

TITLE 25

25.500(1) – Definition of “Support”

“Support” means the provision of maintenance or subsistence and includes medical insurance coverage and uncovered medical costs for the child, arrearages, interest on arrearages, past support, interest on past support and reimbursement for expended public assistance. [If the defendant’s obligations were ordered in a Title IV-D case under the Social Security Act, the term also includes spousal maintenance that was included in the same order that directed child support.]

SOURCE: A.R.S. § 25-500(9) (statutory language as of July 18, 2000).

Use the language in brackets as appropriate to the facts.

The additional definition of support in the statute pertaining to spousal maintenance in social security cases should be used cautiously to insure that the spousal maintenance order involves support for the child. Otherwise, the bracketed language would have no relevance to the criminal offense of failure of parent to provide support for a child.

25.500(2) – Definition of “Arrearage”

“Arrearage” means the total unpaid support owed, including child support, past support, spousal maintenance and interest.

SOURCE: A.R.S. § 25-500(1) (statutory language as of July 18, 2000).

25.511 – Failure of Parent to Provide for a Child

The crime of failure of a parent to provide for a child requires proof that the defendant:

1. was a parent of a minor child; and
2. knowingly failed to furnish reasonable support for such minor child.

In determining whether the defendant failed to furnish reasonable support, you shall consider all assets, earnings and entitlements of the defendant, and whether the defendant made all reasonable efforts to obtain the necessary funds.

Inability to furnish support is not a defense to this offense if the defendant voluntarily remained idle, voluntarily decreased [his] [her] income or voluntarily incurred other financial obligations.

[If there has been evidence of the defendant’s previous employment or the defendant’s lack of a physical or mental disability precluding employment, you may infer that the defendant is capable of full-time employment at least at the federal adult minimum wage. You are not required to make this inference. You must determine whether the facts and circumstances shown by the evidence in this case warrant any inference which the law

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permits you to make. You are reminded that the State has the burden of proving each and every element of the offense of shoplifting beyond a reasonable doubt.]

SOURCE: A.R.S. § 25-511 (statutory language as of August 6, 1999).

USE NOTE: Use the language in brackets as appropriate to the facts. Do not use the bracketed language if the defendant was a non-custodial parent who was under the age of 18 years and still attending high school at the time of the offense.

The court shall instruct on the culpable mental state.

“Knowingly” is defined in A.R.S. § 13-105 (Statutory Definition Instruction 1.056(b)).

“Support” is defined in A.R.S. § 25-500 (Title 25 Statutory Definition Instruction 25-500(1)).

COMMENT: The statute provides for an affirmative defense that the defendant complied with a valid court order that was in effect at the time of the offense that set forth an amount of support for the minor child or provided that the defendant was unable to furnish reasonable support. A.R.S. § 25-511(B).

The statute also provides an exception that should have been ruled on by the Court prior to trial or during a Rule 20 proceeding. This exception allows the Court to determine whether the defendant, the defendant’s parents or a legal guardian is not obligated to contribute to the child’s support if maternity or paternity was the result of the parent’s sexual contact with a person who has been found guilty of sexual conduct with a minor under A.R.S. § 13-1405 or sexual assault under A.R.S. § 13-1406. A.R.S. §§ 25-511(A) and 25-500(F).

TITLE 35

3.01 – Misuse of Public Monies

The crime of misuse of public monies requires proof that the defendant was a [public officer] [justice of the peace] [constable] [person] charged with the receipt, safekeeping, transfer or disbursement of public money, and the defendant:

[without authority of law, appropriated public money, or any portion thereof, to the defendant's own use, or to the use of another.]

[knowingly loaned public money, or any portion thereof.]

[knowingly failed to keep public money in the defendant's possession until disbursed or paid out by authority of law.]

[without authority of law knowingly deposited public money, or any portion thereof, in a bank, or with a banker or other person, except on special deposit for safekeeping.]

[knowingly kept a false account, or made a false entry or erasure in an account of, or relating to public money.]

[(altered) (falsified) (concealed) (destroyed) (obliterated) an account of, or relating to public money with an intent to defraud or deceive.]

