2.03 – Causation Instruction

Conduct is the cause of a result when both of the following exist:

1. But for the conduct the result in question would not have occurred.
2. The relationship between the conduct and result satisfies any additional causal requirements imposed by the definition of the offense.

In order to find the defendant guilty of [the crime], you must find that the [death] [injury] was proximately caused by the acts of the defendant.

The proximate cause of a [death] [injury] is a cause which, in natural and continuous sequence, produces the [death] [injury], and without which the [death] [injury] would not have occurred.

[If intentionally causing a particular result is an element of an offense, and the actual result is not within the intention or contemplation of the person, that element is established if:

1. The actual result differs from that intended or contemplated only in the respect that a different person or different property is injured or affected or that the injury or harm intended or contemplated would have been more serious or extensive than that caused; *or*
2. The actual result involves similar injury or harm as that intended or contemplated and occurs in a manner which the person knows or should know is rendered substantially more probable by such person's conduct.]

[If recklessly or negligently causing a particular result is an element of an offense, and the actual result is not within the risk of which the person is aware or in the case of criminal negligence, of which the person should be aware, that element is established if:

1. The actual result differs from the probable result only in the respect that a different person or different property is injured or affected or that the injury or harm intended or contemplated would have been more serious or extensive than that caused; *or*
2. The actual result involves similar injury or harm as the probable result and occurs in a manner which the person knows or should know is rendered substantially more probable by such person's conduct.]

SOURCE: A.R.S. § 13-203 (statutory language as of October 1, 1978); *State v. Aragón in & for Cnty. of Pima*, 252 Ariz. 525 (2022); *State v. Lawson*, 144 Ariz. 547 (1985).

USE NOTE: Use language in brackets as appropriate to the facts and applicable mental states.

2.03.01 – Causation Instruction – Intervening Event

The proximate cause of a [death] [injury] is a cause which, in natural and continuous sequence, produces the [death] [injury], and without which the [death] [injury] would not have occurred.

Proximate cause does not exist if the chain of natural effects and cause either does not exist or is broken by a superseding intervening event that was unforeseeable by the defendant and, with the benefit of hindsight, may be described as abnormal or extraordinary.

The State must prove beyond a reasonable doubt that a superseding intervening event did not cause the [death] [injury].

SOURCE: *State v. Aragón in & for Cnty. of Pima*, 252 Ariz. 525 (2022); *State v. Bass*, 198 Ariz. 571 (2000); *State v. Cocio*, 147 Ariz. 277, 279 (1985); *see also Torres v. Jai Dining Services (Phoenix) Inc.*, 252 Ariz. 28 (2021) (cited in *Aragón*).

USE NOTE: Before giving the instruction, the court must first determine whether the evidence supports it. A court must "*first* determine whether the event is an intervening event; this is a predicate to a superseding cause defense." *See State v. Aragón in & for Cnty. of Pima*, 252 Ariz. 525, 530, ¶ 17 (2022) (emphasis in original). An "intervening event" is "one that actively operates in producing harm *after* the original actor's … act or omission has been committed"; it is a "*later* cause of independent origin." *Id.* at 529, ¶ 11 (emphases in original; quotations omitted). "[W]here the defendant's course of conduct actively continues up to the time the injury is sustained, then any outside force which is also a substantial factor in bringing about the injury is a concurrent cause of the injury and never an 'intervening' force." *Id.* (internal quotation omitted).

If this instruction is given, Criminal Instruction 2.03 – Causation Instruction should also be given.

3.01 – Accomplice

"Accomplice" means a person, who, with the intent to promote or facilitate the commission of the offense, does any of the following:

1. solicits or commands another person to commit the offense; *or*
2. aids, counsels, agrees to aid, or attempts to aid another person in planning or committing the offense; *or*
3. provides means or opportunity to another person to commit the offense.

A defendant is criminally accountable for the conduct of another if the defendant is an accomplice of such other person in the commission of the offense, including any offense that is a natural and probable or reasonably foreseeable consequence of the offense for which the person was an accomplice.

SOURCE: A.R.S. §§ 13-301 and -303(A)(3) (statutory language as of September 26, 2008).

USE NOTE: For offenses that occurred before September 26, 2008, the following instruction should be used:

"Accomplice" means a person, who, with the intent to promote or facilitate the commission of the offense, does any of the following:

1. solicits or commands another person to commit the offense; *or*
2. aids, counsels, agrees to aid, or attempts to aid another person in planning or committing the offense; *or*
3. provides means or opportunity to another person to commit the offense.

A defendant is criminally accountable for the conduct of another if the defendant is an accomplice of such other person in the commission of the offense. This criminal liability extends only to offenses that the defendant intended to aid, solicit, facilitate or command.

In *State v. Phillips*, 202 Ariz. 427, 436 (2002), the court reversed a premeditated murder conviction, affirmed a felony murder conviction and held that to be an accomplice to premeditated murder, the defendant must intend to aid or facilitate another in committing the murder. The 2008 legislative amendment supersedes *Phillips*.

3.03A – Criminal Liability Based on Conduct of Another

A person is criminally accountable for the conduct of another if:

1. The person is made accountable for such conduct by the statute defining the offense; *or*
2. Acting with the culpable mental state sufficient for the commission of the offense, such person causes another person, whether or not such other person is capable of forming the culpable mental state, to engage in such conduct.

[It is no defense that the other person has not been prosecuted for or convicted of such offense, or has been acquitted of such offense, or has been convicted of a different offense or degree of offense or has an immunity to prosecution or conviction for such offense.]

[It is no defense that the accused belongs to a class of persons who by definition of the offense are legally incapable of committing the offense in an individual capacity.]

SOURCE: A.R.S. § 13-303(A) (statutory language as of September 26, 2008); A.R.S. § 13–304 (statutory language as of April 23, 1980).

3.03B – Accomplice Liability Based on Result

A person who acts [intentionally] [knowingly] [recklessly] [negligently] with respect to the result that is sufficient for commission of the offense is guilty of that offense if:

1. The person solicits or commands another person to engage in the conduct causing the result; *or*
2. The person aids, counsels, agrees to aid or attempts to aid another person in planning or engaging in the conduct causing such result.

SOURCE: A.R.S. § 13-303(B)

USE NOTE: Use culpable mental state required for commission of the underlying charged offense and use applicable Statutory Definition Instructions. This instruction should be given instead of the Accomplice Instruction 3.01 when causing a particular result is an element of an offense.

7.08-C Release Status

The proposal is to remove the *mens rea* requirement from the RAJI, as it is not consistent with the statute and there does not appear to be a case that supports it.

To prove the allegation that Defendant [was on probation for a conviction of a felony offense] [was on parole, work furlough, community supervision or any other release following a conviction of a felony offense] [escaped from confinement following a felony conviction] at the time [he/she] committed the crime of "[insert name of offense on which jury found defendant guilty]," the State must prove beyond a reasonable doubt that:

1. Defendant had been convicted of a felony offense prior to [insert date of offense on which defendant was found guilty]; *and*

2. Defendant is the person who was convicted of that felony offense; *and*

3. Defendant [was on probation for a conviction of a felony offense] [was on parole, work furlough, community supervision or any other release following a conviction of a felony offense] [had escaped from confinement following a felony conviction] prior to [insert date of offense on which defendant was found guilty]; *and*

~~4. Defendant knew that [he/she] [was on probation for a conviction of a felony offense] [was on parole, work furlough, community supervision or any other release following a conviction of a felony offense] [had escaped from confinement following a felony conviction] prior to [insert date of offense on which defendant was found guilty]; *and*~~

4. Defendant committed the offense of "[insert name of offense on which jury found defendant guilty]" while [was on probation for a conviction of a felony offense] [was on parole, work furlough, community supervision or any other release following a conviction of a felony offense] [escaped from confinement following a felony conviction].

The State has the burden of proving each of these ~~five~~ four elements beyond a reasonable doubt. In civil cases, it is only necessary to prove that a fact is more likely true than not or that its truth is highly probable. In criminal cases such as this, the state's proof must be more powerful than that. It must be beyond a reasonable doubt.

Proof beyond a reasonable doubt is proof that leaves you firmly convinced that the allegation is true. There are very few things in this world that we know with absolute certainty, and in criminal cases the law does not require proof that overcomes every doubt. If, based on your consideration of the evidence, you are firmly convinced that the allegation is true, you must find that the allegation has been proven. If, on the other hand, you think there is a real possibility that the allegation is not true, you must give [him/her] the benefit of the doubt and find that the allegation has not been proven.

