

## Proposed Plain Language Revisions to

### Colorado Criminal Jury Instruction Chapter 1:04 and Chapter 3

The work of the Plain Language Subcommittee is set forth below. For comparison, the **redrafted instruction** is immediately followed by the current instruction (black text). As you review these, please use these factors to assess them:

1. Does the new wording convey the point of the instructions and would it make sense to a lay person?
2. Does the instruction make sense with just one reading?
3. Does any of the language strike you as inaccurate, incomplete or ambiguous?
4. Are these drafts an improvement over the existing instructions?
5. Please also provide any other impressions or comments you might like to mention.

Remember to please submit your comments to [jury.instructions@judicial.state.co.us](mailto:jury.instructions@judicial.state.co.us) on or before August 15, 2011. Thank you.

#### 1:04 Jurors' Conduct During Trial—Admonitions redrafted instruction

*Now that you have been selected to be jurors, there are rules you must follow. These are the same rules jurors have always had to follow. During the trial, this courtroom is a place partially isolated from the outside world. Your decision must be made inside this place and you must follow its rules. You must decide this case based only on the evidence presented in the courtroom. You must avoid any other information about the case from any other source. These rules are designed to make sure there is a fair trial.*

*There are two basic rules:*

1. *You must not communicate with others or among yourselves about the trial as it is going on.*
2. *You must not do any independent investigation or research about the case.*

I will go over these rules in great detail because they are very important. I will also explain the reasons for these rules. If you learn anyone has violated these rules you must report that to me at once.

#### [COMMUNICATION]

You must not discuss the case among yourselves in any way during the course of the trial. You may not discuss the case among yourselves until after you have heard all the evidence and you begin to deliberate on a verdict. In fairness, you must keep an open mind throughout the trial, and you should reach your decision only during your deliberations at the end of the trial.

Do not permit anyone else to discuss the case with you, or near you. If anyone, including one of your fellow jurors, attempts to do so, report that fact to me immediately.

Do not talk with any witness, or with the defendant, or with any of the lawyers in the case. You cannot talk to them and they cannot talk to you, even casually.

Do not communicate about the case with anyone else in any way, including in person, by telephone, cell phone, Smart phone, iPhone, Blackberry, computer; the internet, OR any internet service. This means you must not email, text, instant message, tweet, blog, or post information

about this case, or about your experience as a juror on this case, on any website, list serve, chat room, blog, or website such as Facebook, My Space, LinkedIn, YouTube, or Twitter, *[elaborate with more current examples of such technology]*. You must not read, review, or accept any communications in any form from anyone regarding this case or cases like this.

You are permitted, however, to explain to family, friends, and employers that you are on a jury and to inform them of how long the trial will last. You cannot say anything else though, about any aspect of your experience until you are released from jury service.

#### [RESEARCH]

While each of you would probably want as much information as possible before deciding the case, you cannot be investigators outside the courtroom. Attempting to get further information outside the courtroom would be unfair to the parties and would be a direct and serious violation of your oath.

Do not attempt to gather any information on your own. Do not read or research about this case or this kind of case from any other source, including the internet. Many of us routinely use the internet to quickly research topics of interest. But you may not do that in this case. You may not Google anything, any place, or anybody involved in this case. This includes the defendant, the attorneys, the witnesses, your fellow jurors, and the court personnel. This applies whether you are here, at home, or anywhere else. Do not read about this case in the newspapers or on the internet, or listen to any radio or television broadcasts about the trial. The law even prohibits you from consulting a dictionary.

Do not attempt to visit any places mentioned in this case. Finally, do not in any other way try to learn about this case or this kind of case outside the courtroom.

Why aren't you allowed to do these things? Evidence presented to a jury in court must meet at least three legal standards:

First, it must be allowable under the Rules of Evidence. The Rules of Evidence are designed to eliminate information that is not reasonably reliable.

Second, in a courtroom, witnesses are placed under oath to tell the truth, under penalty of perjury. A witness who lies can be prosecuted and sentenced to jail.

Third, all witnesses' testimony is subject to cross examination, which means questioning by lawyers from the other side of the case. Cross examination can help you determine whether evidence is reliable. By contrast, information you might obtain on your own would not have been subject to the Rules of Evidence, would not be under oath, and would not have been cross-examined. Therefore, it may be unreliable. Furthermore, if you secretly obtain information on your own, the prosecution and defense would not know you had done this, and would not have a fair opportunity to show that such information may be false, inaccurate, or incomplete. Trials must not be decided based upon secret information.

Breaking any of these rules would violate your oath as a juror and would subject you to punishment for contempt of court. If you violate any of these rules, you and your fellow jurors might have to come back to court after this trial to testify about your conduct. Furthermore, violating your oath could require a new trial before a new jury. Your misconduct will have wasted all the time you, your fellow jurors, the Court, the attorneys, and parties have spent in this trial.

