



## Criminal Jury Instructions Committee

**Meeting Minutes  
September 19, 2025.**

### **Present**

Hon. Jennifer Green  
Hon. Jeffrey Altieri  
Hon. Gary Donahoe  
Hon. Lacy Gard (proxy for Hon. Elizabeth Bingert)  
Jamal Allen  
James Baumann  
Greg Benson  
Bryce Brown  
Carlos Carrion  
Ian Cobb  
Kevin Heade (proxy for David Euchner)  
Alice Jones  
Samantha Kluger  
Todd Lawson  
Jennifer Linn (proxy for Shawn Steinberg, Michael Minicozzi & Karen Komrada)  
Ian McCloskey  
Kevin Morrow  
Christine Ortega  
Jeff Roseberry  
Mikel Steinfeld  
Tai Summers  
Evan Tompkins  
Ilona Kukan

### **Proxy Sent**

Hon. Elizabeth Bingert  
David Euchner  
Karen Komrada  
Michael Minicozzi  
Shawn Steinberg

### **Not Present**

Ryan Alcorn  
Joseph Butner  
Sasha Charls  
Kristian Garibay  
Hon. Danielle Harris  
Hon. Jarom Harris  
Hon. Sarah Mayhew  
Joshua Spears

### **Call to order**

Judge Green called the meeting to order at 1:30 pm.

### **1. Approval of February 28, 2025 Meeting Minutes – Judge Green**

- **Kluger moved to approve the minutes.**
- **Alice Jones seconded.**
- **Minutes unanimously approved.**

## **2. New Member Introductions (Bryce Brown, Ian Cobb, Ret. Judge Gary Donahoe, Ian McCloskey, Kevin Morrow, Jeffrey Roseberry & Tai Summers) – Judge Green**

- Judge Green introduced the new committee members.

### **Announcement of Vice Chair - Judge Green**

- Judge Green noted that the State Bar has appointed Comm. Bingert to serve as Vice Chair.

## **3. Add new 1.0544 Definition of Sexual Motivation – Jeff Roseberry**

- Roseberry provided background for the proposal.
- **Lawson moved to adopt.**
- **Linn seconded.**
- **Unanimously approved.**

## **4. Amend 2.03 and 2.03.01 Causation – Alice Jones**

- Jones provided background for the proposal.
- Linn believed the committee needs to revamp the instruction because the current RAJI is not what is in the statute. It is much more abbreviated. But Linn especially did not like the addition of proximate cause. Believed we should keep intervening act as separate and provide a use note pointing people to other instructions.
- Jones acknowledged the point, but noted that the sentences are what is in the actual RAJI.
- Heade asked if the position is that proximate cause is not required for a conviction.
- Linn said it is a very specific statute and the RAJI does not look like the statute.
- Heade provided a case that noted proximate cause is required.
  - *State v. Aragon in & for Cnty. of Pima, 252 Ariz. 525 (2022).*
- Jones expressed a willingness to take a deeper dive.
- Heade said he is hesitant to remove the proximate cause language because he believed the Arizona Supreme Court has said proximate cause is required.
- Judge Donahoe provided some background regarding the Third edition of the RAJI. There were 21 members on the committee--evenly split between judges, prosecutors, and defense attorneys. If the language was included, the language likely came from somewhere.
- Linn said she is happy to work with anyone to a dive deeper into the topic.
- Jones had no objection.
- Jones, Linn, and Heade will work on revisions.
- **Tabled until the next meeting.**

## **5. Proposed new 3.01A – Criminal Liability Based on Conduct of Another – Alice Jones**

- Jones provided background for the proposal.
- Judge Donahoe asked if there was a reason we used “person” rather than “the defendant.”

