

CHAPTER SEVEN

OFFENSES AGAINST PUBLIC ADMINISTRATION

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INSTRUCTION NO. [7-101]

[Bribery in Official and Political Matters]

A person commits the offense of bribery if the person purposely or knowingly **[(offers) (confers upon) (agrees to confer upon) another] [(solicits) (accepts) (agrees to accept) from another]:**

[any pecuniary benefit as a consideration for the recipient's (decision) (opinion) (recommendation) (vote) (exercise of discretion) as a (public servant) (party official) (voter).]

OR

[any benefit as consideration for the recipient's (decision) (vote) (recommendation) (exercise of official discretion) in a(n) (judicial) (administrative) proceeding.]

OR

[any benefit as consideration for a violation of a known duty as a (public servant) (party official).]

GIVEN: _____
DISTRICT JUDGE

Source: MCJI 7-101 (2009)

Plaintiff's Proposed Instruction No. _____ Defendant's Proposed Instruction No. _____

Given as Instruction No. _____ Refused _____ Withdrawn _____ By _____

[Bribery in Official and Political Matters, No. 7-101, 2009, Source]

SOURCE: MCA § 45-7-101 (2007).

INSTRUCTION NO. [7-101(a)]

[Issues in Bribery in Official and Political Matters]

To convict the Defendant of bribery, the State must prove the following elements:

1. That the Defendant **[offered to] [conferred upon] [agreed to confer upon] [solicited from] [accepted from] [agreed to accept from]** another any pecuniary benefit;

AND

2. That the Defendant did so as a consideration for the **[Defendant's] [recipient's] [decision] [opinion] [recommendation] [vote] [exercise of discretion]** as a **[public servant] [party official] [voter]**;

AND

3. That the Defendant acted purposely or knowingly.

OR

1. That the Defendant **[offered to] [conferred upon] [agreed to confer upon] [solicited from] [accepted from] [agreed to accept from]** another any benefit;

AND

2. **[That the Defendant did so as consideration for the (Defendant's) (recipient's) (decision) (vote) (recommendation) (exercise of official discretion) in a(n) (judicial) (administrative) proceeding;]**
[That the Defendant did so as consideration for a violation of a known duty as a (public servant) (party official);]

AND

3. That the Defendant acted purposely or knowingly.

If you find from your consideration of the evidence that all of these elements have been proved beyond a reasonable doubt, then you should find the Defendant guilty.

If, on the other hand, you find from your consideration of the evidence that any of these elements has not been proved beyond a reasonable doubt then you should find the Defendant not guilty.

GIVEN: _____
DISTRICT JUDGE

Source: MCJI 7-101(a) (2009)

Plaintiff's Proposed Instruction No. _____ Defendant's Proposed Instruction No. _____

Given as Instruction No. _____ Refused _____ Withdrawn _____ By _____

[Issues in Bribery in Official and Political Matters, No. 7-101(a), 2009, Source]

SOURCE: MCA § 45-7-101 (2007).

INSTRUCTION NO. [7-101(b)]

[Defense to Bribery or Threats and Other Improper Influence in Official and Political Matters]

It is not a defense to the charge of **[bribery] [threats and other improper influence]** in official and political matters that a person whom the offender sought to influence was not qualified to act in the desired way whether because he had not yet assumed office, or lacked jurisdiction, or for any other reason.

GIVEN: _____
DISTRICT JUDGE

Source: MCJI 7-101(b) (2009)

Plaintiff's Proposed Instruction No. _____ Defendant's Proposed Instruction No. _____

Given as Instruction No. _____ Refused _____ Withdrawn _____ By _____

[Defense to Bribery or Threats and Other Improper Influence in Official and Political Matters, No. 7-101(b), 2009, Source and Comment]

SOURCE: MCA § 45-7-101(2) (2007).

COMMENT: The above is applicable to the crime of bribery and to the crime of threat and other improper influence in official and political matters.

INSTRUCTION NO. [7-102]

[Threats and Other Improper Influence in Official and Political Matters]

A person commits the offense of threat and other improper influence in **[official]** **[political]** matters if that person purposely or knowingly:

[threatens harm to (any person) (the person's spouse, child, parent, or sibling) (the person's property) with the purpose to influence that individual's (decision) (opinion) (recommendation) (vote) (other exercise of discretion) as a (public servant) (party official) (voter).]

OR

[threatens harm to (any public servant) (the public servant's spouse, child, parent or sibling) (the public servant's property) with the purpose to influence the public servant's (decision) (opinion) (recommendation) (vote) (other exercise of discretion) in a(n) (judicial) (administrative) proceeding.]