[knowingly refused or omitted to pay over, on demand, public monies in the defendant's hands, upon presentation of a draft, order or warrant drawn upon such monies by competent authority.]

[knowingly omitted or refused to transfer public money when a transfer was required by law.]

[knowingly transferred public money when not authorized or directed by law.]

[knowingly omitted or refused to pay over to an officer or person authorized by law to receive public money, any public money received by the defendant when a duty was imposed by law to pay over the public money.]

“Public money” includes bonds and evidence of indebtedness, and money belonging to, received or held by, state, county, district, city or town officers in their official capacity.

SOURCE: A.R.S. §§ 35-301 (statutory language as of April 23, 1980); 35-302 (statutory language as of April 23, 1980).

USE NOTE: Use the language in brackets 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 1.056(b)).

“Intentionally” or “with intent to” is defined in A.R.S. § 13-105 (Statutory Criminal 1.056(a)(1)).

COMMENT: The actual statutory caption for this offense is “Duties and liabilities of custodian of public monies.” However, this statute is commonly referred to as “Misuse of

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Public Monies.” Because that is a more accurate description of the offense, the Committee used the latter title for the instruction.

There is no statute of limitations for a crime involving misuse of public monies. A.R.S. § 13-107.

There is no definition of “public officer” in Title 35. There is a definition of “public officer” in A.R.S. § 38-101, which states that the definition applies to Title 38. For this reason, the Committee believed it was not appropriate to incorporate this definition in this instruction.

TITLE 38

38-1.01 – Definition of “Officer” or “Public Officer”

“Officer” or “public officer” means the incumbent of any office, member of any board or commission, or the deputy or assistant exercising the powers and duties of the officer, other than clerks or mere employees of the officer.

SOURCE: A.R.S. § 38-101 (statutory language as of 1939).

38-4.21 – Stealing, Destroying, Altering or Secreting Public Record

The crime of stealing, destroying, altering or secreting public record requires proof that the defendant:

1. [was not a public officer; *and*]
2. [was a public officer having custody of any (record/map/book/paper or proceeding of any court), which was (filed or deposited in any public office/placed in the defendant’s hands for any purpose); *and*]
3. knowingly and without lawful authority [commits theft of] [destroys] [mutilates] [defaces] [alters] [falsifies] [removes] [secretes] [permits another person to (list one or more of foregoing acts)] all or any part of any (record/map/book/paper or proceeding of any court), which was (filed or deposited in any public office/placed in the defendant’s hands for any purpose).

SOURCE: A.R.S. § 38-421 (statutory language as of October 1, 1978).

USE NOTE: Use the language in brackets as appropriate to the facts. Use only one paragraph 1 depending on whether the defendant was a public officer.

The court shall instruct on the culpable mental state.

“Knowingly” is defined in A.R.S. § 13-105 (Statutory Criminal Instruction 1.056(b)).

“Unlawful” is defined in A.R.S. § 13-105 (Statutory Criminal Instruction 1.0535).

“Theft” is defined in A.R.S. § 13-1802 (Statutory Criminal Instruction 18.02-1). “Officer” or “Public officer” is defined in A.R.S. § 38-101 (Statutory Title 38 Non-Criminal Instruction 38-1.01).

The instruction must include a finding of whether the defendant is or is not a public officer, because it affects the class of felony. A.R.S. § 38-421.

COMMENT: There is no statute of limitations for a crime involving falsification of public records. A.R.S. § 13-107; *State v. Fogel*, 16 Ariz. App. 246, 248-49, 492 P.2d 742, 744-45 (1972).

If the defendant is a public officer, the offense is a class 4 felony, while a nonpublic officer’s violation of this statute is a class 6 felony. A.R.S. § 38-421.

TITLE 39

39-1.61 – Presentment of False Instrument for Filing

The crime of presentment of false instrument for filing requires proof of the following:

1. the defendant [acknowledged] [certified] [notarized] [procured] [offered] to [file] [register] [record] an instrument in a public office; *and*
2. the defendant knew that the instrument was [false] [forged]; *and*
3. the instrument, if genuine, could be [filed] [registered] [recorded] under the law.

