



Criminal Jury Instructions Committee

Meeting Minutes
November 21, 2025.

Present

Hon. Jeffrey Altieri
Hon. Gary Donahoe
Hon. Lacy Gard (Proxy for Bingert)
Hon. Danielle Harris
Hon. Sarah Mayhew
Ryan Alcorn
Jamal Allen
James Baumann
Greg Benson
Bryce Brown
Joseph Butner
Carlos Carrion
Ian Cobb
David Euchner
Kristian Garibay
Kevin Heade
Alice Jones
Samantha Kluger
Todd Lawson
Jennifer Linn (Proxy for Steinberg and Komrada)
Ian McCloskey
Michael Minicozzi
Kevin Morrow
Christine Ortega
Jeffrey Roseberry
Mikel Steinfeld
Tai Summers
Evan Tompkins

Ilona Kukan

Proxy Sent

Hon. Elizabeth Bingert
Karen Komrada
Shawn Steinberg

Not Present

Hon. Jennifer Green
Jarom Harris
Sasha Charls
Joshua Spears

Call to order

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

1. Approval of September 19, 2025 Meeting Minutes – Judge Gard

- **Allen moved to approve the minutes.**
- **Kluger seconded.**
- **Minutes unanimously approved (Judge Mayhew abstained).**

2. 2.03 and 2.03.01 Causation – Alice Jones

- Jones provided background on the proposal and her work with Heade and Linn.
- Heade noted that the proposal has new information in light of *State v. Aragon in & for Cnty. of Pima*, 252 Ariz. 525 (2022), which should provide more insight.
- Euchner noted he handled an appeal in which the issue arose and is glad the committee is addressing it.
- Judge Donahoe asked whether the committee is still using parallel citations.
- Kukan and Euchner confirmed the committee is not.

- **Jones moved to adopt.**
- **Carrion seconded.**
- **Proposal unanimously approved.**

3. 3.01 & 3.03 Instructions with Proposal for new 3.01A – Alice Jones

- Jones provided background on the proposal and her work with Steinfeld. She noted one amendment—the addition of “or not” in light of a statutory amendment. The committee had debated whether to use “defendant” or “person.”
- Euchner and Linn agreed with leaving the language given the context of accomplice liability.
- Heade asked whether the bracketed language comes from RAJI 3.04; Jones confirmed it does.

- **Jones moved to adopt.**
- **Steinfeld seconded.**
- **Proposal unanimously approved.**

4. 14.10 Molestation of a Child – Alice Jones

- Jones explained that while the definition for sexual contact changed, she did not change the Molestation of a Child instruction in light of the proposal. She is now in favor of Minicozzi’s proposal.
- Minicozzi agreed to resubmit the proposal.

- **Jones moved to withdraw the current proposal.**
- **Carrion seconded.**
- **Proposal unanimously withdrawn.**
- Continued discussion following the withdrawal.
- Euchner noted a concern in light of the opinion in *Bieganski v. Shinn*, 149 F.4th 1055 (9th Cir. 2025), and suggested it may be worth citing.
- Minicozzi noted that it is not binding on Arizona courts and *State v. Holle*, 240 Ariz. 301 (2016), is still good law.
- Euchner acknowledged the unusual circumstance but noted the risk of cases going to trial with instructions known to be wrong as a matter of federal law. He proposed adding a citation below the line.
- Carrion agreed this is the purpose of below-the-line comments.
- Heade agreed with the possibility of a *cf.* citation to *Bieganski*.
- Summers asked that Jones and Minicozzi also look at the Sexual Abuse instruction.

5. Proposal for new 14.30 Child Enticement – Michael Minicozzi

- Minicozzi agreed with previously raised concerns and proposed modifications to better follow the statutory language.
- Euchner expressed concern regarding whether the statute presents two offenses or two ways to interpret the offense.
- Summers asked if it is two different offenses or two ways to commit the offense.
- Lawson believed the conduct in subsection 1 can be part of the conduct in subsection 2.
- Benson noted legislative history context suggesting this was to address grooming.
- Linn noted that the proposed instruction left out the key word “either.” She believed one could commit subsection 2 without subsection 1.
- Lawson suggested adopting the proposal by inserting “either,” placing the first paragraph in brackets including “or,” and placing the second paragraph in brackets excluding “specifically.”
- Judge Mayhew believed this is confusing because almost everything is bracketed and suggested it should be explained in a use note.
- Judge Donahoe agreed.
- Minicozzi will attempt to draft a use note.
- **Tabled until the next meeting.**

6. 7.08-C Release Status – Tai Summers

- Summers provided background: the current RAJI includes a mens rea, but the statute does not.