OR

[threatens harm to any (public servant) (party official) (the person's spouse, child, parent, or sibling) (the person's property) with the purpose to influence the person to (violate the person's duty) (prevent the {public servant} {party official} from accepting or holding any public office.)]

OR

[privately addresses to any public servant who has or will have an official discretion in a(n) (judicial) (administrative) proceeding any representations, entreaty, argument or other communication designed to influence the outcome on the basis of considerations other than those authorized by law.]

OR

[as a (juror) (officer in charge of a jury) (receives) (permits to be received) any communication relating to any matter pending before such jury, except according to the regular course of proceedings.],

OR

[injures the (person) (property) of a public servant] or (injures the servant's spouse, child, parent or sibling) (because of the public servant's lawful discharge of the duties of the office) or (to prevent the public servant from discharging the public servant's official duties.)

GIVEN: _____
DISTRICT JUDGE

Source: MCJI 7-102 (2009)

Plaintiff's Proposed Instruction No. _____ Defendant's Proposed Instruction No. _____

Given as Instruction No. _____ Refused _____ Withdrawn _____ By _____

[Threats and Other Improper Influence in Official and Political Matters, No. 7-102, 2009, Source and Comment]

SOURCE: MCA §45-7-102 (2007).

COMMENT: The "other exercise of discretion" in paragraphs [1] and [2] should be specified.

INSTRUCTION NO. [7-102(a)]

[Issues in Threats and Other Improper Influence in Official and Political Matters]

To convict the Defendant of the charge of threat and other improper influence in **[official] [political]** matter, the State must prove the following elements:

1. That the Defendant threatened harm to **(any person) (the person's spouse, child, parent, or sibling) (the person's property);**

AND

2. That the Defendant did so with the purpose to influence the **(decision) (opinion) (recommendation) (vote) (other exercise of discretion)** as a **(public servant) (party official) (voter);**

AND

3. That the Defendant acted purposely or knowingly;

OR

1. That the Defendant threatened harm to **(any person) (the person's spouse, child parent, or sibling) (the person's property);**

AND

2. That the Defendant did so with the purpose to influence the public servant's **(decision) (opinion) (recommendation) (vote) (other exercise of discretion)** in a(n) **(judicial) (administrative)** proceedings;

AND

3. That the Defendant acted purposely or knowingly;

OR

1. That the Defendant threatened harm to **(any person) (the person's spouse, child, parent, or sibling) (the person's property);**

AND

2. That the Defendant did so with the purpose to influence the person to **(violate the person's duty) (prevent the {public servant} {party official} from accepting or holding any public office);**

AND

3. That the Defendant acted purposely or knowingly;

OR

1. That the Defendant privately addressed to any public servant who has or will have an official discretion in a(n) **(judicial) (administrative)** proceeding any representations, entreaty, argument or other communication designed to influence the outcome on the basis of considerations other than those authorized by law;

AND

2. That the Defendant acted purposely or knowingly;

OR

1. That the Defendant as a **(juror) (officer in charge of a jury) (receives) (permits to be received)** any communication relating to any matter pending before such jury;

AND

2. That the Defendant did so other than according to the regular course of proceedings;

AND

3. That the Defendant acted purposely or knowingly;

OR

1. That the Defendant injures the **(person) (property)** of a public servant or **(injures the servant's spouse, child, parent, or sibling)**;

AND

2. That the Defendant does so **(because of the public servant's lawful discharge of the duties of the office)** or **(to prevent the public servant from discharging the public servant's official duties)**;

AND

3. That the Defendant acted purposely or knowingly.

GIVEN: _____
DISTRICT JUDGE

Source: MCJI 7-102(a) (2009)

Plaintiff's Proposed Instruction No. _____ Defendant's Proposed Instruction No. _____

Given as Instruction No. _____ Refused _____ Withdrawn _____ By _____

**[Issues in Threats and Other Improper Influence in Official and Political Matters,
No. 7-102(a), 2009, Source and Comment]**

SOURCE: MCA §45-7-102 (2007).

COMMENT: The "other exercise of discretion" in the first and second set of issues should be specified.

INSTRUCTION NO. [7-103]

[Perjury]

A person commits the offense of perjury if, in an official proceeding, the person knowingly **[makes a false statement under oath or equivalent affirmation] [swears or affirms the truth of a false statement previously made]**. No person shall be guilty of perjury who retracts the falsification in the course of the proceeding in which it was made before it became manifest that the falsification was or would be exposed and before the falsification substantially affected the proceeding.

