player, contestant, or member of a team, or as a coach, manager, trainer, owner, or other person directly associated with a player, contestant, team or entry. [§18-5-403(1)(b), C.R.S.]

F(247) STATE

"State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or a territory or insular possession subject to the jurisdiction of the United States. [§18-18-102(34), C.R.S.]

F(248) STUN GUN

"Stun gun" means a device capable of temporarily immobilizing a person by the infliction of an electrical charge. [§18-12-101(1)(i.5), C.R.S.]

F(249) SUBSTANTIAL STEP

A substantial step is any conduct, whether act, omission, or possession, which is strongly corroborative of the firmness of the actor's purpose to complete the commission of the offense. [§18-2-101(1), C.R.S.] See also: *People v. Lehnert*, 163 P.3d 1111 (Colo. 2007)(discussion of substantial step)

F(250) SUBSTANTIAL THREAT (CRIMINAL EXTORTION)

"Substantial threat" means a threat that is reasonably likely to induce a belief that the threat will be carried out and is one that threatens that significant confinement, restraint, injury or damage will occur. [§18-3-207(3), C.R.S.]

F(251) SWITCHBLADE KNIFE

"Switchblade knife" means any knife, the blade of which opens automatically by hand pressure applied to a button, spring, or other device in its handle. [§18-12-101(1)(j), C.R.S.]

F(252) TAMPER

"Tamper" means to interfere with something improperly, to meddle with it, or to make unwarranted alterations in its condition. [§18-1-901(3)(q), C.R.S.]

F(253) TELECOMMUNICATIONS DEVICE

"Telecommunications device" means any instrument, apparatus, method, system, or equipment which controls, measures, directs, or facilitates telecommunications service. The term includes, but is not limited to, computer hardware, software, programs, electronic mail systems, voice mail systems, identification validation systems, and private branch exchanges. [§18-9-309(1)(d), C.R.S.]

F(254) TELECOMMUNICATIONS PROVIDER

"Telecommunications provider" means any person, firm, association, or private or municipal corporation that owns, operates, or manages any facilities used to provide telecommunications service. [§18-9-309(1)(e), C.R.S.]

F(255) TELECOMMUNICATIONS SERVICE

"Telecommunications service" means a service which, in exchange for pecuniary consideration, provides or offers to provide transmission of messages, signals, facsimiles, or other communication between persons who are physically separated from each other, by means of telephone, telegraph, cable, wire, or the projection of energy without physical connection. [§ 18-9-309(1)(f), C.R.S.]

F(256) TELEPHONE COMPANY

"Telephone company" means any telecommunications provider which provides local exchange telecommunications service. [§ 18-9-309(1)(g), C.R.S.]

NOTES ON USE

The definitions of "telecommunications provider" and "telecommunications service" should be given with this definition.

F(257) TESTIMONY

"Testimony" includes oral or written statements, documents, or any other evidence that may be offered by or through a witness in an official proceeding. [§18-8-601(2), C.R.S.]

F(258) TETRAHYDROCANNABINOLS

"Tetrahydrocannabinols" means synthetic equivalents of the substances contained in the plant, or in the resinous extractives of, cannabis, or synthetic substances, derivatives, and their isomers with similar chemical structure and pharmacological activity. [§18-18-102(35), C.R.S.]

F(259) THERAPEUTIC DECEPTION

"Therapeutic Deception" means the representation by a psychotherapist that sexual contact, penetration or intrusion by the psychotherapist is consistent with or part of the client's treatment. § 18-3-405.5, C.R.S., et. seq.

F(260) THING OF VALUE

"Thing of value" includes real property, tangible and intangible personal property, contract rights, choses in action, services, confidential information, medical records information, and any rights of use or enjoyment connected therewith. [§18-1-901(3)(r), C.R.S.]

F(261) THROWING STAR

"Throwing star" means a disk having sharp radiating points, or any disk-shaped bladed object which is hand-held and thrown and which is in the design of a weapon used in connection with a system of self defense. [§18-12-106(1)(e), C.R.S.]