In order to reach a verdict, all of you must agree on the verdict. All of you must agree on whether the allegation is proven or not proven. You will be given one form of verdict on which to indicate your decision. It reads as follows and there is no significance to the order in which the options are listed:

SOURCE: A.R.S. § 13-708(C) (statutory language effective January 1, 2009.)

USE NOTE: The following script may be used by the judge prior to giving this instruction:

> Members of the jury, there is another matter that must be presented to you for decision. The State alleges that Defendant committed the offense of "[insert name of offense on which defendant convicted]" while he/she [was on probation for a conviction of a felony offense] [was on parole, work furlough, community supervision or any other release following a conviction of a felony offense] [escaped from confinement following a felony conviction]. The law provides that the jury must decide whether an allegation of commission of a felony while [on probation for a conviction of a felony offense] [on parole, work furlough, community supervision or any other release following a conviction of a felony offense] [escaped from confinement following a felony conviction] is proven or not proven. We estimate that the presentation of evidence and argument on this issue will take about _____ minutes.
>
> I am going to read to you the allegation: [read from the State's notice]
>
> Defendant has denied this allegation.
>
> After the evidence has been presented and counsel have made any arguments, I will give to you and read the jury instruction you are to follow in deciding this issue.
>
> *[Opening Statement, Evidence, Argument]*
>
> *[Read the jury instruction and verdict form.]*

If the § 13-708(C) allegation is being tried at a time other than immediately following the trial on the main offense, other appropriate instructions should be given.

COMMENT: If the conviction on which the allegation made pursuant to A.R.S. § 13-708 is made is "a serious offense as defined by A.R.S. § 13-706," resulted in serious physical injury or "involved the use or exhibition of a deadly weapon or dangerous instrument," the court must sentence the defendant to the maximum sentence allowed by law. If at least two aggravating factors listed in A.R.S. § 13-701(D) are found, the court may increase the sentence by up to twenty-five percent. The court shall also revoke any release status on the prior felony and impose a consecutive sentence on the new offense unless the prior conviction was in another state.

The determination of whether the underlying felony is a serious offense, resulted in serious physical injury or involved the use or exhibition of a deadly weapon or dangerous instrument is probably one for the court to make as a matter of law if the determination can be made by reference to the statutory definition of the prior offense or to findings made by the sentencing court. *See Cherry v. Araneta*, 203 Ariz. 532 (App. 2002).

11.03A2 – Manslaughter by Sudden Quarrel or Heat of Passion

The crime of manslaughter by sudden quarrel or heat of passion requires proof that:

1. a. The defendant intentionally ~~killed another person~~caused the death of [another person] [unborn child]; *or*

   b. The defendant caused the death of [another person] [an unborn child] by conduct which the defendant knew would cause death or serious physical injury; *or*

   c. Under circumstances which showed an extreme indifference to human life, the defendant caused the death of [another person] [an unborn child] by consciously disregarding a grave risk of death. The risk must be such that disregarding it was a gross deviation from what a reasonable person in the defendant's situation would have done; *and*

2. The defendant acted upon a sudden quarrel or heat of passion; *and*

3. The sudden quarrel or heat of passion resulted from adequate provocation by the person who was killed.

[It is no defense that the defendant was unaware of the risk solely by reason of intoxication.]

"Adequate provocation" means conduct or circumstances sufficient to deprive a reasonable person of self-control. Words alone are not adequate provocation to justify reducing an intentional killing to manslaughter.

[There must not have been a "cooling off" period between the provocation and the killing. A "cooling off" period is the time it would take a reasonable person to regain self-control under the circumstances.]

[If you find the elements of second-degree murder proven beyond a reasonable doubt, you must consider whether the homicide was committed upon a sudden quarrel or heat of passion resulting from adequate provocation by the victim. If you unanimously find that the homicide was committed upon a sudden quarrel or heat of passion resulting from adequate provocation by the victim, then you must find the defendant guilty of **manslaughter** by sudden quarrel or heat of passion rather than second-degree murder.]

[If you determine that the defendant is guilty of either second-degree murder or manslaughter by sudden quarrel or heat of passion but you have a reasonable doubt as to which it was, you must find the defendant guilty of manslaughter.]

SOURCE: A.R.S. § 13-1103(A)(2) (statutory language as of ~~August 12, 2005~~March 17, 2021).

USE NOTE: Use the bracketed language if this instruction is given as a lesser ~~included~~ offense instruction.

Use Statutory Definition Instruction 1.0510(b) defining "knowingly."

Use Statutory Definition Instructions 1.0510(a)(1) and 1.0510(a)(2) defining "intent" and "intent – inference."

COMMENT: "Adequate provocation" is defined in A.R.S. § 13-1101(4). In *State v. Doss*, 116 Ariz.

156, 162 (1977), the court held that "words alone are not adequate provocation to justify reducing an intentional killing to manslaughter." In *State v. Ortiz*, 158 Ariz. 528 (1988), the Arizona Supreme Court approved the definition contained in the model instruction. If there is evidence to support an instruction on the "cooling-off" period, use the bracketed language.

The statute provides that it "applies to an unborn child in the womb at any stage of its development" and then gives three exceptions to its application. See A.R.S. § 13-1103(B).

~~In *State v. Eddington*, 226 Ariz. 72 (App. 2011), the court suggested that "heat-of-passion manslaughter" may not be a lesser-included offense of second-degree murder. See also State v. Garcia, 220 Ariz. 49 (App. 2008).~~

In *State v. Lua*, 237 Ariz. 301, 304–05, ¶¶ 6–14 (2015), the Arizona Supreme Court held that although manslaughter by sudden quarrel or heat of passion is a lesser homicide, it is not a lesser-included offense of second-degree murder. If manslaughter by sudden quarrel or heat of passion instruction is given in connection with second-degree murder, the manslaughter by sudden quarrel or heat of passion instruction should not be given as a lesser-included offense instruction and instead given with the instruction from *Lua*, which is in brackets above.

. . . .

11.04 – Second-Degree Murder

The crime of second-degree murder requires proof of one of the following:

1. The defendant intentionally caused the death of [another person] [an unborn child]; *or*
2. The defendant caused the death of [another person] [an unborn child] by conduct which the defendant knew would cause death or serious physical injury; *or*
3. Under circumstances manifesting extreme indifference to human life, the defendant recklessly engaged in conduct that created a grave risk of death and thereby caused the death of [another person] [an unborn child]. The risk must be such that disregarding it was a gross deviation from what a reasonable person in the defendant's situation would have done~~; *or*~~.

[The difference between first-degree murder and second-degree murder is that second-degree murder does not require premeditation by the defendant.]

[If you determine that the defendant is guilty of either first-degree murder or second-degree murder and you have a reasonable doubt as to which it was, you must find the defendant guilty of second-degree murder.].

[If you find the elements of second-degree murder proven beyond a reasonable doubt, you must consider whether the homicide was committed upon a sudden quarrel or heat of passion resulting from adequate provocation by the victim. If you unanimously find that the homicide was committed upon a sudden quarrel or heat of passion resulting from adequate provocation by the victim, then you must find the defendant guilty of manslaughter by sudden quarrel or heat of passion rather than second-degree murder.

"Adequate provocation" means conduct or circumstances sufficient to deprive a reasonable person of self-control. Words alone are not adequate provocation to justify reducing an intentional killing to manslaughter.

There must not have been a "cooling off" period between the provocation and the killing. A "cooling off" period is the time it would take a reasonable person to regain self-control under the circumstances.]

SOURCE: A.R.S. § 13-1104 (statutory language as of January 1, 2009).

USE NOTE: Use Statutory Definition Instruction 1.0510(b) defining "knowingly."

Use Statutory Definition Instructions 1.0510(a)(1) and 1.0510(a)(2) defining "intent" and "intent – inference."

Use Statutory Definition Instruction 1.0510(c) defining "reckless." Use the first and/or second bracketed language if this instruction is given as a lesser-included offense instruction of first-degree murder.

Use the third bracketed language ~~only when there is a claim that the homicide was committed upon a sudden quarrel or heat of passion resulting from adequate provocation by the victim~~ if the court is also instructing the jury on manslaughter upon a sudden quarrel or heat of passion.. *See State v. Lua*, 237 Ariz. 301, 304–05 ¶¶ 6–~~9~~14 (2015) (holding that although manslaughter by sudden quarrel or heat of passion is a lesser homicide, it is not a lesser-included offense of second-degree murder, and providing instruction that should be given if facts support it).

COMMENT: The statute provides that it "applies to an unborn child in the womb at any stage of its development" and gives three exceptions to its application. *See* A.R.S. § 13- 1104(B).