GIVEN: _____
DISTRICT JUDGE

Source: MCJI 7-103 (2009)

Plaintiff's Proposed Instruction No. _____ Defendant's Proposed Instruction No. _____

Given as Instruction No. _____ Refused _____ Withdrawn _____ By _____

[Perjury, No. 7-103, 2009, Source and Comment]

SOURCE: MCA §§ 45-7-201(1); 45-7-201(5) (2007).

COMMENT: Whether a falsification is material is a question of law, and therefore no instruction should be given on this point. MCA § 45-7-201(3) (2007). However, there must be a prior determination by the court that the falsification was material. See, however, *United States v. Gaudin*, 515 U.S. 506 (1995), in which the United States Supreme Court held that a statement's "materiality" is a mixed question of law and fact, to be decided by the jury.

INSTRUCTION NO. [7-103(a)]

[Issues in Perjury]

To convict the Defendant of the charge of perjury, the State must prove the following elements:

1. That the Defendant in an official proceeding **[made a false statement under oath or equivalent affirmation] [swore or affirmed the truth of a false statement previously made];**

AND

2. That the Defendant did not retract the falsification in the course of the proceeding in which it was made before it became manifest that the falsification was or would be exposed and before the falsification substantially affected the proceeding;

AND

3. That the Defendant acted knowingly.

If you find from your consideration of the evidence that all of these elements have been proved beyond a reasonable doubt, then you should find the Defendant guilty.

If, on the other hand, you find from your consideration of the evidence that any of these elements has not been proved beyond a reasonable doubt then you should find the Defendant not guilty.

GIVEN: _____
DISTRICT JUDGE

Source: MCJI 7-103(a) (2009)

Plaintiff's Proposed Instruction No. _____ Defendant's Proposed Instruction No. _____

Given as Instruction No. _____ Refused _____ Withdrawn _____ By _____

[Issues in Perjury, No. 7-103(a), 2009, Source and Comment]

SOURCE: MCA § 45-7-201(1) and § 45-7-201(5) (2007).

COMMENT: *See* MCA § 45-7-201(3) (2007) as it relates to materiality of the statement made: “Falsification is material, regardless of the admissibility of the statement under rules of evidence, if it could have affected the course or outcome of the proceeding. It is no defense that the declarant mistakenly believed the falsification to be immaterial. Whether a falsification is material in a given factual situation is a question of law.” According to the United States Supreme Court, a statement is “material” if it has “a natural tendency to influence, or [is] capable of influencing, the decision of the decision-making body to which it was addressed.” *United States v. Gaudin*, 515 U.S. 506, 509 (1995), quoting *Kungys v. United States*, 485 U.S. 759, 770 (1988). In *Gaudin*, the Court held that a statement’s “materiality” is a mixed question of law and fact, to be decided by the jury.

INSTRUCTION NO. [7-104]

[Tampering with Witnesses or Informants]

A person commits the offense of tampering with a **[witness] [informant]** if, believing that an official proceeding or investigation is **[pending] [about to be instituted]**, the person purposely or knowingly attempts to induce or otherwise cause a **[witness] [informant]** to: **[testify or inform falsely.] [withhold any testimony, information, document or thing.] [elude legal process summoning him or her to testify or supply evidence.] [absent himself or herself from any proceeding or investigation to which he or she has been summoned.]**

GIVEN: _____
DISTRICT JUDGE

Source: MCJI 7-104 (2009)

Plaintiff's Proposed Instruction No. _____ Defendant's Proposed Instruction No. _____

Given as Instruction No. _____ Refused _____ Withdrawn _____ By _____

[Tampering With Witnesses and Informants, No. 7-104, 2009, Source]

SOURCE: MCA § 45-7-206 (2007).

