

# Arizona Peace Officer Standards and Training

## Basic Curriculum Model Lesson Plan

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**LESSON TITLE: INTRODUCTION TO CRIMINAL LAW 2.1**

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SUBJECT:	Introduction to Criminal Law
AZ POST DESIGNATION:	2.1
HOURS:	4
COURSE CONTENT:	An examination of the basic concepts, phrases and definitions needed to study criminal law.
PERFORMANCE OBJECTIVES:	Upon completion of this course of instruction, students using notes, handouts and other support materials as references, within the allotted time, will: <ul style="list-style-type: none"><li>2.1.1 Identify the following alternatives to prosecution available to complainants and victims:<ul style="list-style-type: none"><li>A. Mediation.</li><li>B. Warnings.</li><li>C. Civil remedies.</li><li>D. Referral services.</li></ul></li><li>2.1.2 Per A.R.S. §§13-1001 through 13-1003, identify examples of the terms:<ul style="list-style-type: none"><li>A. Attempt.</li><li>B. Solicitation.</li><li>C. Conspiracy.</li><li>D. Facilitation.</li></ul></li><li>2.1.3 Per A.R.S. §§13-101 and 13-104, identify examples of the difference between “spirit of the law” and “letter of the law.”</li><li>2.1.4 Identify the purposes of A.R.S. Title 13, per A.R.S. §13-101.</li><li>2.1.5 Given a written, verbal or visual description of a possible crime; identify which culpable mental states apply, if any, per A.R.S.</li></ul>

§13-105.

- 2.1.6 Identify examples of the terms defined in A.R.S. §13-105.
- 2.1.7 Identify the time limitations for prosecution per A.R.S. §13-107.
- 2.1.8 Identify the minimum requirements for criminal liability per A.R.S. §13-201.
- 2.1.9 Identify examples of who may be held criminally liable (“parties to offenses”) per A.R.S. §§13-301 through 13-306.
- 2.1.10 Identify examples of persons who are legally incapable of committing a crime per A.R.S. Title 13, Chapter 5.
- 2.1.11 Identify the classifications of felonies and misdemeanors per A.R.S. §13-601.
- 2.1.12 Identify the provisions of law with regard to the suspension of the civil rights of convicted felons per A.R.S. §13-904.
- 2.1.13 Identify the provisions of the law with regard to offenses committed in school safety zones per A.R.S. §13-709.

DATE FIRST PREPARED: November 2000

PREPARED BY: SME Committee

REVIEWED – **REVISED**: Lt. Harold Brady, SME Co-Chair DATE: July 2002  
REVIEWED – **REVISED**: SME Committee DATE: June 2007  
REVIEWED – **REVISED**: Lt. Dave Kelly, Phoenix PD DATE: November 2009  
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AZ POST – APPROVAL: Lori Wait DATE: January 2022

INSTRUCTOR REFERENCES: A.R.S. Title 13

CLASS LEVEL: Student

TRAINING AIDS: <http://www.azleg.gov/ArizonaRevisedStatutes.asp>

INSTRUCTIONAL STRATEGY: Interactive lecture and class discussion.

SUCCESS CRITERIA: 70% or higher on a written, multiple-choice examination.

COMPUTER FILE NAME: 2.1 Introduction to Criminal Law

DATE RELEASED TO THE SHARE FILE: August 2023

**I. INTRODUCTION**

- A. Instructor – (self) introduction.
- B. Preview of performance objectives. **INSTRUCTOR NOTE:** *Introduction to Criminal Law includes this portion as well as Chapters 1, 2, 3, 5, and 9. This should be covered in about four (4) hours.*

**II. BASIC TRAINING**

- A. During your basic training, you will be very much involved with three (3) kinds of law.
- B. What are they? (Discussion)
  - 1. Statutory – Title 13, Title 28 and Title 4.
  - 2. Constitutional – search and seizure, Miranda, etc.
  - 3. Case – changes in the use or interpretation of statutory and constitutional law based on what? **INSTRUCTOR NOTE:** *Discuss with the class.*
  - 4. Answer: Previous court decision, precedent or Stare Decisis.
- C. In this course we will be concentrating on statutory and case law.