SOURCE: A.R.S. § 39-161 (statutory language as of April 23, 1980).

USE NOTE: Use the language in brackets 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 1.056(b)).

“Instrument” includes “written instrument,” which is defined in A.R.S. § 13-2001. *See* A.R.S. § 39-161.

COMMENT: Unlike the crime of forgery, intent to defraud is not an element of this crime. *State v. Edgar*, 124 Ariz. 472, 474, 605 P.2d 450, 452 (1979).

While there is no statute of limitations for a crime involving falsification of public records, the usual statute of limitations for a felony applies to the offense of presentment of false instrument for filing. *State v. Fogel*, 16 Ariz. App. 246, 248-49, 492 P.2d 742, 744-45 (1972).

TITLE 41

41.1661 – Definition of “Correctional Officer”

“Correctional officer” is defined as a person, other than an elected official, who is employed by the State of Arizona or a county, city or town in Arizona and who is responsible for the supervision, protection, care, custody or control of inmates in a state, county or municipal correctional institution, including counselors, but excluding secretarial, clerical and professionally trained personnel.

SOURCE: A.R.S. § 41-1661 (statutory language as of June 26, 1997).

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14.53.B.1 – Use of Counterfeit Marks with One Prior Conviction

The crime of “use of counterfeit marks with one prior conviction” requires proof that the defendant:

1. knowingly, and with the intent to [sell] [distribute], [used/displayed/advertised/distributed/offered for sale/sold/possessed] any [item that bore a counterfeit mark] [service that was identified by a counterfeit mark]; *and*
2. was previously convicted of “use of counterfeit marks.”

[A person who knowingly has possession, custody or control of at least twenty-six items that bear a counterfeit mark is presumed to possess the items with the intent to sell or distribute the items. You are free to accept or reject this inference as triers of fact. You must determine whether the facts and circumstances shown by the evidence in this case warrant any inference that the law permits you to make. Even with the inference, the State has the burden of proving each and every element of the offense beyond a reasonable doubt before you can find the defendant guilty.]

A “counterfeit mark” means any unauthorized reproduction or copy of intellectual property or intellectual property that is affixed to any item that is knowingly sold, offered for sale, manufactured or distributed or to any identifying services offered or rendered without the authority of the intellectual property owner. “Intellectual property” means any trademark, service mark, trade name, label, term, device, design or word that is adopted or used by a person to identify that person’s goods or services.

[“Service mark” means any word, name, symbol or device or any combination of these items that is adopted and used by a person to identify services provided or sold by that person and to distinguish the services from services provided or sold by others.]

[“Trademark” means any word, name, symbol or device or any combination of these items that is adopted and used by a person to identify goods made or sold by that person and to distinguish the goods from goods made or sold by others.]

[“Item” includes any component that is designed, marketed or otherwise intended to be used on or in connection with any goods or services or any component of a finished product.]

SOURCE: A.R.S. §§ 44-1453(A), (B)(1), (E) and (M) (statutory language as of September 26, 2008); 44-1441 (statutory language as of August 21, 1998).

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

The court shall instruct on the culpable mental state.

“Knowingly” is defined in A.R.S. § 13-105 (Statutory Definition Instruction 1.056(b)).

“Intentionally” or “with the intent to” is defined in A.R.S. § 13-105 (Statutory Definition Instruction 1.056(a)(1)).

COMMENT: A.R.S. § 44-1453(E) provides for a mandatory presumption. There are no cases pertaining to the presumption, but mandatory presumptions are deemed to be

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unconstitutional, because they shift the burden of proof to the defendant. *State v. Mohr*, 150 Ariz. 564, 568-69, 724 P.2d 1237-38 (App. 1986), *relying upon Francis v. Franklin*, 471 U.S. 307 (1985). Therefore, it seems more appropriate to interpret the presumption in the statute as a permissive one, which would pass constitutional muster. *See, e.g., State v. Mohr*, 150 Ariz. 564, 568-69, 724 P.2d 1237-38 (App. 1986) (holding that a statutory inference must be permissive to withstand constitutional due process and to avoid burden-shifting to the defendant).