INSTRUCTION NO. [7-104(a)]

[Issues in Tampering with Witnesses or Informants]

To convict the Defendant of the charge of tampering with **[witnesses]**
[informants], the State must prove the following elements:

1. That the Defendant believed that an official proceeding or investigation was
[pending] [about to be instituted];

AND

2. That the Defendant attempted to induce or otherwise cause a **[witness]**
[informant] to testify or inform falsely;

AND

3. That the Defendant acted purposely or knowingly.

OR

1. That the Defendant believed that an official proceeding or investigation was
[pending] [about to be instituted];

AND

2. That the Defendant attempted to induce or otherwise cause a **[witness]**
[informant] to withhold testimony, information, a document or thing
therefrom;

AND

3. That the Defendant acted purposely or knowingly.

OR

1. That the Defendant believed that an official proceeding or investigation was
[pending] [about to be instituted];

AND

2. That the Defendant attempted to induce or otherwise cause a **[witness]**
[informant] to elude legal process summoning him to testify or supply
evidence thereto;

AND

3. That the Defendant acted purposely or knowingly.

OR

1. That the Defendant believed that an official proceeding or investigation was **[pending] [about to be instituted];**

AND

2. That the Defendant attempted to induce or otherwise cause a **[witness] [informant]** to absent himself from this proceeding or investigation to which he had been summoned;

AND

3. That the Defendant acted purposely or knowingly.

If you find from your consideration of the evidence that all of these elements have been proved beyond a reasonable doubt, then you should find the Defendant guilty.

If, on the other hand, you find from your consideration of the evidence that any of these elements has not been proved beyond a reasonable doubt then you should find the Defendant not guilty.

GIVEN: _____
DISTRICT JUDGE

Source: MCJI 7-104(a) (2009)

Plaintiff's Proposed Instruction No. ____ Defendant's Proposed Instruction No. ____

Given as Instruction No. ____ Refused ____ Withdrawn ____ By ____

[Issues in Tampering With Witnesses or Informants, No. 7-104(a), 2009, Source]

SOURCE: MCA § 45-7-206 (2007).

INSTRUCTION NO. [7-105]

[Tampering with or Fabricating Physical Evidence]

A person commits the offense of tampering with or fabricating physical evidence if, believing that an official proceeding or investigation is **[pending] [about to be instituted]**, the person:

[(alters) (destroys) (conceals) (removes) any record, document or thing with purpose to impair its verity or availability in such proceeding or investigation];

OR

[(makes) (presents) (uses) any (record) (document) (thing) knowing it to be false and with purpose to mislead any person who is or may be engaged in such proceeding or investigation].

GIVEN: _____
DISTRICT JUDGE

Source: MCJI 7-105 (2009)

Plaintiff's Proposed Instruction No. _____ Defendant's Proposed Instruction No. _____

Given as Instruction No. _____ Refused _____ Withdrawn _____ By _____

[Tampering with or Fabricating Physical Evidence, No. 7-105, 2009, Source]

SOURCE: MCA § 45-7-207 (2007).

INSTRUCTION NO. [7-105(a)]

[Issues in Tampering with or Fabricating Physical Evidence]

To convict the Defendant of the charge of tampering with or fabricating physical evidence, the State must prove the following elements:

1. That the Defendant believed that an official proceeding or investigation was **[pending] [about to be instituted];**

AND

2. **[That the Defendant (altered) (destroyed) (concealed) (removed) a record, document or thing with purpose to impair its verity or availability in such proceeding or investigation;]**

OR

1. That the Defendant believed that an official proceeding or investigation was **[pending] [about to be instituted];**

AND

2. **[That the Defendant (made) (presented) (used) a (record) (document) (thing) knowing it to be false and with purpose to mislead any person who was or in the future may be engaged in such proceeding or investigation.]**

If you find from your consideration of the evidence that all of these elements have been proved beyond a reasonable doubt, then you should find the Defendant guilty.

If, on the other hand, you find from your consideration of the evidence that any of these elements has not been proved beyond a reasonable doubt then you should find the Defendant not guilty.

GIVEN: _____
DISTRICT JUDGE

Source: MCJI 7-105(a) (2009)

Plaintiff's Proposed Instruction No. _____ Defendant's Proposed Instruction No. _____

Given as Instruction No. _____ Refused _____ Withdrawn _____ By _____

**[Issues in Tampering with or Fabricating Physical Evidence, No. 7-105(a), 2009,
Source]**

SOURCE: MCA § 45-7-207 (2007).

INSTRUCTION NO. [7-106]

[Tampering with Public Records or Information]

A person commits the offense of tampering with public records or information if the person

[(knowingly makes a (false entry in) (false alteration of) any (record) (document) (legislative bill or enactment) (thing) belonging to, or received, issued, or kept by the government for information or record, or required by law to be kept by others for information of the government.)]

OR

[(makes) (presents) (uses) any (record) (document) (thing) knowing it to be false, and with purpose that it be taken as a genuine part of information or records belonging to, or received or issued, or kept by the government, or required by law to be kept by others for information of the government.]