**III. CASE LAW**

- A. Case law is actually much older than the U.S. Constitution.
- B. Case law is simply a decision made by a judge that changes the way we use or interpret statutes – in this case, Title 13, Title 4 and Title 3.
  - 1. You may be asking yourself, “Okay, for test purposes and for street application am I going to be held accountable for Title 13 interpretation or for case law?” Good question.
  - 2. You will be held accountable for both. Look at it this way, what good will it do to learn a statute one (1) way if the courts throughout Arizona are mandating that we use it another?
  - 3. Learning the statute itself, as well as how case law has affected it, is of prime importance in law enforcement.
  - 4. Case law can change rapidly.
    - a. Gospel today may be old hat tomorrow.

- b. A perfectly good interpretation may be of no use next week.
    - c. One (1) judge may overturn a case law decision by another judge thereby creating another case law decision with which we must deal.
  - C. Case law sometimes results in an actual change in the wording of the statute and sometimes it does not.
    - 1. For example: Armed robbery.
      - a. State v. Garza Rodriguez.
      - b. The wording in the statute never changed, the way we interpreted the statute did.
    - 2. For example: Arson.
      - a. Case law changed the mental state required from “intentionally” to “knowingly,” making it a little easier to show in court.
      - b. The wording in the statute changed along with our interpretation.
  - D. Making good case law.
    - 1. In the majority of criminal cases, the courts are looking at the officer’s “reasonableness” in his/her actions in determining whether he/she acted in compliance with the Constitution, statutes or case law.
    - 2. Good police work/actions “make” good case law.
      - a. When the courts ruled that the officer’s actions were proper, it was actually the officer’s action and not the court that “made” the “good” law.
      - b. When the courts ruled that the officer’s actions were improper, it was the officer’s actions that made the “bad law.”
    - 3. Improper police activity and poor prosecutorial judgment work together to create bad case law.
      - a. When officers act in violation of constitutional, statutory or case law, or in violation of just plain common sense, “bad case law” is often created.
      - b. When prosecutors issue complaints in such cases, they compound the problem.
  - E. Alternatives to prosecution and/or arrest.

**P. O. 2.1.1**

1. It is not always necessary to make an arrest every time the law is violated. As a matter of fact, on many occasions, the officer will choose not to make an arrest, but will, instead, utilize alternatives. Sometimes the answer is not jail or a citation; sometimes there are alternatives. Consider the following:
2. **Mediation** the officer may act as the mediator himself/herself. **P. O. 2.1.1A**
3. **Warnings** – an officer’s discretion allows the use of verbal and/or written warning instead of arrest or citations. **P. O. 2.1.1B**
4. **Civil remedies** – a “fender bender” may be very minor and the parties may wish to handle the problem themselves rather than get the police involved. **P. O. 2.1.1C**
5. **Referral services** – there are a multitude of referral services in Arizona that may be used in lieu of an arrest. **P. O. 2.1.1D**

**IV. CHAPTER 1 – GENERAL PROVISIONS****A. A.R.S. §13-101 – Purposes.****P. O. 2.1.4**

1. To prescribe conduct that harms or threatens to harm individuals or the general public.
2. To give fair warning that certain acts or omissions are unlawful and punishable.
3. To define the unlawful acts and the accompanying mental states necessary to commit the crimes.
4. To separate serious and minor offenses.
5. Crime deterrence.
6. Punishment.
7. To promote truth and accountability in sentencing.

**B. A.R.S. §13-104 – Rules of Construction.****P. O. 2.1.3**

1. Title 13 is not to be strictly construed.
  - a. Letter of the law v. spirit of the law.
  - b. What does this mean to you?
2. Title 13 provisions must be construed according to the fair meaning of their terms to promote justice.

3. “Test in determining validity of penal statute was whether a reasonable man subject to the statute would be informed of what was required of him, and test is satisfied where statutory words have through daily use acquire content that conveys to any interested person sufficiently accurate concept of what is forbidden.” **INSTRUCTOR NOTE:** *State v. J.S. Garlick.*
4. “It is the duty of the court, when called on, to determine the meaning of penal laws applying statutory and judicially established rules of statutory interpretation.” **INSTRUCTOR NOTE:** *Simon V. State.*
5. “Fair play and the demands of due process require that the terms of a penal statute be sufficiently explicit to inform those subject to it what conduct will render a person liable to its penalties.” **INSTRUCTOR NOTE:** *Passmore v. State.*

