

Proposed Revisions to Preliminary 16 and Standard Criminal 52

Preliminary Criminal 16 – Questions by Jurors

If at any time during the trial you have difficulty hearing or seeing something that you should be hearing or seeing, or if you get into personal distress for any reason, raise your hand and let me know.

If you have any questions about parking, restaurants, or other matters relating to jury service, feel free to ask one of the court staff. But remember that the Admonition applies to court staff, as it does to everyone else, so do not try to discuss the case with court staff.

~~If you have a question about the case for a witness or for me, write it down, but do not sign it. Hand the question to the bailiff. If your question is for a witness who is about to leave the witness stand, please signal the bailiff or me before the witness leaves the stand.~~

When the lawyers have finished questioning a witness, I will ask if any jurors have any questions for the witness. This might be your only opportunity to ask a question of that witness. Once excused, a witness might not return. If you do have a question, please make sure that it is in writing. Do not sign the question. The bailiff will collect all written questions from the jurors when the lawyers have finished their questioning of the witness.

The lawyers and I will discuss the question. The rules of evidence or other rules of law may prevent some questions from being asked. If the rules permit the question and the answer is available, an answer will be given at the earliest opportunity. When we do not ask a question, it is no reflection on the person submitting it. You should attach no significance to the failure to ask a question. I will apply the same legal standards to your questions as I do to the questions asked by the lawyers. If a particular question is not asked, please do not guess why or what the answer might have been.

(Explanation – jurors are often caught off guard as to the timing of their questions to a witness and don't always understand that they can't ask a question to a witness after they have been excused. This edit attempts to make the process more clear.)

Standard Criminal 52 – Closing Instruction

The case is now submitted to you for decision. When you go to the jury room you will choose a Foreperson. He or she will preside over your deliberations.

I suggest that you discuss and then set your deliberation schedule. You are in charge of your schedule, and may set and vary it by agreement and the approval of the Court. After you have decided on a schedule, please advise the bailiff.

You are to discuss the case and deliberate only when all jurors are together in the jury room. You are not to discuss the case with each other or anyone else during breaks or recesses. The admonition I have given you during the trial remains in effect when all of you are not in the jury room deliberating.

After setting your schedule, I suggest that you next review the written jury instructions and verdict [form] [forms]. It may be helpful for you to discuss the instructions and verdict [form] [forms] to make sure that you understand them. Again, during your deliberations you must follow the instructions and refer to them to answer any questions about applicable law, procedure and definitions.

Should any of you, or the jury as a whole, have a question for me during your deliberations or wish to communicate with me on any other matter, please utilize the jury question form that we will provide you. Your question or message must be communicated to me in writing ~~and must be signed by you or the Foreperson.~~

I will consider your question or note and consult with counsel before answering it in writing. I will answer it as quickly as possible.

During your deliberations, you must not communicate with or provide any information to anyone by any means about this case. You may not use any electronic device or media, such as a telephone, cell phone, smart phone, or computer; the internet, any internet service, or any text or instant messaging service; or any internet chat room, blog, website, or social media to communicate to anyone any information about this case or to conduct any research about this case until you are discharged.

Remember that you are not to tell anyone, including me, how you stand, numerically or otherwise, until after you have reached a verdict or have been discharged.

All [eight] [twelve] of you must agree on [the] [each] verdict. You must be unanimous. Once all [eight] [twelve] agree on a verdict, only the Foreperson need sign the verdict form on the line marked "Foreperson."

You will be given [insert number] form(s) of verdict. The verdict form(s) read as follows and there is no significance to the order in which the options of "guilty," "not guilty," ["unable to agree"] ["proven"] ["not proven"] are listed on the verdict [form] [forms]:

(Explanation: the language that requires a juror question to be signed (during deliberations) conflicts with the current language in Preliminary 16 ("write it down but do not sign it"). Further, asking a juror to sign their name conflicts with the current preference for protecting jurors' anonymity.)

4.04 – Justification for Self-Defense Physical Force

4.05 – Justification for Self-Defense Deadly Physical Force

(Explanation: the headings for these two instructions seems odd. Both address self-defense and are nearly identical, but 4.04 deals with non-deadly physical force and 4.05 deals with deadly physical force. The proposal just makes this clear.)

12.04 – Aggravated Assault - General

The crime of aggravated assault requires proof of the following:

1. The defendant committed an assault, *and*
2. The assault was aggravated by at least one of the following factors:

...

– The defendant was eighteen years of age or older and the person assaulted was under fifteen years of age ~~or under~~; or

...

Explanation:

A.R.S. § 13-1204(A)(6) provides that “A person commits aggravated assault if the person commits assault as prescribed by § 13-1203 under any of the following circumstances ... [i]f the person is eighteen years of age or older and commits the assault on a minor under fifteen years of age.” The current instruction allows conviction when minor is 15 years old. The instruction should be amended to conform with the statute.