14.53.B.2 – Use of Counterfeit Marks

The crime of “use of counterfeit marks” requires proof that:

1. The defendant knowingly, and with the intent to [sell] [distribute], [used/displayed/advertised/ distributed/offered for sale/sold/possessed] any [item that bore a counterfeit mark] [service that was identified by a counterfeit mark]; *and*
2. [The offense involved more than one hundred but fewer than one thousand items that bore the counterfeit mark.]

[The total retail value of all of the [items that bore] [services that were identified by] a counterfeit mark was more than one thousand dollars but less than ten thousand dollars.]

[A person who knowingly has possession, custody or control of at least twenty-six items that bear a counterfeit mark is presumed to possess the items with the intent to sell or distribute the items. You are free to accept or reject this inference as triers of fact. You must determine whether the facts and circumstances shown by the evidence in this case warrant any inference that the law permits you to make. Even with the inference, the State has the burden of proving each and every element of the offense beyond a reasonable doubt before you can find the defendant guilty.]

A “counterfeit mark” means any unauthorized reproduction or copy of intellectual property or intellectual property that is affixed to any item that is knowingly sold, offered for sale, manufactured or distributed or to any identifying services offered or rendered without the authority of the intellectual property owner. “Intellectual property” means any trademark, service mark, trade name, label, term, device, design or word that is adopted or used by a person to identify that person’s goods or services.

[“Service mark” means any word, name, symbol or device or any combination of these items that is adopted and used by a person to identify services provided or sold by that person and to distinguish the services from services provided or sold by others.]

[“Trademark” means any word, name, symbol or device or any combination of these items that is adopted and used by a person to identify goods made or sold by that person and to distinguish the goods from goods made or sold by others.]

[“Item” includes any component that is designed, marketed or otherwise intended to be used on or in connection with any goods or services or any component of a finished product.]

[In determining the total quantity of items, you are to consider all items that the defendant manufactured, used, displayed, advertised, distributed, offered for sale, sold or possessed and that bore a counterfeit mark.]

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[For items that bear a counterfeit mark and that are components of a finished product, “retail value” means the counterfeiter’s regular selling price of the finished product on or in which the component would be utilized. For all other items that bear a counterfeit mark or services that are identified by a counterfeit mark, “retail value” means the counterfeiter’s regular selling price for those items or services. The “total retail value” is the retail value of all items or services that the defendant manufactured, used, displayed, advertised, distributed, offered for sale, sold or possessed and that bore a counterfeit mark or that were identified by a counterfeit mark.]

SOURCE: A.R.S. §§ 44-1453(A), (B)(2), (L) and (M) (statutory language as of September 26, 2008); 44-1441 (statutory language as of August 21, 1998).

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

The court shall instruct on the culpable mental state.

“Knowingly” is defined in A.R.S. § 13-105 (Statutory Definition Instruction 1.056(b)).

“Intentionally” or “with the intent to” is defined in A.R.S. § 13-105 (Statutory Definition Instruction 1.056(a)(1)).

COMMENT: A.R.S. § 44-1453(E) provides for a mandatory presumption. There are no cases pertaining to the presumption, but mandatory presumptions are deemed to be unconstitutional, because they shift the burden of proof to the defendant. *State v. Mohr*, 150 Ariz. 564, 568-69, 724 P.2d 1237-38 (App. 1986), *relying upon Francis v. Franklin*, 471 U.S. 307 (1985). Therefore, it seems more appropriate to interpret the presumption in the statute as a permissive one, which would pass constitutional muster. *See, e.g., State v. Mohr*, 150 Ariz. 564, 568-69, 724 P.2d 1237-38 (App. 1986) (holding that a statutory inference must be permissive to withstand constitutional due process and to avoid burden-shifting to the defendant).

14.53.D.1 – Use of Counterfeit Marks With Two Prior Convictions

The crime of “use of counterfeit marks with two prior convictions” requires proof that the defendant:

1. knowingly, and with the intent to [sell] [distribute], [used/displayed/advertised/distributed/offered for sale/sold/possessed] any [item that bore a counterfeit mark] [service that was identified by a counterfeit mark]; *and*
2. was previously convicted two or more times of “use of counterfeit marks.”