OR

[purposely (destroys) (conceals) (removes) (otherwise impairs the verity or availability of) any (record) (document) (thing) belonging to, or received or issued, or kept by the government for information or record, or required by law to be kept by others for information of the government.]

OR

[purposely or knowingly misrepresents the person's identity or the use for which personal information is sought in order to obtain personal information from a motor vehicle record under MCA §§ 61-11-507, 61-11-508, or 61-11-509.]

GIVEN: _____
DISTRICT JUDGE

Source: MCJI 7-106 (2009)

Plaintiff's Proposed Instruction No. _____ Defendant's Proposed Instruction No. _____

Given as Instruction No. _____ Refused _____ Withdrawn _____ By _____

[Tampering with Public Records or Information, No. 7-106, 2009, Source and Comment]

SOURCE: MCA § 45-7-208 (2007).

COMMENT: Specify the manner in which the item was impaired in paragraph [3]. Also, specify the "thing" which was involved in each paragraph if applicable.

The provisions in the last alternative subsection were added in the 2001 legislative session, and only have application to offenses committed on or after the effective date of the amendment, April 23, 2001. If the prosecution is for violation of the last subsection, some instructions will be required to address the referenced code sections in Title 61.

INSTRUCTION NO. [7-106(a)]

[Issues in Tampering with Public Records or Information]

To convict the Defendant of the charge of tampering with public records or information, the State must prove the following elements:

1. That the Defendant made a **[false entry in] [false alteration of] a [record] [document] [legislative bill or enactment] [thing];**

AND

2. That the **[record] [document] [legislative bill or enactment] [thing] [(belonged to the government) (was received by the government) (was issued by the government) (was kept by the government) and (was used for information or record) (was required by law to be kept by others for information of the government)];**

AND

3. That the Defendant acted knowingly.

OR

1. That the Defendant **[made] [presented] [used] a [record] [document] [thing];**

AND

2. That the Defendant knew it to be false;

AND

3. That the Defendant had the purpose that it be taken as a genuine part of information or records **[(belonging to) (received by) (issued by) (kept by) the government] [required by law to be kept by others for information of the government].**

OR

1. That the Defendant **[destroyed] [concealed] [removed] [impaired the truthfulness or availability of] a [record] [document] [thing];**

AND

2. That the Defendant acted purposely.

OR

1. That the Defendant misrepresented the Defendant's identity [**the use for which personal information is sought**] in order to obtain personal information from a motor vehicle record under MCA §§ 61-11-507, 61-11-508, or 61-11-509.

AND

2. That the Defendant acted purposely or knowingly.

If you find from your consideration of the evidence that all of these elements have been proved beyond a reasonable doubt, then you should find the Defendant guilty.

If, on the other hand, you find from your consideration of the evidence that any of these elements has not been proved beyond a reasonable doubt then you should find the Defendant not guilty.

GIVEN: _____
DISTRICT JUDGE

Source: MCJI 7-106(a) (2009)

Plaintiff's Proposed Instruction No. _____ Defendant's Proposed Instruction No. _____

Given as Instruction No. _____ Refused _____ Withdrawn _____ By _____

**[Issues in Tampering with Public Records or Information, No. 7-106(a), 2009,
Source]**

SOURCE: MCA § 45-7-208 (2007).

INSTRUCTION NO. [7-107]

[Obstructing Justice]

A person commits the offense of obstructing justice if, knowing a person is an offender, he or she purposely: **[harbors or conceals an offender.] [warns an offender of impending discovery or apprehension, except this does not apply to a warning given in connection with an effort to bring an offender into compliance with the law.] [provides an offender with money, transportation, weapon, disguise or other means of avoiding discovery or apprehension of an offender.] [prevents or obstructs, by means of (force) (deception) (intimidation), anyone from performing an act that might aid in the discovery or apprehension of an offender.] [suppresses by act of concealment, alteration or destruction any physical evidence that might aid in the discovery or apprehension of an offender.] [aids an offender who is subject to official detention to escape from such official detention.]**

For the purpose of this instruction "an offender" means a person who has been or is liable to be arrested, charged, convicted or punished for a public offense.

GIVEN: _____
DISTRICT JUDGE

Source: MCJI 7-107 (2009)

Plaintiff's Proposed Instruction No. _____ Defendant's Proposed Instruction No. _____

Given as Instruction No. _____ Refused _____ Withdrawn _____ By _____

[Obstructing Justice, No. 7-107, 2009, Source]

SOURCE: MCA § 45-7-303 (2007).