If the victim was under fifteen years of age or an unborn child, the crime is a "dangerous crime against children" and sentencing is pursuant to A.R.S. § 13-604.01. *See* A.R.S. § 13- 1104(C). If the victim was under fifteen years of age or an unborn child, a finding by the jury regarding that fact should be made as part of its verdict.

There is no crime of attempted second-degree murder if the defendant only knows that his or her action would cause serious physical injury rather than death. *See State v. Fierro*, 254 Ariz. 35, 40-41 ¶¶ 13-19 (2022); *see also State v. Ruiz*, 236 Ariz. 317, 320-22 ¶¶ 6-11 (App. 2014) (same rationale applies to attempted manslaughter if the attempt was to cause serious physical injury). The court must use Statutory 11.04B for the offense of attempted second-degree murder.~~*State v. Ontiveros*, 206 Ariz. 539, 542 (App. 2003). *See also State v. Felix*, 237 Ariz. 280, ¶ 14 (App. 2015).~~

~~In *State v. Eddington*, 226 Ariz. 72, 81-82, ¶¶ 29-33 (App. 2010), the Court of Appeals held that fundamental, prejudicial error did not result from instructing the jury that it may only consider the offense of manslaughter upon a sudden quarrel or heat of passion if it first acquits or cannot reach a verdict on second degree murder. See *State v. LeBlanc*, 186 Ariz. 437, 438 (1996). The Court recognized, however, that the Arizona Supreme Court had already decided in *Peak v. Acuña*, 203 Ariz. 83, 84-85, ¶¶ 5-6 (2002), that "heat of passion manslaughter" is not a true lesser included offense of second-degree murder, because manslaughter includes all of the elements of second-degree murder and has the additional "circumstance" of being caused by a sudden quarrel or heat of passion. Eddington recognized that juries are presumed to follow the instructions, and a jury that follows the *LeBlanc*-modeled instruction for homicide lesser offenses could never reach the question of whether there was~~

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~~a sudden quarrel or heat of passion upon adequate provocation because the jury would have already found all of the elements of second-degree murder proven and found the defendant guilty. A majority of the committee recognized that the previous *LeBlanc* modeled instruction rendered manslaughter under A.R.S. § 13-1103(A)(2) a nullity and modified the instruction to ensure that the jury would consider whether the circumstance justifying the lesser offense was present.~~

11.04 – Second-Degree Murder (Mother and Unborn Child)

The crime of second-degree murder requires proof that the defendant intentionally, knowingly or under circumstances manifesting extreme indifference to human life recklessly engaged in conduct that created a grave risk of death and caused the death of another person and thereby caused the death of an unborn child.

[The difference between first-degree murder and second-degree murder is that second-degree murder does not require premeditation by the defendant.]

[If you determine that the defendant is guilty of either first-degree murder or second-degree murder and you have a reasonable doubt as to which it was, you must find the defendant guilty of second-degree murder.].

[If you find the elements of second-degree murder proven beyond a reasonable doubt, you must consider whether the homicide was committed upon a sudden quarrel or heat of passion resulting from adequate provocation by the victim. If you unanimously find that the homicide was committed upon a sudden quarrel or heat of passion resulting from adequate provocation by the victim, then you must find the defendant guilty of manslaughter by sudden quarrel or heat of passion rather than second-degree murder.

"Adequate provocation" means conduct or circumstances sufficient to deprive a reasonable person of self-control. Words alone are not adequate provocation to justify reducing an intentional killing to manslaughter.

There must not have been a "cooling off" period between the provocation and the killing. A "cooling off" period is the time it would take a reasonable person to regain self-control under the circumstances.]

SOURCE: A.R.S. § 13-1104 (statutory language as of January 1, 2009).

USE NOTE: The court shall instruct on the culpable mental state.

Use Statutory Definition Instruction 1.0510(b) defining "knowingly."

Use Statutory Definition Instructions 1.0510(a)(1) and 1.0510(a)(2) defining "intent" and "intent – inference."

Use Statutory Definition Instruction 1.0510(c) defining "reckless."

This instruction should only be given when the defendant's culpable mental state was directed at the mother of the unborn child, and the defendant's conduct resulted in the death of the mother and the unborn child.

Use the first and/or second bracketed language if this instruction is given as a lesser-included

offense instruction of first-degree murder.

Use the third bracketed language if the court is also instructing the jury on manslaughter upon a sudden quarrel or heat of passion. *See State v. Lua*, 237 Ariz. 301, 304–05 ¶¶ 6–14 (2015) (holding that although manslaughter by sudden quarrel or heat of passion is a lesser homicide, it is not a lesser-included offense of second-degree murder, and providing instruction that should be given if facts support it).

~~Use the third bracketed language only when there is a claim that the homicide was committed upon a sudden quarrel or heat of passion resulting from adequate provocation by the victim.~~

COMMENT: The statute provides that it "applies to an unborn child in the womb at any stage of its development" and gives three exceptions to its application. *See* A.R.S. § 13- 1104(B).

If the victim was under fifteen years of age or an unborn child, the crime is a "dangerous crime against children" and sentencing is pursuant to A.R.S. § 13-604.01. *See* A.R.S. § 13- 1104(C). If the victim was under fifteen years of age or an unborn child, a finding by the jury regarding that fact should be made as part of its verdict.

There is no crime of attempted second-degree murder if the defendant only knows that his or her action would cause serious physical injury rather than death. *See State v. Fierro*, 254 Ariz. 35, 40-41 ¶¶ 13-19 (2022); *see also State v. Ruiz*, 236 Ariz. 317, 320-22 ¶¶ 6-11 (App. 2014) (same rationale applies to attempted manslaughter if the attempt was to cause serious physical injury). The court must use Statutory 11.04B for the offense of attempted second-degree murder.~~*State v. Ontiveros*, 206 Ariz. 539, 542 (App. 2003).~~

~~In *State v. Eddington*, 226 Ariz. 72, 81-82, ¶¶ 29-33 (App. 2010), the Court of Appeals held that fundamental, prejudicial error did not result from instructing the jury that it may only consider the offense of manslaughter upon a sudden quarrel or heat of passion if it first acquits or cannot reach a verdict on second-degree murder. See *State v. LeBlanc*, 186 Ariz. 437, 438 (1996). The Court recognized, however, that the Arizona Supreme Court had already decided in *Peak v. Acuña*, 203 Ariz. 83, 84-85, ¶¶ 5-6 (2002), that "heat-of-passion manslaughter" is not a true lesser-included offense of second-degree murder, because manslaughter includes all of the elements of second-degree murder and has the additional "circumstance" of being caused by a sudden quarrel or heat of passion. Eddington recognized that juries are presumed to follow the instructions, and a jury that follows the *LeBlanc*-modeled instruction for homicide lesser offenses could never reach the question of whether there was a sudden quarrel or heat of passion upon adequate provocation because the jury would have already found all of the elements of second-degree murder proven and found the defendant guilty. A majority of the committee recognized that the previous *LeBlanc*-modeled instruction rendered manslaughter under A.R.S. § 13-1103(A)(2) a nullity and modified the instruction to ensure that the jury would consider whether the circumstance justifying the lesser offense was present.~~

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Lesser-Included Offenses of First-Degree Murder – Sample Instruction and Verdict Form

….

Second-Degree Murder and Manslaughter by Sudden Quarrel or Heat of Passion

The crime of "first-degree murder" includes the lesser offenses of "second-degree murder," ~~"manslaughter"~~"manslaughter by sudden quarrel or heat of passion," "reckless manslaughter," and "negligent homicide." You may consider the lesser offense of "second-degree murder" if either:

1. You find the defendant not guilty of "first-degree murder"; *or*
2. After full and careful consideration of the facts, you cannot agree on whether to find the defendant guilty or not guilty of "first-degree murder."

The crime of second-degree murder requires proof of one of the following:

1. The defendant intentionally caused the death of [another person] [an unborn child]; *or*
2. The defendant caused the death of [another person] [an unborn child] by conduct which the defendant knew would cause death or serious physical injury; *or*
3. Under circumstances manifesting extreme indifference to human life, the defendant recklessly engaged in conduct that created a grave risk of death and thereby caused the death of [another person] [an unborn child]. The risk must be such that disregarding it was a gross deviation from what a reasonable person in the defendant's situation would have done.~~; *or*~~
4. ~~The defendant intentionally, knowingly or under circumstances manifesting extreme indifference to human life recklessly engaged in conduct that created a grave risk of death and caused the death of another person and thereby caused the death of an unborn child.~~

The above definitions of "intentionally," "intent – inference" and "knowingly" apply. "Recklessly" means that a defendant is aware of and consciously disregards a substantial and unjustifiable risk that conduct will result in the death of another. The risk must be such that disregarding it is a gross deviation from what a reasonable person would do in the situation.