[A person who knowingly has possession, custody or control of at least twenty-six items that bear a counterfeit mark is presumed to possess the items with the intent to sell or distribute the items. You are free to accept or reject this inference as triers of fact. You must determine whether the facts and circumstances shown by the evidence in this case warrant any inference that the law permits you to make. Even with the inference, the State has the burden of proving each and every element of the offense beyond a reasonable doubt before you can find the defendant guilty.]

A “counterfeit mark” means any unauthorized reproduction or copy of intellectual property or intellectual property that is affixed to any item that is knowingly sold, offered for sale, manufactured or distributed or to any identifying services offered or rendered without

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the authority of the intellectual property owner. “Intellectual property” means any trademark, service mark, trade name, label, term, device, design or word that is adopted or used by a person to identify that person’s goods or services.

[“Service mark” means any word, name, symbol or device or any combination of these items that is adopted and used by a person to identify services provided or sold by that person and to distinguish the services from services provided or sold by others.]

[“Trademark” means any word, name, symbol or device or any combination of these items that is adopted and used by a person to identify goods made or sold by that person and to distinguish the goods from goods made or sold by others.]

[“Item” includes any component that is designed, marketed or otherwise intended to be used on or in connection with any goods or services or any component of a finished product.]

SOURCE: A.R.S. §§ 44-1453(A), (D)(1) and (M) (statutory language as of September 26, 2008); 44-1441 (statutory language as of August 21, 1998).

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

The court shall instruct on the culpable mental state.

“Knowingly” is defined in A.R.S. § 13-105 (Statutory Definition Instruction 1.056(b)).

“Intentionally” or “with the intent to” is defined in A.R.S. § 13-105 (Statutory Definition Instruction 1.056(a)(1)).

COMMENT: A.R.S. § 44-1453(E) provides for a mandatory presumption. There are no cases pertaining to the presumption, but mandatory presumptions are deemed to be unconstitutional, because they shift the burden of proof to the defendant. *State v. Mohr*, 150 Ariz. 564, 568-69, 724 P.2d 1237-38 (App. 1986), *relying upon Francis v. Franklin*, 471 U.S. 307 (1985). Therefore, it seems more appropriate to interpret the presumption in the statute as a permissive one, which would pass constitutional muster. *See, e.g., State v. Mohr*, 150 Ariz. 564, 568-69, 724 P.2d 1237-38 (App. 1986) (holding that a statutory inference must be permissive to withstand constitutional due process and to avoid burden-shifting to the defendant).

14.53.D.2 – Use of Counterfeit Marks

The crime of “use of counterfeit marks” requires proof that:

1. The defendant knowingly, and with the intent to [sell] [distribute], [used/displayed/advertised/distributed/offered for sale/sold/possessed] any [item that bore a counterfeit mark] [service that was identified by a counterfeit mark]; *and*

2. [The offense involved one thousand or more items that bore the counterfeit mark.]

[The total retail value of all of the [items that bore] [services that were identified by] a counterfeit mark was ten thousand dollars or more.]

[A person who knowingly has possession, custody or control of at least twenty-six items that bear a counterfeit mark is presumed to possess the items with the intent to sell or distribute the items. You are free to accept or reject this inference as triers of fact. You must determine whether the facts and circumstances shown by the

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evidence in this case warrant any inference that the law permits you to make. Even with the inference, the State has the burden of proving each and every element of the offense beyond a reasonable doubt before you can find the defendant guilty.]

A “counterfeit mark” means any unauthorized reproduction or copy of intellectual property or intellectual property that is affixed to any item that is knowingly sold, offered for sale, manufactured or distributed or to any identifying services offered or rendered without the authority of the intellectual property owner. “Intellectual property” means any trademark, service mark, trade name, label, term, device, design or word that is adopted or used by a person to identify that person’s goods or services.

[“Service mark” means any word, name, symbol or device or any combination of these items that is adopted and used by a person to identify services provided or sold by that person and to distinguish the services from services provided or sold by others.]