INSTRUCTION NO. [7-107(a)]

[Issues in Obstructing Justice]

To convict the Defendant of the charge of obstructing justice, the State must prove the following elements:

1. That the Defendant knew that _____ was an offender;

AND

2. **[That the Defendant harbored or concealed _____.]**

OR

[That the Defendant warned _____ of impending discovery or apprehension.] (This does not apply to a warning given in connection with an effort to bring such offender into compliance with the law.)

OR

[That the Defendant provided _____ with money, transportation, weapon, disguise or other means of avoiding discovery or apprehension.]

OR

[That the Defendant prevented or obstructed, by means of (force) (deception) (intimidation), _____ from performing an act that might have aided in the discovery or apprehension of _____.]

OR

[That the Defendant suppressed by act of concealment, alteration or destruction any physical evidence that might aid in the discovery or apprehension of _____.]

OR

[That the Defendant aided _____, who was subject to official detention, in escaping from such official detention.]

AND

3. That the Defendant acted purposely.

If you find from your consideration of the evidence that all of these elements have been proved beyond a reasonable doubt, then you should find the Defendant guilty.

If, on the other hand, you find from your consideration of the evidence that any of these elements has not been proved beyond a reasonable doubt then you should find the Defendant not guilty.

GIVEN: _____
DISTRICT JUDGE

Source: MCJI 7-107(a) (2009)

Plaintiff's Proposed Instruction No. _____ Defendant's Proposed Instruction No. _____

Given as Instruction No. _____ Refused _____ Withdrawn _____ By _____

[Issues in Obstructing Justice, No. 7-107(a), 2009, Source and Comment]

SOURCE: MCA § 45-7-303 (2007).

COMMENT: The name of the offender should be inserted in the blanks. See MCJI 7-108 defining "official detention." A definition of "an offender" as specified in the statute should be included.

INSTRUCTION NO. [7-108]

[Official Detention]

"Official detention" means placement of a person in the legal custody of a municipality, a county, or the state as a result of:

[a conviction for an offense or having been charged with an offense.]

OR

[the actual or constructive constraint or custody of a person by a peace officer pursuant to arrest, transport, or court order.]

OR

[detention for extradition or deportation.]

OR

[placement in a community corrections facility or program.]

OR

[supervision while under a supervised release program.]

OR

[participation in a county jail work program.]

OR

[any lawful detention for the purpose of the protection of the welfare of the person detained or for the protection of society.]

Official detention does not include supervision of a person on probation or parole, constraint incidental to release on bail, or an unlawful arrest unless the person arrested employed physical force, a threat of physical force, or a weapon to escape.

GIVEN: _____
DISTRICT JUDGE

Source: MCJI 7-108 (2009)

Plaintiff's Proposed Instruction No. _____ Defendant's Proposed Instruction No. _____

Given as Instruction No. _____ Refused _____ Withdrawn _____ By _____

[Official Detention, No. 7-108, 2009, Source and Comment]

SOURCE: MCA §45-7-306(1) (2007). See also; *State v. Nelson*, 275 Mont. 86, 910 P.2d 247 (1996); *State v. Roberts*, 275 Mont. 365, 912 P.2d 812 (1996); and *State v. Chandler*, 277 Mont. 476, 922 P.2d 1164 (1996).

COMMENT: "Work release programs" are defined in MCA §§ 7-32-2225 through 7-32-2227.

INSTRUCTION NO. [7-109]

[Escape]

A person subject to official detention commits the offense of escape if the person purposely or knowingly **[eludes official detention] [fails to return to official detention following temporary leave granted for a specific purpose or limited time] [while participating in a county jail work program fails to appear for work at a time and place scheduled for participation in the program].**

GIVEN: _____
DISTRICT JUDGE

Source: MCJI 7-109 (2009)

Plaintiff's Proposed Instruction No.____ Defendant's Proposed Instruction No.____

Given as Instruction No.____ Refused ____ Withdrawn____ By ____

[Escape, No. 7-109, 2009, Source and Comment]

SOURCE: MCA § 45-7-306(2) (2007). See also; *State v. Nelson*, 275 Mont. 86, 910 P.2d 247 (1996); *State v. Roberts*, 275 Mont. 365, 912 P.2d 812 (1996); and *State v. Chandler*, 277 Mont. 476, 922 P.2d 1164 (1996).

COMMENT: Work release programs are defined in MCA §§ 7-32-2225 through 7-32-2227.