- Judge Green noted that in 3.06, the instruction uses “person,” so we should likely be consistent.
- Cobb asked a clarifying question about the case; which Jones answered.
- Steinfeld, Lawson, Jones, and Linn all discussed the prospects of changing “person” to “defendant.”
- Jones and Steinfeld will work on revisions.
- **Tabled until the next meeting.**

## 6. RAJI 7.08-C Release Status – Tai Summers

- Summers provided background for the proposal.
- Judge Donahoe asked if anyone has ever failed to meet the burden identified by the instruction.
- Summers explained that she ran into the issue in one of her cases. She provided the background of her case and answered some follow-up questions.
- Judge Donahoe opined that the case sounds like an outlier. He was hesitant to give a defendant an appeal on the grounds that we remove the mens rea language.
- Baumann indicated that he too has had a similar situation. This issue can creep up in certain cases. Believed this change seems appropriate to conform with the statutory language.
- Heade saw where the proposal is coming from. He believed that this could be explained on the ground that strict liability offenses are generally disfavored. He could not find a case addressing the issue, one way or the other. He would feel more comfortable if there was a case that said the standard is not appropriate.
- Linn believed we need to take the mens rea language out.
- Carrion agreed that Heade was likely correct about why the mens rea element may have been included.
- Roseberry found it hard to see how this would be brought to an appellate court. Members pointed to either special action or a counter-appeal as possible processes.
- Jones was familiar with the rules that Heade provided, and understood them to apply to offenses. But she was unsure about whether the principal applies to enhancements. She also knew that license suspensions require some knowledge, and wondered if that was a source.
- A number of folks identified possible cases on point.
  - *Stevens*, 154 Ariz. 510 (App. 1987)
  - *Hurley*, 154 Ariz. 124 (1987)
  - *Spitz*, 127 Ariz. 405 (1987)
  - *Jennings*, 150 Ariz. 90 (1986)
- Carrion indicates he would like to read the cases and then come back to it.
- **Carrion moved to table** so everyone could read the identified cases.
- **Benson seconded.**

- 18 Support tabling; 8 Oppose tabling (Linn (plus 3 proxies), Lawson, Morrow, Baumann, & Roseberry opposed).
- **Tabled until the next meeting.**

#### **7. Amend 13.03 and 13.032 Unlawful Imprisonment & Defense – Alice Jones**

- Jones provided background for proposal. Noted that one of the proposals may not need an instruction because the issue may not require a jury finding.
- Summers had sent a case to Jones. Based on the case, Summers did not believe it is necessary to add the use note or interrogatory.
  - *Tschilar*, 200 Ariz. 427 (App. 2001).
- Heade had questions about what is needed. Is the absence of a condition required to comport with due process?
- **Jones withdrew the first recommendation.**
- **Jones moved to adopt the second proposal**, which adds the definition of detention officer.
- **Carrion seconded.**
- **Proposal unanimously adopted.**

#### **8. Amend 14.10 Molestation of a Child – Alice Jones**

- Jones provided background on the proposal, which was proposed by Minicozzi.
- Jones noted she has some concerns because there were changes to the sexual contact instruction. Jones indicated that it might be better to remove the definition of sexual contact and instead just use the phrase “sexual contact.”
- Steinfeld indicated he would support that friendly amendment to avoid future problems if there are changes to the sexual contact definition.
- Summers would support the friendly amendment over the original because she had trouble with how the proposal was worded. Summers also noted the difference between this instruction and the Sexual Abuse instruction creates an inconsistency.
- Roseberry supported the original proposal, noting that it is easier to present all the elements in one concise instruction, rather than cross-applying definitions.
- Heade provided a clarification to Steinfeld’s prior comment. Regarding the availability of affirmative defense, proposed a *But see* citation to *Bieganski v. Shinn*, 149 F.4th 1055 (9th Cir. 2025).
- Morrow proposed a modification to address Steinfeld’s concern about affirmative defense
- Judge Donahoe agreed with combining everything into a single instruction, rather than several instructions.
- Jones was concerned about a single instruction. She noted her unit has seen incorrect instructions in cases because the committee missed the instructions where the sexual contact definition had been incorporated, rather than just cross-referenced. Stated she was torn because she understood wanting to make it easier for juries to understand. But she

was also concerned about missing something and having years pass with incorrect instructions.