If the State is required to prove that the defendant acted "recklessly," that requirement is satisfied if the State proves that the defendant acted "intentionally" or "knowingly."

The difference between first-degree murder and second-degree murder is that second-degree murder does not require premeditation by the defendant.

If you determine that the defendant is guilty of either first-degree murder or second-degree murder and you have a reasonable doubt as to which it was, you must find the defendant guilty of second-degree murder.

If you find the elements of second-degree murder proven beyond a reasonable doubt, you must consider whether the homicide was committed upon a sudden quarrel or heat of passion resulting from adequate provocation by the victim. If you unanimously find that the homicide was committed upon a sudden quarrel or heat of passion resulting from adequate provocation by the victim, then you must find the defendant guilty of manslaughter by sudden quarrel or heat of passion and not second-degree murder.

"Adequate provocation" means conduct or circumstances sufficient to deprive a reasonable person of self-control. Words alone are not adequate provocation to justify reducing an intentional killing to manslaughter.

There must not have been a "cooling off" period between the provocation and the killing. A

"cooling off" period is the time it would take a reasonable person to regain self-control under the circumstances.

Reckless Manslaughter

You may consider the lesser offense of "reckless manslaughter" if either:

1. You find the defendant not guilty of both "first-degree murder," ~~and~~ "second degree murder," and "manslaughter by sudden quarrel or heat of passion"; *or*
2. After full and careful consideration of the facts, you cannot agree on whether to find the defendant guilty or not guilty of "first-degree murder," ~~or~~ "second-degree murder," or "manslaughter by sudden quarrel or heat of passion."

~~The crime of manslaughter can be committed in two ways. The first is "reckless manslaughter."~~ Reckless manslaughter requires proof that the defendant:

1. Caused the death of a person; *and*

~~1.~~2. Was aware of and showed a conscious disregard of a substantial and unjustifiable risk of death. ~~recklessly caused the death of another person.~~

"Reckless" has the same definition as used above.

~~The second way to commit "manslaughter" is manslaughter by sudden quarrel or heat of passion. Manslaughter by sudden quarrel or heat of passion requires proof that:~~

~~1. a. The defendant intentionally killed another person; *or*~~

~~b. The defendant caused the death of another person by conduct which the defendant knew would cause death or serious physical injury; *or*~~

~~c. Under circumstances which showed an extreme indifference to human life, the defendant caused the death of another person by consciously disregarding a grave risk of death. The risk must be such that disregarding it was a gross deviation from what a reasonable person in the defendant's situation would have done; *and*~~

~~2. The defendant acted upon a sudden quarrel or heat of passion; and~~

~~3. The sudden quarrel or heat of passion resulted from adequate provocation by the person who was killed.~~

~~[It is no defense that the defendant was unaware of the risk solely by reason of intoxication.]~~

~~"Adequate provocation" means conduct or circumstances sufficient to deprive a reasonable person of self control. Words alone are not adequate provocation to justify reducing an intentional killing to manslaughter. [There must not have been a "cooling off" period between the provocation and the killing. A "cooling off" period is the time it would take a reasonable person to regain self-control under the circumstances.]~~

Second degree murder and manslaughter may both result from recklessness. The difference is that the culpable recklessness involved in manslaughter is less than the culpable recklessness involved in second degree murder.

~~You must unanimously agree that the State has proven "manslaughter" beyond a reasonable doubt before you may find the defendant guilty of "manslaughter." However, all of you do not have to agree on whether it was "reckless manslaughter" or "manslaughter by sudden quarrel or heat of~~

~~passion."~~

If you determine that the defendant is guilty of either second-degree murder or reckless manslaughter but you have a reasonable doubt as to which it was, you must find the defendant guilty of reckless manslaughter.

Manslaughter by Sudden Quarrel or Heat of Passion

While considering the crime of second-degree murder, you must also consider the crime of manslaughter by sudden quarrel or heat of passion.

The crime of manslaughter by sudden quarrel or heat of passion requires proof that:

1. a. The defendant intentionally killed another person; *or*

b. The defendant caused the death of another person by conduct which the defendant knew would cause death or serious physical injury; *or*

c. Under circumstances which showed an extreme indifference to human life, the defendant caused the death of another person by consciously disregarding a grave risk of death. The risk must be such that disregarding it was a gross deviation from what a reasonable person in the defendant's situation would have done;

and

2. The defendant acted upon a sudden quarrel or heat of passion; *and*

3. The sudden quarrel or heat of passion resulted from adequate provocation by the person who was killed.

[It is no defense that the defendant was unaware of the risk solely by reason of intoxication.]

"Adequate provocation" means conduct or circumstances sufficient to deprive a reasonable person of self-control. Words alone are not adequate provocation to justify reducing an intentional killing to manslaughter. [There must not have been a "cooling off" period between the provocation and the killing. A "cooling off" period is the time it would take a reasonable person to regain self-control under the circumstances.

If you determine that the defendant is guilty of either second degree murder or manslaughter but you have a reasonable doubt as to which it was, you must find the defendant guilty of manslaughter.

Negligent Homicide

You may consider the lesser offense of "negligent homicide" if either:

1. You find the defendant not guilty of "first-degree murder," "second-degree murder," ~~and~~ "manslaughter by sudden quarrel or heat of passion," and "reckless manslaughter"; *or*
2. After full and careful consideration of the facts, you cannot agree on whether to find the defendant guilty or not guilty of "first-degree murder," "second-degree murder," "manslaughter by sudden quarrel or heat of passion," or "reckless manslaughter."

The crime of negligent homicide requires proof that the defendant:

1. caused the death of another person; *and*
2. failed to recognize a substantial and unjustifiable risk of causing the death of another

person.

The risk must be of such nature and degree that the failure to perceive it is a gross deviation from what a reasonable person would observe in the situation.

The distinction between manslaughter and negligent homicide is this: for manslaughter the defendant must have been aware of a substantial risk and consciously disregarded the risk ~~that [his] [her~~the defendant's~~]~~ conduct would cause death. Negligent homicide only requires that the defendant failed to recognize the risk.

If you determine that the defendant is guilty of either manslaughter or negligent homicide but you have a reasonable doubt as to which it was, you must find the defendant guilty of negligent homicide.

You cannot find the defendant guilty of any lesser-included offense unless you find that the State has proved each element of the lesser-included offense beyond a reasonable doubt.

Verdict – Count One (First-Degree Murder)

We the jury, duly empanel~~l~~ed and sworn in the above entitled action, and upon our oaths, do find the Defendant, [insert defendant's name], on the charge of "first-degree murder" on [insert date of the offense] as the result of the death of [insert victim's name] as follows (check only one):

_____ Not Guilty

_____ Guilty

_____ Unable to agree

[~~Lesser Included Offense Verdict on "second degree murder": If~~ you find the defendant "guilty" of "first-degree murder", do not complete this portion of the verdict form. In other words, complete this portion only if you find the defendant either "not guilty" of "first-degree-murder" or you are unable to ~~decide~~agree.]

We the jury, duly empanel~~l~~ed and sworn in the above entitled action, and upon our oaths, do find the Defendant, [insert defendant's name], on the lesser-included offense of "second degree murder" and "manslaughter by sudden quarrel or heat of passion" ~~-~~on [insert date of the offense] as the result of the death of [insert victim's name], as follows (check only one):

_____ Not guilty of either offense

_____ Guilty of second-degree murder

_____ Guilty of manslaughter by sudden quarrel or heat of passion

~~_____ Not guilty~~

~~_____ Guilty~~

_____ Unable to agree

[~~Lesser Included Offense Verdict on "manslaughter": If~~ you find the defendant "guilty" of "first-degree murder," ~~or "guilty" of~~ "second degree-murder," or "manslaughter by sudden quarrel or heat of passion," ~~-~~do not complete this portion of the verdict form. In other words, complete this portion only if you find the defendant either "not guilty" of those offenses ~~both "first-degree murder" and "second-degree murder"~~ or you are unable to agree~~decide~~.]