INSTRUCTION NO. [7-109(a)]

[Issues in Escape]

To convict the Defendant of the charge of escape, the State must prove the following elements:

1. That the Defendant **[removed himself from official detention] [failed to return to official detention following a temporary leave granted for a specific purpose or limited time] [while participating in a county jail work program failed to appear for work at a time and place scheduled for participation in the program];**

AND

2. That the Defendant acted purposely or knowingly.

If you find from your consideration of the evidence that all of these elements have been proved beyond a reasonable doubt, then you should find the Defendant guilty.

If, on the other hand, you find from your consideration of the evidence that any of these elements has not been proved beyond a reasonable doubt then you should find the Defendant not guilty.

GIVEN: _____
DISTRICT JUDGE

Source: MCJI 7-109(a) (2009)

Plaintiff's Proposed Instruction No. _____ Defendant's Proposed Instruction No. _____

Given as Instruction No. _____ Refused _____ Withdrawn _____ By _____

[Issues in Escape, No. 7-109(a), 2009, Source and Comment]

SOURCE: MCA § 45-7-306(2) (2007). See also; *State v. Nelson*, 275 Mont. 86, 910 P.2d 247 (1996); *State v. Roberts*, 275 Mont. 365, 912 P.2d 812 (1996); and *State v. Chandler*, 277 Mont. 476, 922 P.2d 1164 (1996).

COMMENT: See Instruction No. 7-108 defining "official detention." Work release programs are defined in MCA §§ 7-32-2225 through 7-32-2227.

INSTRUCTION NO. [7-110]

[Bail-Jumping]

A person commits the offense of bail-jumping if the person, having been set at liberty by court order, with or without security, upon condition that the person will subsequently appear at a specified time and place, purposely fails without lawful excuse to appear at that time and place.

GIVEN: _____
DISTRICT JUDGE

Source: MCJI 7-110 (2009)

Plaintiff's Proposed Instruction No. _____ Defendant's Proposed Instruction No. _____

Given as Instruction No. _____ Refused _____ Withdrawn _____ By _____

[Bail Jumping, No. 7-110, 2009, Source and Comment]

SOURCE: MCA § 45-7-308 (2007).

COMMENT: The charge applies to a person who does not appear in connection with a charge of having committed a misdemeanor only where the judge has released the person on his own recognizance. MCA § 45-7-308(3) (1997).

In *State v. Nolan*, 2003 MT 55, 314 Mont. 371, 66 P.3d 269, the Defendant was **mistakenly** released from custody, and the Court held that the State therefore failed to prove that the Defendant was released by court order, a necessary element of bail jumping.

INSTRUCTION NO. [7-110(a)]

[Issues in Bail-Jumping]

To convict the Defendant of the charge of bail-jumping, the State must prove the following elements:

1. That the Defendant was set at liberty by court order, with or without security, upon condition that he/ she subsequently would appear at a specified time and place;

AND

2. That the Defendant purposely failed without lawful excuse to appear at that time and place.

If you find from your consideration of the evidence that all of these elements have been proved beyond a reasonable doubt, then you should find the Defendant guilty.

If, on the other hand, you find from your consideration of the evidence that any of these elements has not been proved beyond a reasonable doubt then you should find the Defendant not guilty.

GIVEN: _____
DISTRICT JUDGE

Source: MCJI 7-110(a) (2009)

Plaintiff's Proposed Instruction No.____ Defendant's Proposed Instruction No.____

Given as Instruction No.____ Refused ____ Withdrawn____ By ____

[Issues in Bail Jumping, No. 7-110(a), 2009, Source and Comment]

SOURCE: MCA § 45-7-308(1) (2007).

COMMENT: The charge applies to a person who does not appear in connection with a charge of having committed a misdemeanor only where the judge has released the person on his own recognizance. MCA § 45-7-308(3) (2007).

INSTRUCTION NO. [7-111]

[Official Misconduct]

A person commits the offense of official misconduct if he/ she, while acting in his/ her official capacity as a public servant:

[(purposely) (negligently) fails to perform any mandatory duty as required (by law) (by a court of competent jurisdiction).]

OR

[knowingly performs an act in his official capacity which he/she knows is forbidden by law.]

OR

[performs an act in excess of his/her lawful authority with the purpose to obtain advantage for (himself)(herself) (another).]

OR

[(solicits) (knowingly accepts) for the performance of any act a (fee) (reward) which he/she knows is not authorized by law.]

OR

[knowingly conducts a meeting of a public agency in violation of Montana's Open Meeting Law.]