**C. A.R.S. §13-105 – Definitions.****P. O. 2.1.6**

1. Definitions play an extremely important role in understanding and applying the statutes.
2. Although it is important to have an understanding of all of the definitions, during this course of instruction we will be concentrating on the statutes and definitions that directly apply to the “beat” or “street” officer.
3. The following definitions are necessary for the understanding and application of the statutes to follow:
  - a. Conduct – an act or omission and its accompanying culpable mental state.
  - b. Crime – a felony or a misdemeanor (note that “petty offense” is not included).
  - c. Criminal street gang – an ongoing formal or informal association of persons whose members or associates, individually or collectively, engage in the commission, attempted commission, facilitation or solicitation of any felony act and which has at least one (1) individual who is a criminal street gang member.
  - d. Criminal street gang member – an individual to whom two (2) of the following seven (7) criteria, which indicate criminal street gang membership, apply:
    - i. Self proclamation.
    - ii. Witness testimony or official statement.
    - iii. Written or electronic correspondence.
    - iv. Paraphernalia or photographs.

- v. Tattoos.
  - vi. Clothing or colors.
  - vii. Any other indicia of street gang membership.
- e. Culpable mental states – a person MUST have technical knowledge of the mental states because they are an element of almost every statute.

**P. O. 2.1.5**

- i. **Intentionally** – the most culpable (blameworthy) mental state. The person’s intent was to commit the crime or to cause the results that occurred.
  - ii. **Knowingly** – the next most culpable mental state after intentionally. This generally refers to the circumstances surrounding the defendant’s conduct and not the conduct itself or its results. For example, a person acts knowingly when he/she receives property that he/she is aware, or believes, has been stolen.
  - iii. **Recklessly** – the third most culpable mental state. The essence of this definition is the conscious disregard of a substantial and unjustifiable risk that the prohibited result will occur. For example, pulling a gun in a crowded restaurant is an act that consciously disregards the risk that someone will, or can, be injured. (A conscious risk-taking.)
  - iv. **Criminal negligence** – the least culpable mental state. The distinction between this and recklessness is the failure to perceive the risk or circumstances of the prohibited act.
- f. Dangerous instruments – compare carefully with the definition of “deadly weapon.” **INSTRUCTOR NOTE:** Discuss the court’s definition of dangerous instruments. Ex; *State v. Francisco (2020)*.
- g. Deadly physical force – compare with “physical force.”
- h. Deadly weapons – must be designed for lethal use.
- i. Felony – note that the only difference in the definitions of this and misdemeanor is whether the defendant is placed in the custody of the Department of Corrections.
- j. Firearm – this definition differs from that given in Chapter 31, Weapons and Explosives. Here, the projectile must be expelled by the action of “expanding gases” while in Chapter 31, the projectile must be expelled by the action of an “explosive.” (We do not use the definition in Chapter 31).



- k. Misdemeanor – again, compare this with a felony.
- l. Offense – this includes, unlike the definition of crime, misdemeanors, felonies and petty offenses.
- m. Petty offense – fine only.
- n. Physical force – note that this includes confinement. Compared with deadly physical force.
- o. Physical injury – compared with serious physical injury.
- p. Possess means to knowingly have physical possession or otherwise exercise dominion or control over property. **INSTRUCTOR NOTE:** *Discuss examples and applications.*
- q. Serious physical injury – compared with physical injury.
- r. Vehicle – “a device “any person or property could be transported on a highway, waterway or airway”. (excludes devices moved by human power.)

**D. A.R.S. §13-107 – Time Limitations.****P. O. 2.1.7**

- 1. Most crimes must have prosecution start during a certain time period after discovery of the crime.
- 2. Class 2 through Class 6 felonies – 7 years.
- 3. Misdemeanors – 1 year.
- 3. Petty offenses – 6 months.
- 5. Exception – the prosecution for the following crimes (or any attempt) can start at any time – no time limitation whatsoever.
  - a. Homicide.
  - b. Misuse of public money.
  - c. A felony involving the falsification of public records.
  - d. Chapter 14 or Chapter 35.1 offenses that are Class 2 felonies.
  - e. Violent sexual assault per A.R.S. §13-1423.
  - f. Terrorism per A.R.S. §13-2308.01.

6. This imposed time limitation is not in effect when the accused leaves this state or when he/she has no reasonable ascertainable place of abode within the state.
7. The period of limitation does not run for a serious offense as defined in A.R.S. §13-705 (Dangerous Crimes Against Children) during any time when the identity of the person who commits the offense(s) is unknown.