We the jury, duly empanelled and sworn in the above entitled action, and upon our oaths, do find the Defendant, [insert defendant's name], on the lesser-included offense of "manslaughter," which includes both "reckless manslaughter" and "manslaughter by sudden quarrel or heat of passion" on [insert date of the offense] as the result of the death of [insert victim's name], as follows (check only one):

_____ Not guilty

_____ Guilty

_____ Unable to agree

~~[Complete this portion of the verdict form only if you find the defendant "guilty" of "manslaughter."]~~

~~Please indicate the number of jurors who found beyond a reasonable doubt that the offense of "manslaughter" was committed as follows:~~

~~_____ Reckless manslaughter~~

~~_____ Manslaughter by sudden quarrel or heat of passion~~

~~_____ Both reckless manslaughter and manslaughter by sudden quarrel or heat of passion~~

[~~Lesser-Included Offense Verdict on "negligent homicide":~~ If you find the defendant "guilty" of "first-degree murder," ~~or "guilty" of~~ "second-degree murder," "manslaughter by sudden quarrel or heat of passion," or ~~"guilty" of~~ "reckless manslaughter," do not complete this portion of the verdict form. In other words, complete this portion only if you find the defendant either "not guilty" of ~~"first-degree murder," "second-degree murder," and "manslaughter"~~those offenses or you are unable to ~~decide~~agree.]

We the jury, duly empanelled and sworn in the above entitled action, and upon our oaths, do find the Defendant, [insert defendant's name], on the lesser-included offense of "negligent homicide" on [insert date of the offense] as the result of the death of [insert victim's name], as follows (check only one):

_____ Not guilty

_____ Guilty

_____ Unable to agree

Signed: _____

Foreperson (Juror # _____)

Foreperson (please print name): _____

USE NOTE: This sample instruction and verdict form is provided to illustrate how to structure the lesser-included instructions and verdict form in a first-degree murder case where the facts support instructing on lesser-included offenses. This instruction and verdict must be modified if the facts do not support all of the lesser-included offenses set forth in this sample instruction and verdict form.

For example, if "manslaughter by sudden quarrel or heat of passion" is not a theory supported by the evidence, that theory must be deleted.

11.99 – "Modified LeBlanc" Instruction for ~~Felony Murder~~ Heat-of-Passion Manslaughter

As an alternative to [First] [Second] Degree Murder, you must also consider [Second Degree Murder] [and] [Manslaughter]. If you unanimously agree the defendant committed a homicide, you must indicate on your verdict form the charge or charges on which you agree. If you believe a homicide was committed, but are uncertain as to which charge was proven, you must vote to convict the defendant of [insert less serious offense]. You may not find the defendant guilty of any offense unless you find that the state has proven each element of the charge beyond a reasonable doubt.

11.03A2 – Manslaughter by Sudden Quarrel or Heat of Passion

The crime of manslaughter by sudden quarrel or heat of passion requires proof that:

1. a. The defendant intentionally caused the death of [another person] [unborn child]; *or*

   b. The defendant caused the death of [another person] [an unborn child] by conduct which the defendant knew would cause death or serious physical injury; *or*

   c. Under circumstances which showed an extreme indifference to human life, the defendant caused the death of [another person] [an unborn child] by consciously disregarding a grave risk of death. The risk must be such that disregarding it was a gross deviation from what a reasonable person in the defendant's situation would have done; *and*

2. The defendant acted upon a sudden quarrel or heat of passion; *and*

3. The sudden quarrel or heat of passion resulted from adequate provocation by the person who was killed.

[It is no defense that the defendant was unaware of the risk solely by reason of intoxication.]

"Adequate provocation" means conduct or circumstances sufficient to deprive a reasonable person of self-control. Words alone are not adequate provocation to justify reducing an intentional killing to manslaughter.

[There must not have been a "cooling off" period between the provocation and the killing. A "cooling off" period is the time it would take a reasonable person to regain self-control under the circumstances.]

[If you find the elements of second-degree murder proven beyond a reasonable doubt, you must consider whether the homicide was committed upon a sudden quarrel or heat of passion resulting from adequate provocation by the victim. If you unanimously find that the homicide was committed upon a sudden quarrel or heat of passion resulting from adequate provocation by the victim, then you must find the defendant guilty of manslaughter by sudden quarrel or heat of passion rather than second-degree murder.]

[If you determine that the defendant is guilty of either second-degree murder or manslaughter by sudden quarrel or heat of passion but you have a reasonable doubt as to which it was, you must find the defendant guilty of manslaughter.]

SOURCE: A.R.S. § 13-1103(A)(2) (statutory language as of March 17, 2021).

USE NOTE: Use the bracketed language if this instruction is given as a lesser offense instruction.

Use Statutory Definition Instruction 1.0510(b) defining "knowingly."

Use Statutory Definition Instructions 1.0510(a)(1) and 1.0510(a)(2) defining "intent" and "intent – inference."

COMMENT: "Adequate provocation" is defined in A.R.S. § 13-1101(4). In *State v. Doss*, 116 Ariz. 156, 162 (1977), the court held that "words alone are not adequate provocation to justify reducing an intentional killing to manslaughter." In *State v. Ortiz*, 158 Ariz. 528 (1988), the Arizona Supreme Court approved the definition contained in the model instruction. If there is evidence to support an

instruction on the "cooling-off" period, use the bracketed language.

The statute provides that it "applies to an unborn child in the womb at any stage of its development" and then gives three exceptions to its application. See A.R.S. § 13-1103(B).

In *State v. Lua*, 237 Ariz. 301, 304–05 ¶¶ 6–14 (2015), the Arizona Supreme Court held that although manslaughter by sudden quarrel or heat of passion is a lesser homicide, it is not a lesser-included offense of second-degree murder. If manslaughter by sudden quarrel or heat of passion instruction is given in connection with second-degree murder, the manslaughter by sudden quarrel or heat of passion instruction should not be given as a lesser-included offense instruction and instead given with the instruction from *Lua*, which is in brackets above.

11.04 – Second-Degree Murder

The crime of second-degree murder requires proof of one of the following:

1. The defendant intentionally caused the death of [another person] [an unborn child]; *or*
2. The defendant caused the death of [another person] [an unborn child] by conduct which the defendant knew would cause death or serious physical injury; *or*
3. Under circumstances manifesting extreme indifference to human life, the defendant recklessly engaged in conduct that created a grave risk of death and thereby caused the death of [another person] [an unborn child]. The risk must be such that disregarding it was a gross deviation from what a reasonable person in the defendant's situation would have done.

[The difference between first-degree murder and second-degree murder is that second-degree murder does not require premeditation by the defendant.]

[If you determine that the defendant is guilty of either first-degree murder or second-degree murder and you have a reasonable doubt as to which it was, you must find the defendant guilty of second-degree murder.].

[If you find the elements of second-degree murder proven beyond a reasonable doubt, you must consider whether the homicide was committed upon a sudden quarrel or heat of passion resulting from adequate provocation by the victim. If you unanimously find that the homicide was committed upon a sudden quarrel or heat of passion resulting from adequate provocation by the victim, then you must find the defendant guilty of manslaughter by sudden quarrel or heat of passion rather than second-degree murder. "Adequate provocation" means conduct or circumstances sufficient to deprive a reasonable person of self-control. Words alone are not adequate provocation to justify reducing an intentional killing to manslaughter.

There must not have been a "cooling off" period between the provocation and the killing. A "cooling off" period is the time it would take a reasonable person to regain self-control under the circumstances.]

SOURCE: A.R.S. § 13-1104 (statutory language as of January 1, 2009).

USE NOTE: Use Statutory Definition Instruction 1.0510(b) defining "knowingly."

Use Statutory Definition Instructions 1.0510(a)(1) and 1.0510(a)(2) defining "intent" and "intent – inference."

Use Statutory Definition Instruction 1.0510(c) defining "reckless." Use the first and/or second bracketed language if this instruction is given as a lesser-included offense instruction of first-degree murder.

Use the third bracketed language if the court is also instructing the jury on manslaughter upon a sudden quarrel or heat of passion... *See State v. Lua*, 237 Ariz. 301, 304–05 ¶¶ 6–14 (2015) (holding that although manslaughter by sudden quarrel or heat of passion is a lesser homicide, it is not a lesser-included offense of second-degree murder, and providing instruction that should be given if facts support it).

COMMENT: The statute provides that it "applies to an unborn child in the womb at any stage of its development" and gives three exceptions to its application. *See* A.R.S. § 13- 1104(B).

If the victim was under fifteen years of age or an unborn child, the crime is a "dangerous crime against children" and sentencing is pursuant to A.R.S. § 13-604.01. *See* A.R.S. § 13- 1104(C). If the victim was under fifteen years of age or an unborn child, a finding by the jury regarding that fact should be made as part of its verdict.