- Carrion noted there is generally a judicial presumption that a mens rea exists unless there is clear statutory direction otherwise.
- Judge Donahoe found a case indicating this is a status offense that the court can decide on its own.
- Summers noted *State v. Hurley*, 154 Ariz. 124 (1987).
- Euchner asked how much of this withstands *Apprendi v. New Jersey*, 530 U.S. 466 (2000), though Summers noted this is a sentencing enhancement.
- **Linn moved to remove the mens rea language.**
- **Lawson seconded with a correction to the case cited in the source below the line.**
- **Proposal passed (6 opposed).**

7. Amendments to Chapter 11 Instructions (Joint Proposal) – Minicozzi, Euchner & Jones

- Jones provided background on the joint proposal she worked on with Euchner and Minicozzi.
- Heade opined that it makes it easier to say the State must prove the alleged second-degree murder did not occur as a result of a sudden quarrel or heat of passion.
- Euchner noted this is a step in the right direction to address the issue identified in *State v. Hippensteel*, __ Ariz. __, 572 P.3d 579 (App. 2025), though he believes the committee needs to go further with Agenda Item 8.
- Jones proposed deleting the comment that discusses *State v. Eddington*, 226 Ariz. 72 (App. 2010).
- Carrion agreed, referencing an email from Justice King regarding updates.
- Euchner recalled the paragraph was from 2011 and is not needed in light of *State v. Lua*, 237 Ariz. 301 (2015).
- **Jones moved to adopt the proposal with the highlighted deletion.**
- **Euchner seconded.**
- **Proposal passed (1 opposed).**

8. Separate Amendment Proposal to Chapter 11 Instruction – David Euchner

- Euchner moved to adopt his separate proposal, amending it to assume the deletion of the *Eddington* discussion. He noted this addresses the issue from *Mullaney v. Wilbur*, 421 U.S. 684 (1975).
- Linn expressed opposition.
- Jones believed the easiest way to explain the issue would be to add the highlighted language into what was just approved and believed there is currently no burden shifting.
- Steinfeld believed the current instruction does not actually explain the burden.
- **Euchner moved to adopt the separate proposal.**

- **Heade seconded.**
- **Vote (by roll call): Motion fails 12-15.**
 - **Aye:** Heade, McCloskey, Euchner, Judge Donahoe, Steinfeld, Ortega, Tompkins, Carrion, Butner, Judge Altieri, Benson, Cobb.
 - **Nay:** Linn, Komrada (proxy), Alcorn, Judge Harris, Kluger, Minicozzi, Steinberg (proxy), Morrow, Baumann, Jones, Lawson, Roseberry, Brown, Summers, Judge Mayhew, Allen.

- **Euchner moved to add the *Mullaney* citation below the line.**
- **Heade seconded.**
- **Vote (by roll call): Motion fails 12-15.**
 - **Aye:** Heade, McCloskey, Euchner, Judge Donahoe, Steinfeld, Ortega, Tompkins, Carrion, Butner, Judge Altieri, Benson, Cobb.
 - **Nay:** Linn, Komrada (proxy), Alcorn, Judge Harris, Kluger, Minicozzi, Steinberg (proxy), Morrow, Baumann, Jones, Lawson, Roseberry, Brown, Summers, Judge Mayhew, Allen.

9. Proposal for new 17.06 Burning of Wildlands – Ryan Alcorn

- Alcorn provided background and noted an amendment is needed to bracket “or knowingly” in subsection 1 because a court has taken a different approach since the proposal was drafted. Alcorn noted there will likely be a need for misdemeanors in light of lessers, as the mens rea defines the level of offense.
- Carrion agreed that mens rea will be the moving factor in many cases.
- Lawson believed the jury needs to have all mental states and ask which one was proven; the punishment will flow from that.
- Linn believed the proposal is too confusing to fix currently and may need a verdict form similar to Aggravated Assault.

- **Alcorn requested to table.**
- **Unanimously tabled.**

10. Title 28 DUI Revised – Wrong Way – Carlos Carrion

- Carrion provided background regarding a case stating wrong-way driving DUI is strict liability. He proposed adding a comment.
- Euchner asked if a PFR was filed; he believed there was not.

- **Carrion moved to adopt the comment with a friendly amendment to include the Pacific Reporter citation.**
- **Benson seconded.**
- **Proposal unanimously approved.**

11. Capital Case Instructions – Carlos Carrion

- Carrion provided an update on the progress of the Capital Case Restyling Working Group. He proposed sending the instructions directly to the entire State Bar membership for comment.
- Judge Gard explained the purpose of the group was to have a cross-section of all sides. Jones clarified this is not to cut off all discussion, but that discussion will occur after public comment.
- **Carrion moved to send to the expected draft of the Restyling Working Group to the membership.**
- **Judge Donahoe seconded.**
- **Proposal passed. (Opposed: Linn (plus proxy), Roseberry, Alcorn, Baumann).**

12. Any Other Business – Judge Gard

- **Justice King Email:**
 - Judge Gard noted the committee received an email from Justice King.
 - Heade believed the committee should take seriously any communication from a Supreme Court Justice asking the committee to do a better job and expressed confusion regarding expectations for participation.
 - Euchner agreed the committee could do better and suggested returning to full-day meetings to complete work.
 - Steinfeld and Linn noted that in-person meetings allowed for fixes to be made in the moment.
 - Judge Gard will discuss the email and the possibility of in-person meetings with Judge Green and Commissioner Bingert.
- **Special Meeting:** The committee will send out a poll with non-Friday dates to find a time for a special meeting.

Call to the Public – Judge Gard

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

Adjournment – Judge Gard

- **Euchner moved to adjourn.**
- **Steinfeld seconded.**
- **Unanimously approved.**