**V. CHAPTER 2 – GENERAL PRINCIPLES OF CRIMINAL LIABILITY****A. A.R.S. §13-201 – Requirements for Criminal Liability. P. O. 2.1.8**

1. Minimum requirement for liability is the performance of a prohibited act, or the omission to perform a duty required by law by someone physically capable of performing.
- B. A.R.S. §13-202.B *INSTRUCTOR NOTE:* Discuss “strict liability” offenses (i.e. littering, DUI offenses)**
- C. A.R.S. §13-204 – Effect of ignorance or mistake upon criminal liability. *INSTRUCTOR NOTE:* Discuss “ignorance” defense and exceptions.**

**VI. CHAPTER 3 – PARTIES TO OFFENSES: ACCOUNTABILITY P. O. 2.1.9****A. A.R.S. §13-301 – Definition of “Accomplice”.**

1. The purpose of this section is to define the term “accomplice” as it is used in this chapter.
  2. This term covers anyone who, with the intent to promote or facilitate the commission of an offense, solicits, commands, aids, counsels, agrees or attempts to aid or provides means or opportunity to another to commit the offense.
  3. The old common law terms of “principal in the second degree” and “accessory before the fact” are not used.
  4. Special attention should be given to the exclusion of bona fide peace officers. The legislature added this language so that undercover police activities are protected.
- B. A.R.S. §13-302 – Criminal Liability Based Upon Conduct.**
1. This is a statutory reaffirmation of the general principle that a person may be criminally liable for either his/her own conduct, the conduct of another or both.
  2. Special note: The testimony of an accomplice need not be corroborated.

**C. A.R.S. §13-303 – Criminal Liability Based Upon Conduct of Another.**

1. This section provides four (4) separate circumstances in which one (1) person will be held accountable for the criminal conduct of another.
2. Subsection A, paragraph 2, An individual acting with the culpable mental state sufficient for the commission of the offense causes another person to commit the offense regardless of whether the other person is capable of forming the culpable mental state.
3. Subsection A, paragraph 2, states that a person is no less guilty because he/she uses an innocent or irresponsible person to commit his/her crime. For example, a person who directs a child to kill someone is guilty of homicide.

**D. A.R.S. §13-304 – Non Defense to Criminal Liability Based Upon Conduct of Another.**

1. In any prosecution for an offense in which the criminal liability of the accused is based on the conduct of another.
2. It is no defense that:
  - a. The other person has not been prosecuted for or convicted of such offense, has been acquitted of such offense, has been convicted of a different offense or degree of offense or has an immunity to prosecution or conviction of such offense; or
  - b. The accused belongs to a class of persons who, by definition of the offense, are legally incapable of committing the offense in an individual capacity.

**E. A.R.S. §13-305 – Criminal Liability of Enterprises.**

1. An enterprise commits an offense if:
  - a. The conduct charged is a failure to discharge a specific duty imposed by law; or
  - b. We can show that the owners, managers or directors of the enterprise authorized, solicited, commanded or recklessly tolerated the conduct; or
  - c. The conduct charged is engaged in by an agent of the enterprise while acting within the scope of employment and in behalf of the enterprise; and
    - i. The conduct is a misdemeanor or petty offense; or
    - ii. The offense is one that imposes criminal liability on an enterprise by statute.

**F. A.R.S. §13-306 – Criminal Liability of an Individual for Conduct of an Enterprise.**

1. A person is criminally liable for conduct constituting an offense which such person performs, or causes to be performed, in the name of, or in behalf of, an enterprise to the same extent if such conduct were performed in such person's own name or behalf.

**VII. CHAPTER 5 – RESPONSIBILITY****P. O. 2.1.10****A. A.R.S. §13-501 – Persons Under 18 Years of Age; Felony Charging.**

1. The county attorney shall bring a criminal prosecution against a juvenile in the same manner as an adult if the juvenile is 15, 16 or 17 years of age and is accused of any of the following crimes:
  - a. First-degree murder.
  - b. Second-degree murder.
  - c. Forcible sexual assault.
  - d. Armed robbery.
  - e. Any other violent felony.
  - f. Any felony offense committed by a chronic felony offender.
  - g. Any offense that is properly joined to an offense listed in this subsection.
2. The county attorney may bring a criminal prosecution against a juvenile in the same manner as an adult if the juvenile is at least 14 years of age and is charged with any of the following offenses:
  - a. A Class 1 felony.
  - b. A Class 2 felony.
  - c. A Class 3 felony in violation of any offense in Chapters 10-17, 19 or 23 of this Title.
  - d. A Class 3, 4, 5 or 6 felony involving the intentional or knowing infliction of serious physical injury or the discharge, use or threatening exhibition of a deadly weapon or dangerous instrument.
  - e. Aggravated driving under the influence.
  - f. Any felony offense committed by a chronic felony offender.