After the trial is over and you have been discharged as jurors, you will be free to discuss any aspect of this case with anyone and you may do any research that you like. But no such

**communication with others or research about this case may occur until then.**

**We are all depending upon you to uphold the oath that you have taken to follow the rules as jurors and we are confident you will do so.**

**1:04 Jurors' Conduct During Trial—Admonitions *current instruction***

*[You will not be required to remain together while the court is in recess.]*

*[I have concluded that the jury must remain together during the recesses of this court. Though I realize that this may be a hardship for you, the bailiff will try to assist you in any way he can. Please do not attempt to communicate with any person by letter, telephone, or otherwise without first advising the bailiff.]*

It is important that you obey the following instructions with reference to the recesses of the court:

First, do not discuss the case either among yourselves or with anyone else during the course of the trial. In fairness to the parties to this lawsuit, you should keep an open mind throughout the trial, and you should reach your decision only during your final deliberations.

Second, do not permit any third person to discuss the case in your presence. If anyone attempts to do so, report that fact to the court immediately.

Third, during the course of the trial, do not talk with any witness, or with the defendant, or with any of the lawyers in the case.

Fourth, do not attempt to gather any information on your own. Do not engage in any outside reading on this case. Do not attempt to visit any places mentioned in the case. Finally, do not in any other way try to learn about the case outside the courtroom.

Fifth, do not read about the case in the newspapers, or listen to radio or television broadcasts about the trial. You must base your verdict solely on the evidence presented at the trial.

**3:01 Duty or Function of Judge and Jury *redrafted instruction***

**Members of the jury, the evidence in this case has been completed. In a moment, I will read you jury instructions that contain the rules of law you must apply to reach your verdict. You will have copies of what I read to take with you to the jury room. But first, I want to mention a few things you need to keep in mind when you are discussing this case in the jury room.**

**Until you have returned a verdict, you must not do any research about this case or this kind of case using any source, including dictionaries, reference materials, the internet or any other electronic means. You must not communicate in any way with anyone else about this case or this kind of case until you have returned a verdict in court. This includes your family and friends. If you have a cell phone or other electronic device, you must keep it turned off during jury deliberations.**

*(NOTE: The judge should also consider a more detailed admonishment like that in 1:04. Also, the judge should consider having the jurors surrender their electronic devices during deliberations. )*

**It is my job to decide what rules of law apply to the case. While the attorneys may comment on some of these rules, you must follow the instructions I give you. Even if you disagree or don't understand the reasons for some of the rules of law, you must follow them. No single instruction describes all the law which must be applied; they must be considered together as a whole.**

**During the trial, you received all of the evidence that you may properly consider in deciding the case. Your decision must be made by applying the rules of law that I give you to the evidence presented at trial. Remember, you must not be influenced by sympathy or prejudice in reaching your decision.**

**If you decide that the prosecution has proved beyond a reasonable doubt that the defendant is guilty, it will be my job to decide what the punishment will be. In making your decision, you must not consider punishment at all. At times during the trial, attorneys made objections. Do not draw any conclusions from the objections or from my rulings on the objections. These only related to legal questions I had to decide and should not influence your thinking. If I told you not to consider a particular statement that was made during the trial, you must not consider it in your deliberations.**

*[I have asked questions of witnesses during the trial. That did not mean I had any opinion about the facts in the case.]*

**Finally, you should consider all the evidence in light of your experience in life.**

### **3:01 Duty or Function of Judge and Jury *current instructions***

Members of the jury, the evidence in this case has been completed. In a moment I will read you the law which you must apply in order to reach your verdict. But first, I want to mention a few things that you need to keep in mind when you are discussing this case in the jury room.

It is my job to decide what rules of law apply to the case. While the lawyers may have commented during the trial on some of these rules, you are to be guided by what I say about them. You must follow all of the rules as I explain them to you. Even if you disagree or don't understand the reasons for some of the rules, you must follow them. No single rule describes all the law which must be applied. Therefore, the rules must be considered together as a whole.

During the course of the trial you received all of the evidence that you may properly consider to decide the case. Your decision must be made by applying the rules of law which I give you to the evidence presented at trial. Neither sympathy nor prejudice should influence your decision.

[If you decide that the prosecution has proved beyond a reasonable doubt that the defendant has committed the crime as charged, it will be my job to decide what the punishment will be. You should not try to guess what the punishment might be. It should not enter into your consideration at any time.]

At times during the trial lawyers made objections to questions asked by other lawyers, and to answers by witnesses. Do not draw any conclusions from such objections or from my rulings on the objections. These only related to the legal questions that I had to determine and should not influence your thinking. When I told you not to consider a particular statement, you were told to put that statement out of your mind, and you may not consider any statement in your deliberations which you were instructed to disregard.

[Sometimes in the trial I have asked questions of witnesses. When I asked questions, that did not indicate I had any opinion about the facts in the case.]

Finally, you should consider all the evidence in the light of your observations and experience in life.

**3:02 The Charge Against the Defendant redrafted instruction**

The defendant is charged with committing the crime(s) of \_\_\_\_\_ [which include(s) the crime(s) of \_\_\_\_\_] in \_\_\_\_\_ County, Colorado, on or about (insert date). The defendant has pleaded not guilty.