F(262) TRAP AND TRACE DEVICE

"Trap and trace device" means a device which captures the incoming electronic or other impulses which identify the originating number of an instrument or device from which a wire or electronic communication was transmitted. [§18-9-301(8.7), C.R.S.]

F(263) ULTIMATE USER

"Ultimate user" means an individual who lawfully possesses a controlled substance for the individual's own use or for the use of a member of the individual's household or for administering to an animal owned by the individual or by a member of the individual's household. [§18-18-102(36), C.R.S.]

F(264) UNDER THE INFLUENCE

"Under the influence" means to have consumed alcohol or drugs, or a combination of alcohol and drugs, which affect a person to a degree that he or she is substantially incapable, either mentally or physically, of exercising clear judgment, sufficient physical control, or due care [in the safe operation of a vehicle]. [§§ 42-4-1301(1)(f), 18-3-106(b)(IV), 18-3-205(1)(b)(IV), 18-12-106(1)(d), C.R.S.]

F(265) UNIVERSAL MALICE

"Universal malice" is that depravity of the human heart which determines to take life upon slight or insufficient provocation, without knowing or caring who may be the victim. It does not mean the malicious purpose to take the life of all persons. *Candelaria v. People*, 148

P.3d 178, 181 (Colo. 2006); People v. Jefferson, 748 P.2d 1223 (Colo. 1998).

F(266) UNLAWFULLY ENTER OR REMAIN

A person "unlawfully enters or remains" in or upon premises when he is not licensed, invited, or otherwise privileged to do so. [§18-4-201(3), C.R.S.]

NOTE ON USE

See statute as to license, invitation, or privilege.

F(267) USER

"User" means any person or entity which uses an electronic communication service and is duly authorized by the provider of such service to engage in such use. [§ 18-9-301(8.9), C.R.S.]

F(268) UTILITY

"Utility" means an enterprise which provides gas, sewer, electric, steam, water, transportation, or communication services, and includes any carrier, pipeline, transmitter, or source, whether publicly or privately owned or operated. [§18-1-901(3)(s), C.R.S.]

F(269) UTTER

"Utter" means to transfer, pass, or deliver, or attempt to cause to be transferred, past, or delivered, to another person any written instrument, article, or thing. [§18-5-101(8), C.R.S.]

F(270) VICTIM

"Victim" means the person alleging to have been subjected to a criminal sexual assault.

F(271) VINOUS LIQUORS

"Vinous liquors" means wine and fortified wines that contain not less than one-half of one percent and not more than twenty-one percent alcohol by volume and shall be construed to mean an alcoholic beverage obtained by the fermentation of the natural sugar contents of fruits or other agricultural products containing sugar. [§12-47-103(39), C.R.S.]

F(272) VOLUNTARY ACT

"Voluntary Act" means an act performed consciously as a result of effort or determination, and includes the possession of property if the actor was aware of his physical possession or control thereof for a sufficient period to have been able to terminate it. [§18-1-501(9), C.R.S.]

F(273) WHILE ABILITY IMPAIRED

"While ability impaired" means to have consumed alcohol or drugs, or a combination of alcohol and drugs, which affects a person to the slightest degree so that the person is less able than he or she ordinarily would have been, either mentally or physically, to exercise clear judgment, sufficient physical control, or due care in the safe operation of a vehicle. [§ 42-4-1301(1)(g), C.R.S.]

F(274) WILLFULLY

See "Knowingly".

F(275) WIRE COMMUNICATION

"Wire communication" means any aural transfer made in whole or in part through the use of facilities for the transmission of communications by the aid of wire, cable, or other like connection, including the use of such connection in the switching station, between the point of origin and the point of reception, furnished or operated by any person engaged in providing or operating such

facilities for the transmission of communications and includes any electronic storage of such communications. [§18-9-301(9), C.R.S.]

F(276) WRITTEN INSTRUMENT

"Written instrument" means any paper, document, or other instrument containing written or printed matter or the equivalent thereof, used for purposes of reciting, embodying, conveying, or recording information, and any money, credit card, token, stamp, seal, badge, or trademark or any evidence or symbol of value, right, privilege, or identification, which is capable of being used to the advantage or disadvantage of some person. [§18-5-101(9), C.R.S.]