There is no crime of attempted second-degree murder if the defendant only knows that his or her action would cause serious physical injury rather than death. *See State v. Fierro*, 254 Ariz. 35, 40-41 ¶¶ 13-19 (2022); *see also State v. Ruiz*, 236 Ariz. 317, 320-22 ¶¶ 6-11 (App. 2014) (same rationale applies to attempted manslaughter if the attempt was to cause serious physical injury). The court must use Statutory 11.04B for the offense of attempted second-degree murder.

11.04 – Second-Degree Murder (Mother and Unborn Child)

The crime of second-degree murder requires proof that the defendant intentionally, knowingly or under circumstances manifesting extreme indifference to human life recklessly engaged in conduct that created a grave risk of death and caused the death of another person and thereby caused the death of an unborn child.

[The difference between first-degree murder and second-degree murder is that second-degree murder does not require premeditation by the defendant.]

[If you determine that the defendant is guilty of either first-degree murder or second-degree murder and you have a reasonable doubt as to which it was, you must find the defendant guilty of second-degree murder.].

[If you find the elements of second-degree murder proven beyond a reasonable doubt, you must consider whether the homicide was committed upon a sudden quarrel or heat of passion resulting from adequate provocation by the victim. If you unanimously find that the homicide was committed upon a sudden quarrel or heat of passion resulting from adequate provocation by the victim, then you must find the defendant guilty of manslaughter by sudden quarrel or heat of passion rather than second-degree murder.

"Adequate provocation" means conduct or circumstances sufficient to deprive a reasonable person of self-control. Words alone are not adequate provocation to justify reducing an intentional killing to manslaughter.

There must not have been a "cooling off" period between the provocation and the killing. A "cooling off" period is the time it would take a reasonable person to regain self-control under the circumstances.]

SOURCE: A.R.S. § 13-1104 (statutory language as of January 1, 2009).

USE NOTE: The court shall instruct on the culpable mental state.

Use Statutory Definition Instruction 1.0510(b) defining "knowingly."

Use Statutory Definition Instructions 1.0510(a)(1) and 1.0510(a)(2) defining "intent" and "intent – inference."

Use Statutory Definition Instruction 1.0510(c) defining "reckless."

This instruction should only be given when the defendant's culpable mental state was directed at the mother of the unborn child, and the defendant's conduct resulted in the death of the mother and the unborn child.

Use the first and/or second bracketed language if this instruction is given as a lesser-included offense instruction of first-degree murder.

Use the third bracketed language if the court is also instructing the jury on manslaughter upon a sudden quarrel or heat of passion. *See State v. Lua*, 237 Ariz. 301, 304–05 ¶¶ 6–14 (2015) (holding that although manslaughter by sudden quarrel or heat of passion is a lesser homicide, it is not a lesser-included offense of second-degree murder, and providing instruction that should be given if facts support it).

COMMENT: The statute provides that it "applies to an unborn child in the womb at any stage of its development" and gives three exceptions to its application. *See* A.R.S. § 13- 1104(B).

If the victim was under fifteen years of age or an unborn child, the crime is a "dangerous crime against children" and sentencing is pursuant to A.R.S. § 13-604.01. *See* A.R.S. § 13- 1104(C). If the victim was under fifteen years of age or an unborn child, a finding by the jury regarding that fact should be made as part of its verdict.

There is no crime of attempted second-degree murder if the defendant only knows that his or her action would cause serious physical injury rather than death. *See State v. Fierro*, 254 Ariz. 35, 40-41 ¶¶ 13-19 (2022); *see also State v. Ruiz*, 236 Ariz. 317, 320-22 ¶¶ 6-11 (App. 2014) (same rationale applies to attempted manslaughter if the attempt was to cause serious physical injury). The court must use Statutory 11.04B for the offense of attempted second-degree murder.

Lesser-Included Offenses of First-Degree Murder – Sample Instruction and Verdict Form

Second-Degree Murder and Manslaughter by Sudden Quarrel or Heat of Passion

The crime of "first-degree murder" includes the lesser offenses of "second-degree murder," "manslaughter by sudden quarrel or heat of passion," "reckless manslaughter," and "negligent homicide." You may consider the lesser offense of "second-degree murder" if either:

1. You find the defendant not guilty of "first-degree murder"; *or*

2. After full and careful consideration of the facts, you cannot agree on whether to find the defendant guilty or not guilty of "first-degree murder."

The crime of second-degree murder requires proof of one of the following:

1. The defendant intentionally caused the death of [another person] [an unborn child]; *or*
2. The defendant caused the death of [another person] [an unborn child] by conduct which the defendant knew would cause death or serious physical injury; *or*
3. Under circumstances manifesting extreme indifference to human life, the defendant recklessly engaged in conduct that created a grave risk of death and thereby caused the death of [another person] [an unborn child]. The risk must be such that disregarding it was a gross deviation from what a reasonable person in the defendant's situation would have done.

The above definitions of "intentionally," "intent – inference" and "knowingly" apply. "Recklessly" means that a defendant is aware of and consciously disregards a substantial and unjustifiable risk that conduct will result in the death of another. The risk must be such that disregarding it is a gross deviation from what a reasonable person would do in the situation.

If the State is required to prove that the defendant acted "recklessly," that requirement is satisfied if the State proves that the defendant acted "intentionally" or "knowingly."

The difference between first-degree murder and second-degree murder is that second-degree murder does not require premeditation by the defendant.

If you determine that the defendant is guilty of either first-degree murder or second-degree murder and you have a reasonable doubt as to which it was, you must find the defendant guilty of second-degree murder.

If you find the elements of second-degree murder proven beyond a reasonable doubt, you must consider whether the homicide was committed upon a sudden quarrel or heat of passion resulting from adequate provocation by the victim. If you unanimously find that the homicide was committed upon a sudden quarrel or heat of passion resulting from adequate provocation by the victim, then you must find the defendant guilty of manslaughter by sudden quarrel or heat of passion and not second-degree murder.

"Adequate provocation" means conduct or circumstances sufficient to deprive a reasonable person of self-control. Words alone are not adequate provocation to justify reducing an intentional killing to manslaughter.

There must not have been a "cooling off" period between the provocation and the killing. A "cooling off" period is the time it would take a reasonable person to regain self-control under the circumstances.

Reckless Manslaughter

You may consider the lesser offense of "reckless manslaughter" if either:

1. You find the defendant not guilty of both "first-degree murder," "second degree murder," and "manslaughter by sudden quarrel or heat of passion"; *or*
2. After full and careful consideration of the facts, you cannot agree on whether to find the defendant guilty or not guilty of "first-degree murder," "second-degree murder," or "manslaughter by sudden quarrel or heat of passion."

Reckless manslaughter requires proof that the defendant:

1. Caused the death of a person; *and*
2. Was aware of and showed a conscious disregard of a substantial and unjustifiable risk of death.

"Reckless" has the same definition as used above.

Second degree murder and manslaughter may both result from recklessness. The difference is that the culpable recklessness involved in manslaughter is less than the culpable recklessness involved in second degree murder.

If you determine that the defendant is guilty of either second-degree murder or reckless manslaughter but you have a reasonable doubt as to which it was, you must find the defendant guilty of reckless manslaughter.

Manslaughter by Sudden Quarrel or Heat of Passion

While considering the crime of second-degree murder, you must also consider the crime of manslaughter by sudden quarrel or heat of passion.

The crime of manslaughter by sudden quarrel or heat of passion requires proof that:

1. a. The defendant intentionally killed another person; *or*

   b. The defendant caused the death of another person by conduct which the defendant knew would cause death or serious physical injury; *or*

   c. Under circumstances which showed an extreme indifference to human life, the defendant caused the death of another person by consciously disregarding a grave risk of death. The risk must be such that disregarding it was a gross deviation from what a reasonable person in the defendant's situation would have done;

and

2. The defendant acted upon a sudden quarrel or heat of passion; *and*

3. The sudden quarrel or heat of passion resulted from adequate provocation by the person who was killed.

[It is no defense that the defendant was unaware of the risk solely by reason of intoxication.]

"Adequate provocation" means conduct or circumstances sufficient to deprive a reasonable person of self-control. Words alone are not adequate provocation to justify reducing an intentional killing to manslaughter. [There must not have been a "cooling off" period between the provocation and the killing. A "cooling off" period is the time it would take a reasonable person to regain self-control under the circumstances.

If you determine that the defendant is guilty of either second degree murder or manslaughter but you have a reasonable doubt as to which it was, you must find the defendant guilty of manslaughter.