[“Trademark” means any word, name, symbol or device or any combination of these items that is adopted and used by a person to identify goods made or sold by that person and to distinguish the goods from goods made or sold by others.]

[“Item” includes any component that is designed, marketed or otherwise intended to be used on or in connection with any goods or services or any component of a finished product.]

[In determining the total quantity of items, you are to consider all items that the defendant manufactured, used, displayed, advertised, distributed, offered for sale, sold or possessed and that bore a counterfeit mark.]

[For items that bear a counterfeit mark and that are components of a finished product, “retail value” means the counterfeiter’s regular selling price of the finished product on or in which the component would be utilized. For all other items that bear a counterfeit mark or services that are identified by a counterfeit mark, “retail value” means the counterfeiter’s regular selling price for those items or services. The “total retail value” is the retail value of all items or services that the defendant manufactured, used, displayed, advertised, distributed, offered for sale, sold or possessed and that bore a counterfeit mark or that were identified by a counterfeit mark.]

SOURCE: A.R.S. §§ 44-1453(A), (D)(2), (L) and (M) (statutory language as of September 26, 2008); 44-1441 (statutory language as of August 21, 1998).

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

The court shall instruct on the culpable mental state.

“Knowingly” is defined in A.R.S. § 13-105 (Statutory Definition Instruction 1.056(b)).

“Intentionally” or “with the intent to” is defined in A.R.S. § 13-105 (Statutory Definition Instruction 1.056(a)(1)).

COMMENT: A.R.S. § 44-1453(E) provides for a mandatory presumption. There are no cases pertaining to the presumption, but mandatory presumptions are deemed to be unconstitutional, because they shift the burden of proof to the defendant. *State v. Mohr*, 150 Ariz. 564, 568-69, 724 P.2d 1237-38 (App. 1986), *relying upon Francis v. Franklin*, 471 U.S. 307 (1985). Therefore, it seems more appropriate to interpret the presumption in the statute as a permissive one, which would pass constitutional muster. *See, e.g., State v. Mohr*, 150 Ariz. 564,

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568-69, 724 P.2d 1237-38 (App. 1986) (holding that a statutory inference must be permissive to withstand constitutional due process and to avoid burden-shifting to the defendant).

14.53.C – Manufacturing or Producing Items of Services with Counterfeit Marks

The crime of “manufacturing or producing items or services with counterfeit marks” requires proof that the defendant, with the intent to sell or distribute, knowingly [manufactured] [produced] any [item that bore a counterfeit mark] [service that was identified by a counterfeit mark].

[A person who knowingly has possession, custody or control of at least twenty-six items that bear a counterfeit mark is presumed to possess the items with the intent to sell or distribute the items. You are free to accept or reject this inference as triers of fact. You must determine whether the facts and circumstances shown by the evidence in this case warrant any inference that the law permits you to make. Even with the inference, the State has the burden of proving each and every element of the offense beyond a reasonable doubt before you can find the defendant guilty.]

A “counterfeit mark” means any unauthorized reproduction or copy of intellectual property or intellectual property that is affixed to any item that is knowingly sold, offered for sale, manufactured or distributed or to any identifying services offered or rendered without the authority of the intellectual property owner. “Intellectual property” means any trademark, service mark, trade name, label, term, device, design or word that is adopted or used by a person to identify that person’s goods or services.

[“Service mark” means any word, name, symbol or device or any combination of these items that is adopted and used by a person to identify services provided or sold by that person and to distinguish the services from services provided or sold by others.]

[“Trademark” means any word, name, symbol or device or any combination of these items that is adopted and used by a person to identify goods made or sold by that person and to distinguish the goods from goods made or sold by others.]

[“Item” includes any component that is designed, marketed or otherwise intended to be used on or in connection with any goods or services or any component of a finished product.]

SOURCE: A.R.S. §§ 44-1453(C) and (M) (statutory language as of September 26, 2008); 44-1441 (statutory language as of August 21, 1998).

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

The court shall instruct on the culpable mental state.