- Heade agreed this is likely a circumstance where we should have a cross-reference.
- Linn expressed some confusion because of the back and forth. Proposed tabling to see both alternatives side by side.
- Jones stated she was happy to write up the friendly amendment alternative.
- **Linn moved to table.**
- **Judge Donahoe seconded.**
- **Unanimously tabled.**

#### **9. Amend 17.01 Definition of Occupied Structure (Arson) – Jeff Roseberry**

- Roseberry provided background for the proposal.
- Heade asked if there was a reason we have used “human beings” rather than “person.”
- Jones noted that “human beings” is the language in the statute
- Comm. Altieri wondered if this statute is trying to differentiate from structures that might be occupied by animals.
- **Morrow moved to adopt.**
- **Benson seconded.**
- **Unanimously approved.**

#### **10. Add new 14.30 Child Enticement – Jeff Roseberry**

- Roseberry provided background for proposal.
- Ortega noted a small discrepancy between the proposal and statutory language (absence of “attempt to lure”).
- Summers agreed the proposal does not track. Also wanted more information about why the proposal asks for the insertion of a specific offense.
- Roseberry agreed to take the comments back to Minicozzi.
- **Roseberry agreed to table.**
- **Tabled.**

#### **11. Amendments to Chapter 11 Instructions – 3 sets of submissions – Minicozzi (Presented by Jeff Roseberry), David Euchner & Alice Jones**

- Jones provided background for her proposal. Observed the three proposals are all close. Believed it may be appropriate to table the proposals to ensure Minicozzi and Euchner are present. Jones also said that she tried to address a problem from *State v. Fierro*, 254 Ariz. 35 (2022).
- Heade provided additional background regarding Euchner’s proposal. Supported tabling.
- Linn believed we already addressed *Fierro*.
- Jones agreed, but didn’t see it in the online version.

- Linn checked her email and confirmed we did on September 30, 2022. Linn agreed to forward the email to Kukan.
- **Tabled.**
- Minicozzi, Euchner, and Jones will work on the issue.

#### **12. Proposed New 17.06 Burning of Wildlands – Bryan Alarcon**

- Alarcon not present.
- Nobody has a burning desire to discuss without Alarcon.
- **Tabled.**

#### **13. Right to Remain Silent Jury Instruction Letter – Ilona**

- **Linn moved to reject.**
- **Judge Gard seconded.**
- **Unanimously rejected.**

#### **14. Revisions to Capital Case Jury Instructions Report Update – Dan Carrion**

- Carrion provided an update regarding the Capital Case Jury Instructions Working Group.
- Carrion proposed that once the working group has a final version, the version be sent directly to the State Bar for member comments, rather than going through debates in this committee.

#### **15. Any Other Business – Judge Green**

- **Materials**
  - Linn asked about trying to get materials further in advance. Asked for two weeks.
  - Judge Green agreed two weeks was reasonable.
  - Kukan said two weeks is reasonable.
- **Next meeting scheduled for November 21, 2025, at 1:30**
  - The committee discussed calendars and scheduled the next meeting for November 21, 2025, at 1:30 pm.
  - Kukan will need all materials by November 6, 2025, so she can send everything out two weeks before.
- **Statutory changes**
  - Summers volunteered to submit proposals to address statutory changes.
- **Instruction for jury decision of prior convictions**
  - Judge Green brought up the possibility that we may need instructions for jury decisions of priors in the wake of *Erlinger* and other cases. Just wanted to get it on everyone's radar.

- **Items previously tabled**

- Lawson noted that there are two tabled instructions according to the minutes (numbers 3 and 4 from the minutes) that had not been reraised.
- Judge Green will put them on the next agenda.
- Judge Green noted there was another proposal from Carrion regarding driving/actual physical control.
- Benson said that he and Carrion have not been able to complete the planned work.
- Carrion explained that they want to leave the items off the November agenda.

**Call to the Public – Judge Green**

- Judge Green called the public.
- No public members indicated a desire to be heard.

**Adjournment – Judge Green**

- **Kluger moved to adjourn.**
- **Steinfeld seconded.**
- **Unanimously approved.**
- **Closed at 3:28 pm.**