Negligent Homicide

You may consider the lesser offense of "negligent homicide" if either:

1. You find the defendant not guilty of "first-degree murder," "second-degree murder,"

"manslaughter by sudden quarrel or heat of passion," and "reckless manslaughter"; *or*

2. After full and careful consideration of the facts, you cannot agree on whether to find the defendant guilty or not guilty of "first-degree murder," "second-degree murder," "manslaughter by sudden quarrel or heat of passion," or "reckless manslaughter."

The crime of negligent homicide requires proof that the defendant:

1. caused the death of another person; *and*

2. failed to recognize a substantial and unjustifiable risk of causing the death of another person.

The risk must be of such nature and degree that the failure to perceive it is a gross deviation from what a reasonable person would observe in the situation.

The distinction between manslaughter and negligent homicide is this: for manslaughter the defendant must have been aware of a substantial risk and consciously disregarded the risk the defendant's conduct would cause death. Negligent homicide only requires that the defendant failed to recognize the risk.

If you determine that the defendant is guilty of either manslaughter or negligent homicide but you have a reasonable doubt as to which it was, you must find the defendant guilty of negligent homicide.

You cannot find the defendant guilty of any lesser-included offense unless you find that the State has proved each element of the lesser-included offense beyond a reasonable doubt.

Verdict – Count One (First-Degree Murder)

We the jury, duly empaneled and sworn in the above entitled action, and upon our oaths, do find the Defendant, [insert defendant's name], on the charge of "first-degree murder" on [insert date of the offense] as the result of the death of [insert victim's name] as follows (check only one):

_____ Not Guilty

_____ Guilty

_____ Unable to agree

[If you find the defendant "guilty" of "first-degree murder", do not complete this portion of the verdict form. In other words, complete this portion only if you find the defendant either "not guilty" of "first-degree-murder" or you are unable to agree.]

We the jury, duly empaneled and sworn in the above entitled action, and upon our oaths, do find the Defendant, [insert defendant's name], on the lesser-included offense of "second degree murder" and "manslaughter by sudden quarrel or heat of passion" on [insert date of the offense] as the result of the death of [insert victim's name], as follows (check only one):

_____ Not guilty of either offense

_____ Guilty of second-degree murder

_____ Guilty of manslaughter by sudden quarrel or heat of passion

_____ Unable to agree

[If you find the defendant "guilty" of "first-degree murder," "second degree-murder," or "manslaughter by sudden quarrel or heat of passion," do not complete this portion of the verdict form. In other words, complete this portion only if you find the defendant either "not guilty" of those offenses or you are unable to agree.]

We the jury, duly empaneled and sworn in the above entitled action, and upon our oaths, do find the Defendant, [insert defendant's name], on the lesser-included offense of "manslaughter," which includes both "reckless manslaughter" and "manslaughter by sudden quarrel or heat of passion" on [insert date of the offense] as the result of the death of [insert victim's name], as follows (check only one):

_____ Not guilty

_____ Guilty

_____ Unable to agree

[If you find the defendant "guilty" of "first-degree murder," "second-degree murder," "manslaughter by sudden quarrel or heat of passion," or "reckless manslaughter," do not complete this portion of the verdict form. In other words, complete this portion only if you find the defendant either "not guilty" of those offenses or you are unable to agree.]

We the jury, duly empaneled and sworn in the above entitled action, and upon our oaths, do find the Defendant, [insert defendant's name], on the lesser-included offense of "negligent homicide" on [insert date of the offense] as the result of the death of [insert victim's name], as follows (check only one):

_____ Not guilty

_____ Guilty

_____ Unable to agree

Signed: _____

Foreperson (Juror # _____)

Foreperson (please print name): _____

USE NOTE: This sample instruction and verdict form is provided to illustrate how to structure the lesser-included instructions and verdict form in a first-degree murder case where the facts support instructing on lesser-included offenses. This instruction and verdict must be modified if the facts do not support all of the lesser-included offenses set forth in this sample instruction and verdict form. For example, if "manslaughter by sudden quarrel or heat of passion" is not a theory supported by the evidence, that theory must be deleted.

11.99 – "Modified LeBlanc" Instruction for Heat-of-Passion Manslaughter

As an alternative to [First] [Second] Degree Murder, you must also consider [Second Degree Murder] [and] [Manslaughter]. If you unanimously agree the defendant committed a homicide, you must indicate on your verdict form the charge or charges on which you agree. If you believe a homicide was committed, but are uncertain as to which charge was proven, you must vote to convict the defendant of [insert less serious offense]. You may not find the defendant guilty of any offense unless you find that the state has proven each element of the charge beyond a reasonable doubt.

RAJI 7.08-C Release Status; A.R.S. § 13-708(C)

The proposal is to remove the *mens rea* requirement from the RAJI, as it is not consistent with the statute and there does not appear to be a case that supports it.

The current RAJI is as follows:

To prove the allegation that Defendant [was on probation for a conviction of a felony offense] [was on parole, work furlough, community supervision or any other release following a conviction of a felony offense] [escaped from confinement following a felony conviction] at the time [he/she] committed the crime of "[insert name of offense on which jury found defendant guilty]," the State must prove beyond a reasonable doubt that:
1. Defendant had been convicted of a felony offense prior to [insert date of offense on which defendant was found guilty]; *and*
2. Defendant is the person who was convicted of that felony offense; *and*
3. Defendant [was on probation for a conviction of a felony offense] [was on parole, work furlough, community supervision or any other release following a conviction of a felony offense] [had escaped from confinement following a felony conviction] prior to [insert date of offense on which defendant was found guilty]; *and*
4. ~~Defendant knew that [he/she] [was on probation for a conviction of a felony offense] [was on parole, work furlough, community supervision or any other release following a conviction of a felony offense] [had escaped from confinement following a felony conviction] prior to [insert date of offense on which defendant was found guilty];~~ *and*
5. Defendant committed the offense of "[insert name of offense on which jury found defendant guilty]" while [was on probation for a conviction of a felony offense] [was on parole, work furlough, community supervision or any other release following a conviction of a felony offense] [escaped from confinement following a felony conviction].

The current version of A.R.S. § 13-708(C) is as follows:
A person who is convicted of any felony offense that is not included in subsection A or B of this section and that is committed while the person is on probation for a conviction of a felony offense or parole, work furlough, community supervision or any other release or escape from confinement for conviction of a felony offense shall be sentenced to a term of not less than the presumptive sentence authorized for the offense and the person is not eligible for suspension of sentence, probation, pardon or release from confinement on any basis except as specifically authorized by § 31-233, subsection A or B until the sentence imposed by the court has been served, the person is eligible for release pursuant to § 41-1604.07 or the sentence is commuted. The release provisions prescribed by this section shall not be substituted for any penalties required by the substantive offense or provision of law that specifies a later release or completion of the sentence imposed before release. For the purposes of this subsection, "substantive offense" means the felony, misdemeanor or petty offense that the trier of fact found beyond a reasonable doubt the defendant

committed. Substantive offense does not include allegations that, if proven, would enhance the sentence of imprisonment or fine to which the defendant would otherwise be subject.

Reasoning:

There is no *mens rea* requirement in the statute. Further, this is a sentencing enhancement, not a separate crime. *See State v. Stevens*, 154 Ariz. 510 (App. 1987) ("A culpable mental state, by contrast, is irrelevant to the function of release status as a sentence enhancer. To find release status, the court need not evaluate conduct or mens rea involved in the prohibited transaction. The operative aggravating factor is not the actor's culpable mental state but his legal status of release.") (internal citations omitted).

In addition to the plain language of the statute, it is notable that the RAJI for pretrial release, 7.08-D, does not contain a *mens rea*, yet the two statutes are virtually identical, but for the type of release status. *Compare* A.R.S. § 13-708(D). The RAJI comments contain no explanation for the addition of the *mens rea* to 7.08-C, nor is there a case cited to explain the reasoning for the difference.

Therefore, we propose that the *mens rea* requirement be removed from RAJI 7.08-C, to conform to the statute.

28.1383(A)(5)-1 – Aggravated Driving or Actual Physical Control While Driving the Wrong Way on a Highway and Under the Influence

The crime of aggravated driving or actual physical control while driving the wrong way on a highway and under the influence requests proof that:

1. The defendant [drove] [was in actual physical control of] a vehicle in this state; *and*
2. The defendant was under the influence of [intoxicating liquor] [any drug] [a vapor releasing substance containing a toxic substance] [any combination of liquor, drugs or vapor releasing substances] at the time of [driving] [being in actual physical control]; *and*
3. The defendant was impaired to the slightest degree by reason of being under the influence of [intoxicating liquor] [any drug] [a vapor releasing substance containing a toxic substance] [any combination of liquor, drugs or vapor releasing substances]; *and*
4. The defendant drove the wrong way on a highway.

