



Criminal Jury Instructions Committee

Meeting Minutes December 13, 2024.

Attending:

Hon. Jennifer Green--Chair
Hon. Elizabeth Bingert (*Proxy for Gard*)
Hon. Lacey Stover Gard (*Departed at 3:00*)
Hon. Sarah Mayhew
Jamal Allen
Gregory Benson
Joseph Butner
Carlos Carrion (*Proxy for Steinfeld*)
Sasha Charls
David Euchner
Kristian Garibay
Kevin Heade
Alice Jones
Samantha Kluger
Karen Komrada (*Proxy for Baumann, Linn*)
Todd Lawson
Michael Minicozzi
Christine Ortega
Evan Tompkins
William Wallace
Ilona Kukan

Absent:

Ryan Alcorn
Hon. Jeffrey Altieri
James Baumann (*Proxy sent*)
Jarom Harris
Jennifer Linn (*Proxy sent*)
Joshua Spears
Mikel Steinfeld (*Proxy sent*)
Robb Holmes

1. Call to Order and Approval of September 13, 2024, Meeting Minutes

- a. Judge Green called the meeting to order at 1:30
- b. Euchner moved to approve the minutes as modified (corrections to two names). Bingert seconded.
 - i. Minutes approved. Abstentions from Judge Mayhew and Komrada.

2. Discussion on Preliminary 16 and Standard 52 – Judge Green.

- a. After the last meeting, Judge Green talked to Judge Myers but she did not solicit a memo from him as the committee discussed at the last meeting.
- b. Modifications to Preliminary 16 were approved at the last meeting; only the proposal to modify Standard 52 was tabled until this meeting.
- c. Heade suggested modifying Standard 52 to remove the language “and must be signed by you or the Foreperson.” Discussion centered around the fact that jurors might feel intimidated by the requirement to sign the note. Jones moved to adopt that proposed change, and Judge Mayhew seconded. Passes unanimously.
- d. Changes to both these instructions will be sent to the bar for public comment.

3. Standard 37, Possession defined – tabled from previous meeting – Heade.

- a. Heade talked with a couple people and there was concern about the mere presence language being duplicative with a mere presence instruction. He is willing to remove that sentence and proceed only with the first additional sentence.
- b. Jones reviewed *State v. Ottar* and recognized that the case gives part of the definition of what it means to control, and she agreed with the first sentence as a correct statement of the law from *Ottar*.
- c. Further discussion of *Ottar* and *State v. Cox* centered on attempts to identify the source of the language “within reach,” but the Committee could not find the legal authority for the statement in the cited cases. Although it seemed to be a correct statement of the law, no one could find the legal authority for the statement.
- d. After reviewing the cases, Commissioner Bingert did not support moving forward with either sentence.
- e. Heade moved to table consideration of this proposal, and Carrion seconded. Passed unanimously.

4. Proposed amendment to Statutory 12.04 – Aggravated Assault on a Minor – Jones.

- a. Jones said that a recent case showed how the current RAJI on assault of a minor doesn’t match the statutory language. The statute requires the minor to be under 15, but the RAJI allows for a finding that the minor is 15 or under. Jones proposed changing the RAJI to match the statutory language.
- b. Judge Mayhew moved, Carrion seconded. Passes unanimously.

5. Proposed amendment to Statutory 13.08 – Trafficking of Persons for Forced Labor or Services – Jones.

- a. Jones went through the statute and put forth a proposal that better tracks the statute while acknowledging that it is difficult to make a comprehensible statute out of a messy statute.
- b. Carrion moved to adopt the proposal, and Benson seconded. Passes unanimously.

6. Proposed new Statutory 14.30 – Child Enticement – Minicozzi.

- a. Minicozzi created a draft instruction based on a new statute, A.R.S. 13-1430.
- b. Euchner suggested that the statute seems to define two separate crimes. At Lawson’s suggestion, the draft was split into two separate instructions, 14.30.01 and 14.30.02
- c. There was discussion how to include language from section 13-1430(B); the consensus of the committee was it applied to both crimes.
- d. Lawson moved to create the instructions as redrafted by the committee, and Euchner seconded. Passed unanimously.

7. Proposed amendment to Statutory 38.21 – Failure to Register as a Sex Offender – Minicozzi.

- a. Minicozzi noted that the current RAJI requires a conviction for an offense, but the statute permits the registration requirement to be based on a guilty-except-insane verdict or a juvenile adjudication.

- b. The committee discussed challenges with expressing these possibilities in the instruction that jurors can understand.
- c. Euchner noted that the current instruction says “knew or should have known,” but failure to register requires actual knowledge.
- d. Minicozzi moved to table, and Benson seconded. Passed unanimously.

8. Proposed new Statutory 28.1381(A)(5) – Driving Vehicle for Hire with 0.04 BAC – Benson.

- a. Benson modeled the use notes on 28.1381(A)(4) and the new (A)(5) statute.
- b. Jones found a definition of livery vehicle in 28-101(42), and a use note will be added below the line. Other below-line modifications made.
- c. Various committee members noticed similar language in other DUI instructions that was copied into the proposed instruction below the line.
- d. The committee recognized that the DUI instructions need some cleanup. Carrion said they had not been significantly modified in 20 years.
- e. Benson moved to table, and Carrion seconded. Passed unanimously.
- f. Judge Mayhew, Benson, and Carrion will look at the DUI instructions and offer cleaned-up versions at a future meeting.

9. Any Other Business.

- a. Next week Ilona will send approved instructions to the bar for comment. The public / State Bar will have until February 14, 2025, to submit comments.
- b. Next meeting scheduled for February 28, 2025, at 1:30 p.m.

10. Call to the Public.

- a. None present.

11. Adjourn.

- a. Euchner moved to adjourn; Mayhew seconded.
- b. Adjourned at 3:32 p.m.