13.08 – Trafficking of Persons for Forced Labor or Services

The crime of trafficking of persons for forced labor or services requires proof that the defendant knowingly:

[trafficked another person with the intent or knowledge that the other person would be subject to forced labor or services]

[benefited, financially or by receiving anything of value, from participation in a venture that was engaged in an act of unlawfully obtaining labor or services]

[benefited, financially or by receiving anything of value, from participation in a venture that was engaged in an act of sex trafficking]

[benefited, financially or by receiving anything of value, from participation in a venture that was engaged in an act of trafficking of persons for forced labor or services]

[benefited, financially or by receiving anything of value, from participation in a venture that was engaged in an act of [recruitment] [enticement] [harboring] [transportation] [making available to another] [obtaining] ~~by any means~~ a minor with the intent of causing the minor to engage in prostitution or ~~any~~ sexually explicit performance]

[benefited, financially or by receiving anything of value, from participation in a venture that was engaged in an act of [recruitment] [enticement] [harboring] [transportation] [providing] ~~[making available to another]~~ [obtaining] ~~by any means~~ a minor knowing that the minor would engage in prostitution or ~~any~~ sexually explicit performance]

“Forced labor or services” means labor or services that are performed or provided by another person and that are obtained through the defendant [either]-[causing or threatening to cause serious physical injury to any person] [or] [restraining or threatening to physically restrain another person] [or] [~~knowingly destroying, concealing, removing, confiscating, possessing, or withholding from another person that person’s actual or purported passport or other immigration document, government issued identification document, government records, identifying information or personal property~~] [~~or~~] [~~abusing or threatening to abuse the law or the legal system~~] [~~or~~] [~~extortion~~] [~~or~~] [~~causing or threatening to cause financial harm to any person~~] [~~or~~] [~~facilitating or controlling another person’s access to a controlled substance~~].

“Traffic” means to entice, recruit, harbor, provide, transport or otherwise obtain another person by deception, coercion or force.

SOURCE: A.R.S. § 13-1308 (statutory language as of ~~August 9, 2017~~ September 24, 2022).

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

“Unlawfully obtaining labor or services” is defined in A.R.S. § 13-1306 (Statutory Definition Instruction 13.06).

“Sex trafficking” is defined in A.R.S. § 13-1307 (Statutory Definition Instruction 13.07).

“Prostitution is defined in A.R.S. § 13-3211(5).

“Sexually Explicit Performance” is defined in A.R.S. § 13-1307(C)(3)

“Forced labor or services” does not include ordinary household chores and reasonable disciplinary measures between a parent or legal guardian and the parent’s or legal guardian’s child. A.R.S. §13-1308(C)(1)(b).

14.30.01 CHILD ENTICEMENT – New Instruction

A person commits “child enticement” by knowingly:

[Using an electronic communication device] [performing an act in person or through a third party] [using any written communication] to lure or entice a minor to distribute a visual depiction of a person’s genitals or the female breast.

[The State must prove beyond a reasonable doubt that the visual depiction taken as a whole has no serious literary, artistic, political, or scientific value for minors.]

SOURCE: A.R.S. § 13-1430 (effective date of September 14, 2024).

USE NOTE: Use bracketed language as appropriate to the facts.

The Court shall instruct on the culpable mental state:

“Knowingly” is defined in A.R.S. § 13-105 (statutory definition instruction 1.0510(b)).

“Electronic communication device” has the same meaning as in A.R.S. § 13-3561 and is defined as follows: An “electronic communication device” means any electronic device that is capable of transmitting visual depictions and includes a computer, computer system, computer network, cellular telephone or wireless telephone.

“Visual depiction” has the same meaning as in A.R.S. § 13-3551 (statutory definition instruction 35.51(12)).

14.30.02 CHILD ENTICEMENT – New Instruction

A person commits “child enticement” by knowingly:

Committing any act in furtherance of or to facilitate the sexual abuse of a minor, specifically [*insert offense(s) listed in Chapter 14, Chapter 35.1, or A.R.S. § 13-3212*].

[The State must prove beyond a reasonable doubt that the visual depiction taken as a whole has no serious literary, artistic, political, or scientific value for minors.]

SOURCE: A.R.S. § 13-1430 (effective date of September 14, 2024).

USE NOTE: Use bracketed language as appropriate to the facts.

The Court shall instruct on the culpable mental state:

“Knowingly” is defined in A.R.S. § 13-105 (statutory definition instruction 1.0510(b)).

“Sexual abuse” includes any offense in chapter 14 or 35.1 of this title or A.R.S. § 13-3212.

“Visual depiction” has the same meaning as in A.R.S. § 13-3551 (statutory definition instruction 35.51(12)).