“Knowingly” is defined in A.R.S. § 13-105 (Statutory Definition Instruction 1.056(b)).

“Intentionally” or “with the intent to” is defined in A.R.S. § 13-105 (Statutory Definition Instruction 1.056(a)(1)).

Comment: A.R.S. § 44-1453(E) provides for a mandatory presumption. There are no cases pertaining to the presumption, but mandatory presumptions are deemed to be unconstitutional, because they shift the burden of proof to the defendant. *State v. Mohr*, 150 Ariz. 564, 568-69, 724 P.2d 1237-38 (App. 1986), *relying upon Francis v. Franklin*, 471 U.S. 307

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(1985). Therefore, it seems more appropriate to interpret the presumption in the statute as a permissive one, which would pass constitutional muster. *See, e.g., State v. Mohr*, 150 Ariz. 564, 568-69, 724 P.2d 1237-38 (App. 1986) (holding that a statutory inference must be permissive to withstand constitutional due process and to avoid burden-shifting to the defendant).

14.55 – Use of Unauthorized Copy of Computer Software

The crime of “use of unauthorized copy of computer software” requires proof that:

1. The defendant knowingly used, other than for personal, noncommercial use, an unauthorized copy of computer software; *and*
2. The computer software when used [depicted] [incorporated] [displayed] [caused to be depicted, incorporated or displayed] a trademark or service mark that had been registered in Arizona for computer software.

[“Service mark” means any word, name, symbol or device or any combination of these items that is adopted and used by a person to identify services provided or sold by that person and to distinguish the services from services provided or sold by others.]

[“Trademark” means any word, name, symbol or device or any combination of these items that is adopted and used by a person to identify goods made or sold by that person and to distinguish the goods from goods made or sold by others.]

SOURCE: A.R.S. §§ 44-1455 and 44-1441 (statutory language as of August 21, 1998).

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

The court shall instruct on the culpable mental state.

“Knowingly” is defined in A.R.S. § 13-105 (Statutory Definition Instruction 1.056(b)).

TITLE 46

46-456.01 – Definition of “Deception”

“Deception” means that a person deceives [an incapacitated] [a vulnerable] adult by knowingly doing one or more of the following:

1. creating or confirming a false impression in [an incapacitated] [a vulnerable] adult’s mind; *or*
2. failing to correct a false impression that the person is responsible for creating or confirming in [an incapacitated] [a vulnerable] adult’s mind; *or*
3. making a promise to [an incapacitated] [a vulnerable] adult that the person does not intend to perform or that the person knows will not or cannot be performed. A person’s failure to perform a promise is not by itself sufficient proof that the person did not intend to perform the promise; *or*
4. misrepresenting or concealing a material fact that relates to the terms of a contract or an agreement that the person enters into with [an incapacitated] [a vulnerable] adult or that relates to the existing or preexisting condition of any of the property involved in a contract or an agreement; *or*
5. using any material misrepresentation, false pretense or false promise to induce, encourage or solicit [an incapacitated] [a vulnerable] adult to enter into a contract or an agreement.

46-456.02 – Definition of “Intimidation”

“Intimidation” includes threatening to deprive [an incapacitated] [a vulnerable] adult of food, nutrition, shelter or necessary medication or medical treatment.

46-456.03 – Definition of “Position of Trust and Confidence”

“Position of trust and confidence” means that a person is any of the following:

1. one who has assumed a duty to provide care to [an incapacitated] [a vulnerable] adult; *or*
2. a joint tenant or a tenant in common with [an incapacitated] [a vulnerable] adult; *or*
3. one who is in a fiduciary relationship with [an incapacitated] [a vulnerable] adult including a de facto guardian or de facto conservator.

SOURCE: A.R.S. § 46-456(G) (statutory language as of August 25, 2004).

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

“Knowingly” is defined in A.R.S. § 13-105 (Statutory Definition Instruction 1.056(b)).

“Material misrepresentation” is defined in A.R.S. § 13-1801 (Statutory Definition Instruction 18.01(8)).

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“Vulnerable adult” is defined in A.R.S. § 13-3623 (Statutory Definition Instruction 36.23.01).