GIVEN: _____
DISTRICT JUDGE

Source: MCJI 7-111 (2009)

Plaintiff's Proposed Instruction No.____ Defendant's Proposed Instruction No.____

Given as Instruction No.____ Refused ____ Withdrawn____ By ____

[Official Misconduct, No. 7-111, 2009, Source and Comment]

SOURCE: MCA § 45-7-401 (2007).

COMMENT: In regard to the last bracketed paragraph, reference should be made to MCA § 2-3-202 (2007) for a definition of a “meeting” and MCA § 2-3-203 (2007) to determine the extent and purpose of the law. Appropriate instructions should be drafted for these sections as required. In *State v. Conrad*, 197 Mont. 406, 643 P.2d 239 (1982), the Montana Supreme Court ruled that MCA § 45-7-401(1)(e) was void for vagueness.

INSTRUCTION NO. [7-111(a)]

[Issues in Official Misconduct]

To convict the Defendant of the charge of official misconduct, the State must prove the following elements:

1. That the Defendant was a public servant.

AND

2. That while acting in his/her official capacity the Defendant (**purposely**) (**negligently**) failed to perform a mandatory duty as required (**by law**) (**by a court of competent jurisdiction**).

OR

1. That the Defendant was a public servant.

AND

2. That while acting in his/her official capacity the Defendant knowingly performed an act forbidden by law.

AND

3. That the Defendant knew the act was forbidden by law.

OR

1. That the Defendant was a public servant.

AND

2. That while acting in his/her official capacity the Defendant performed an act in excess of his/her lawful authority.

AND

3. That the Defendant did so with the purpose to obtain advantage for [**himself**] [**herself**] [**another**].

OR

1. That the Defendant was a public servant.

AND

2. That while acting in his/her official capacity the Defendant **[solicited]** **[knowingly accepted]** a **[fee]** **[reward]** for the performance of an act.

AND

3. That the Defendant knew the **[fee]** **[reward]** was not authorized by law.

OR

1. That the Defendant was a public servant.

AND

2. That while acting in his/her official capacity the Defendant knowingly conducted a meeting of a public agency in violation of Montana's Open Meeting Law.

If you find from your consideration of the evidence that all of these elements have been proved beyond a reasonable doubt, then you should find the Defendant guilty.

If, on the other hand, you find from your consideration of the evidence that any of these elements has not been proved beyond a reasonable doubt then you should find the Defendant not guilty.

GIVEN: _____
DISTRICT JUDGE

Source: MCJI 7-111(a) (2009)

Plaintiff's Proposed Instruction No. _____ Defendant's Proposed Instruction No. _____

Given as Instruction No. _____ Refused _____ Withdrawn _____ By _____

[Issues in Official Misconduct, No. 7-111(a), 2009, Source and Comment]

SOURCE: MCA § 45-7-401 (2007).

COMMENT: See Comment to MCJI 7-111 as to Montana's Open Meeting Law. In *State v. Conrad*, 197 Mont. 406, 643 P.2d 239 (1982), the Montana Supreme Court ruled that MCA § 45-7-401(1)(e) was void for vagueness.

INSTRUCTION NO. [7-112]

[Employer Misconduct]

A person who is an employer as defined by these instructions, commits the offense of employer misconduct if the person knowingly or purposely:

[avoids the person's responsibility to provide coverage for the person's employees as required by these instructions.]

OR

[misrepresents or falsifies employment records or information, including but not limited to understating the amount of payroll or the number of employees.]

OR

[refuses to pay premiums that the person is obligated to pay by law.]

GIVEN: _____
DISTRICT JUDGE

Source: MCJI 7-112 (2009)

Plaintiff's Proposed Instruction No. _____ Defendant's Proposed Instruction No. _____

Given as Instruction No. _____ Refused _____ Withdrawn _____ By _____

[Employer Misconduct, No. 7-112, 2009, Source and Comment]

SOURCE: MCA § 45-7-501(2007).

COMMENT: MCA§ 39-71-117 (2007) defines the term “employer” as used in this instruction. The definition is lengthy, so only the provisions applicable to the facts of the case should be given.

The last subsection references the statutory language in MCA § 45-7-501(1)(c) which provides in part: “...compensation plan No. 2, as provided in Title 39, chapter 71, part 22, or compensation plan No. 3, as provided in Title 39, Chapter 71, part 23.”

The Commission believes that actually stating the language in the instruction, or providing separate definitions of the various compensation plans, would confuse the issues before the jury. The Court can make a determination of whether the defendant is obligated to pay the required premiums, and the jury’s determination would then be whether the defendant purposely or knowingly refused to pay the premiums.