"Wrong way" means vehicular movement that is in a direction opposing the legal flow of traffic. Wrong way does not include median crossing or a collision where a motor vehicle comes to a stop facing the wrong way.

SOURCE: A.R.S. §§ 28-1383(A)(5), (N)(2) and 28-1381(A)(1) (statutory language as of August 3, 2018).

USE NOTE: Use language in brackets as appropriate to the facts

DEFINITIONS:

"Highway" means the entire width between the boundary lines of every way if a part of the way is open to the use of the public for purposes of vehicular travel. *See* A.R.S. § 28-101(61) (statutory language as of August 3, 2018).

COMMENT: *Franz v. State,* 576 P.3d 716 at ¶ 21 (App. amended Sept. 24, 2025) held "the plain language of the statute expresses the legislature's clear intent to make wrong-way DUI under A.R.S. § 28-1383(A)(5) a strict liability offense if the motorist is going against the 'legal flow of traffic' on a roadway that is "designated and signposted." A.R.S. § 28-728[.]"

28.1383(A)(5)-2 – Aggravated Driving or Actual Physical Control While Driving the Wrong Way on a Highway and an Alcohol Concentration of 0.08 or More Within Two Hours of Driving

The crime of aggravated driving or actual physical control while driving the wrong way on a highway and an alcohol concentration of 0.08 or more within two hours of driving requires proof that:

1. The defendant [drove] [was in actual physical control of] a vehicle in this state; *and*
2. The defendant had an alcohol concentration of 0.08 or more within two hours of [driving] [being in actual physical control of] the vehicle; *and*
3. The alcohol concentration resulted from alcohol consumed either before or while [driving] [being in actual physical control of] the vehicle; *and*
4. The defendant drove the wrong way on a highway.

"Wrong way" means vehicular movement that is in a direction opposing the legal flow of traffic. Wrong way does not include median crossing or a collision where a motor vehicle comes to a stop facing the wrong way.

SOURCE: A.R.S. §§ 28-1383(A)(5), (N)(2) and 28-1381(A)(2) (statutory language as of August 3, 2018).

USE NOTE: Use language in brackets as appropriate to the facts.

DEFINITIONS:

"Highway" means the entire width between the boundary lines of every way if a part of the way is open to the use of the public for purposes of vehicular travel. *See* A.R.S. § 28–101(61) (statutory language as of August 3, 2018).

COMMENT: *Franz v. State,* 576 P.3d 716 at ¶ 21 (App. amended Sept. 24, 2025) held "the plain language of the statute expresses the legislature's clear intent to make wrong-way DUI under A.R.S. § 28-1383(A)(5) a strict liability offense if the motorist is going against the 'legal flow of traffic' on a roadway that is "designated and signposted." A.R.S. § 28-728[.]"

28.1383(A)(5)-3 – Aggravated Driving or Actual Physical Control While Driving the Wrong Way on a Highway and There Is a Drug in the Defendant's Body

The crime of aggravated driving or actual physical control while driving the wrong way on a highway and there is a drug in the defendant's body requires proof that:

1. The defendant [drove] [was in actual physical control of] a vehicle in this state; *and*
2. The defendant had in [his] [her] body [(name of drug)] [a metabolite of (name of drug)] at the time of [driving] [being in actual physical control of] the vehicle; *and*
3. The defendant drove the wrong way on a highway.

"Wrong way" means vehicular movement that is in a direction opposing the legal flow of traffic. Wrong way does not include median crossing or a collision where a motor vehicle comes to a stop facing the wrong way.

SOURCE: A.R.S. §§ 28-1383(A)(5), (N)(2) and 28-1381(A)(3) (statutory language as of August 3, 2018).

USE NOTE: Use language in brackets as appropriate to the facts

DEFINITIONS:

"Highway" means the entire width between the boundary lines of every way if a part of the way is open to the use of the public for purposes of vehicular travel. *See* A.R.S. § 28–101(61) (statutory language as of August 3, 2018).

COMMENT: *Franz v. State,* 576 P.3d 716 at ¶ 21 (App. amended Sept. 24, 2025) held "the plain language of the statute expresses the legislature's clear intent to make wrong-way DUI under A.R.S. § 28-1383(A)(5) a strict liability offense if the motorist is going against the 'legal flow of traffic' on a roadway that is "designated and signposted." A.R.S. § 28-728[.]"

28.1383(A)(5)-4 – Aggravated Driving or Actual Physical Control While Driving the Wrong Way on a Highway and a Commercial Motor Vehicle with an Alcohol Concentration of 0.04 or More

The crime of aggravated driving or actual physical control while driving the wrong way on a highway and there is a drug in the defendant's body requires proof that:

1. The defendant [drove] [was in actual physical control of] a commercial motor vehicle; *and*
2. The defendant had an alcohol concentration of 0.04 or more; *and*
3. The defendant drove the wrong way on a highway.

"Wrong way" means vehicular movement that is in a direction opposing the legal flow of traffic. Wrong way does not include median crossing or a collision where a motor vehicle comes to a stop facing the wrong way.

SOURCE: A.R.S. §§ 28-1383(A)(5), (N)(2) and 28-1381(A)(4) (statutory language as of August 3, 2018).

USE NOTE: Use language in brackets as appropriate to the facts

DEFINITIONS:

"Highway" means the entire width between the boundary lines of every way if a part of the way is open to the use of the public for purposes of vehicular travel. *See* A.R.S. § 28-101(61) (statutory language as of August 3, 2018).

"Commercial driver license" means a license that is issued to an individual and that authorizes the individual to operate a class of commercial motor vehicles. *See* A.R.S. § 28–3001 (statutory language as of August 9, 2017).

"Commercial motor vehicle" means a motor vehicle or combination of motor vehicles used to transport passengers or property if the motor vehicle either:

(a) Has a gross combined weight rating of twenty-six thousand one or more pounds inclusive of a towed unit with a gross vehicle weight rating of more than ten thousand pounds.

(b) Has a gross vehicle weight rating of twenty-six thousand one or more pounds.

(c) Is a school bus.

(d) Is a bus.

(e) Is used in the transportation of materials found to be hazardous for the purposes of the hazardous materials transportation act 49 United States Code §§ 5101 through 5127 and is required to be placarded under 49 Code of Federal Regulations § 172.504, as adopted by the department pursuant to chapter 14 of title 28.

See A.R.S. § 28–1301(3) (statutory language as of August 3, 2018).

COMMENT: *Franz v. State,* 576 P.3d 716 at ¶ 21 (App. amended Sept. 24, 2025) held "the plain language of the statute expresses the legislature's clear intent to make wrong-way DUI under A.R.S. § 28-1383(A)(5) a strict liability offense if the motorist is going against the 'legal flow of traffic' on a roadway that is "designated and signposted." A.R.S. § 28-728[.]"

28.1383(A)(5)-5 – Aggravated Driving or Actual Physical Control While Driving the Wrong Way on a Highway Under the Extreme Influence of Intoxicating Liquor

The crime of driving or actual physical control while driving the wrong way and while under the extreme influence of intoxicating liquor requires proof that:

1. The defendant [drove] [was in actual physical control of] a vehicle in this state; *and*
2. The defendant had an alcohol concentration of 0.15 or more within two hours of [driving] [being in actual physical control of] the vehicle; *and*
3. The alcohol concentration resulted from alcohol consumed either before or while [driving] [being in actual physical control of] the vehicle; *and*
4. The defendant drove the wrong way on a highway.

"Wrong way" means vehicular movement that is in a direction opposing the legal flow of traffic. Wrong way does not include median crossing or a collision where a motor vehicle comes to a stop facing the wrong way.

SOURCE: A.R.S. §§ 28-1383(A)(5), (N)(2) and 28-1382(A) (statutory language as of August 3, 2018).

USE NOTE: Use language in brackets as appropriate to the facts

DEFINITIONS:

"Highway" means the entire width between the boundary lines of every way if a part of the way is open to the use of the public for purposes of vehicular travel. *See* A.R.S. § 28–101(61) (statutory language as of August 3, 2018).

COMMENT: *Franz v. State,* 576 P.3d 716 at ¶ 21 (App. amended September 24, 2025) held "the plain language of the statute expresses the legislature's clear intent to make wrong-way DUI under A.R.S. § 28-1383(A)(5) a strict liability offense if the motorist is going against the 'legal flow of traffic' on a roadway that is "designated and signposted." A.R.S. § 28-728 [.]"