**3:02 The Charge Against the Defendant *current instruction***

The defendant is charged with committing the crime(s) of \_\_\_\_\_ [which include(s) the crime(s) of \_\_\_\_\_] in \_\_\_\_\_ County, Colorado, on or about (insert date). The defendant has pleaded not guilty.

**3:03 Charge—Not Evidence redrafted instruction**

**The charge against the defendant is not evidence.**

**3:03 Charge—Not Evidence *current instruction***

The charge against the defendant is not evidence.

**3:04 – Presumption of Innocence-Burden of Proof Generally-Reasonable Doubt redrafted instruction**

**I will now explain the presumption of innocence and the prosecution’s burden of proof. The law does not require the defendant to prove innocence. Every defendant is presumed by law to be innocent unless proven guilty. This presumption requires a verdict of not guilty unless, after considering all of the evidence, you are firmly convinced that the prosecution has proved its case beyond a reasonable doubt.**

**The prosecution has the burden of proving every element of the crime charged beyond a reasonable doubt. It is not sufficient to show that an element is more likely true than not. The prosecution’s proof must be more powerful than that. It must be beyond a reasonable doubt.**

**A reasonable doubt is a doubt based on thoughtful consideration and common sense; it is not a vague, speculative or imaginary doubt. There are very few things in this world that we know with absolute certainty, and the law does not require proof that overcomes every possible doubt. Proof beyond a reasonable doubt is proof that leaves you firmly convinced.**

**In deciding whether the prosecution has proven all of the elements of the crime charged beyond a reasonable doubt, you must give fair and rational consideration to all of the evidence or lack of evidence. If, based on this consideration, you are firmly convinced that the prosecution has proven each and every element of the crime charged, you will find the defendant guilty. If, based on this consideration, you think that the prosecution has failed to prove one or more of the elements beyond a reasonable doubt you will find the defendant not guilty.**

**3:04 Presumption of Innocence—Burden of Proof Generally—Reasonable Doubt *current instruction***

Every person charged with a crime is presumed innocent. This presumption of innocence remains with the defendant throughout the trial and should be given effect by you unless, after considering all of the evidence, you are then convinced that the defendant is guilty beyond a reasonable doubt.

The burden of proof is upon the prosecution to prove to the satisfaction of the jury beyond a reasonable doubt the existence of all of the elements necessary to constitute the crime charged.

Reasonable doubt means a doubt based upon reason and common sense which arises from a fair and rational consideration of all of the evidence, or the lack of evidence, in the case. It is a doubt which is not a vague, speculative or imaginary doubt, but such a doubt as would cause reasonable people to hesitate to act in matters of importance to themselves.

If you find from the evidence that each and every element has been proven beyond a reasonable doubt, you will find the defendant guilty. If you find from the evidence that the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt you will find the defendant not guilty.

### **3:05 Number of Witnesses redrafted instruction**

**The number of witnesses testifying for or against a certain fact does not, by itself, prove or disprove that fact.**

### **3:05 Number of Witnesses *current instruction***

The mere number of witnesses appearing for or against a certain proposition does not in and of itself prove or disprove said proposition.

### **3:06 Credibility of Witnesses redrafted instruction**

**You may have to decide what testimony to believe. You should carefully consider all of the testimony given and the circumstances under which each witness has testified.**

**For each witness consider their knowledge, motive, state of mind, demeanor, and manner while testifying. Consider their ability to observe, the strength of their memory, and how they obtained their knowledge. Consider any relationship the witness may have to either side of the case, and how each witness might be affected by the verdict. Consider how the testimony of the witness is supported or contradicted by other evidence in the case. You should consider all facts and circumstances shown by the evidence when you evaluate the credibility of each witness' testimony.**

**You may believe all of the testimony of a witness, part of it, or none of it.**

### **3:06 Credibility of Witnesses *current instruction***

You may have to decide what testimony to believe. You should carefully consider all of the testimony given and the circumstances under which each witness has testified.

Consider each witness' knowledge, motive, state of mind, demeanor, and manner while on the stand. Consider the witness' means of knowledge, ability to observe, and strength of memory. Consider also any relationship each witness may have to either side of the case; the manner in which each witness might be affected by the verdict; and the extent to which, if at all, each witness is either supported or contradicted by other evidence in the case. You should consider all facts and circumstances shown by the evidence which affects the credibility of the witness' testimony.

You may believe all of the testimony of a witness, or part of it, or none of it.

### **3:07 Testimony of Defendant—Not Compelled redrafted instruction**

**Every defendant has an absolute constitutional right not to testify. I remind you that the prosecution must prove the defendant's guilt beyond a reasonable doubt. The defendant does not have to prove anything. Do not consider, for any reason at all, that the defendant did not testify. Do not discuss it during your deliberations or let it influence your decision in any way.**

**3:07 Testimony of Defendant—Not Compelled *current instruction***

The defendant is never compelled to testify, and the fact that he does not cannot be used as an inference of guilt and should not prejudice him in any way.