- g. Any offense that is properly joined to an offense listed in this subsection.
  - 3. A criminal prosecution shall be brought against a juvenile in the same manner as an adult if the juvenile has been charged with a criminal offense and has a historical prior felony conviction.
- B. A.R.S. §13-502 – Insanity; Burden of Proof.**
  - 1. A person may be found guilty, except insane, if at the time of the commission of the criminal act the person was afflicted with a mental disease or defect of such severity that the person did not know the criminal act was wrong.
  - 2. A mental disease or defect constituting legal insanity is an affirmative defense.
  - 3. Mental disease or defect does not include disorders that result from acute voluntary intoxication or withdrawal from alcohol or drugs, character defects, psychosexual disorders or impulse control disorder.
  - 4. Conditions that do not constitute legal insanity include, but are not limited to:
    - a. Momentary.
    - b. Temporary conditions arising from the pressure of the circumstance.
    - c. Moral decadence.
    - d. Depravity or passion growing out of anger, jealousy, revenge, hatred or other motives in a person who does not suffer from a mental disease or defect.
    - e. An abnormality that is manifested only by criminal conduct.
  - 5. This subsection sets up testing procedures once a person has been convicted or claims insanity.
  - 6. The defendant shall prove his/her legal insanity by clear and convincing evidence.
  - 7. Once a person has been found to be guilty, but insane, the court determines the presumptive sentence the defendant would have received if he/she had not been found insane – he/she is then committed to a secure state mental health facility for the term.
- C. A.R.S. §13-503 – Effect of Alcohol or Drug Use.**
  - 1. Voluntary ingestion is not a defense.

**VIII. CHAPTER 9 – PROBATION AND RESTORATION OF CIVIL RIGHTS**

- A. **A.R.S. §13-904 – Suspension of Civil Rights.** **P. O. 2.1.12**
- B. A conviction for a felony suspends the following civil rights of the person so convicted:
1. The right to vote.
  2. The right to hold public office of trust or profit.
  3. The right to serve as a juror.
  4. The right to possess a gun or firearm.
  5. Any other right the suspension of which is necessary during a period of imprisonment.

**IX. CHAPTER 6 – CLASSIFICATION OF OFFENSES**

- A. **A.R.S. §13-601 – Classification of Offenses.** **P. O. 2.1.11**
1. There are six (6) categories of felonies. From high to low:
    - a. Class 1 felony.
    - b. Class 2 felony.
    - c. Class 3 felony.
    - d. Class 4 felony.
    - e. Class 5 felony.
    - f. Class 6 felony. ***INSTRUCTOR NOTE:*** *The instructor should discuss “open ended” designations.*
  2. There are three (3) categories of misdemeanors. From high to low:
    - a. Class 1 misdemeanor.
    - b. Class 2 misdemeanor.
    - c. Class 3 misdemeanor.
  3. There is only one (1) designation of petty offense.
- B. **A.R.S. §13-705 – Dangerous Crimes Against Children.** **P. O. 2.1.9D**
1. This statute was designed to provide increased sentencing for those who commit

dangerous crimes against children.

2. Please note that it is not possible to actually charge someone with A.R.S. §13-705, but it provides that if certain other crimes are committed against persons under certain ages, then sentencing will commence as per this statute.
3. Except as otherwise provided in this section, a person who is at least 18 years of age or who has been tried as an adult and who stands convicted of a dangerous crime against children in the first degree involving:
  - a. Attempted first-degree murder of a minor 12 years of age or younger.
  - b. Second-degree murder of a minor 12 years of age or younger.
  - c. Sexual assault of a minor 12 years of age or younger.
  - d. Sexual conduct with a minor 12 years of age or younger.
4. May be sentenced to life imprisonment; the presumptive term shall be 20 years.
5. Except as otherwise provided in this section, a person who is at least 18 years of age or who has been tried as an adult and who stands convicted of a dangerous crime against children in the first degree involving:
  - a. Attempted first-degree murder of a minor 12, 13 or 14 years of age.
  - b. Second-degree murder of a minor 12, 13 or 14 years of age.
  - c. Sexual assault of a minor 12, 13 or 14 years of age.
  - d. Sexual conduct with, or taking a minor for the purposes of prostitution or prostitution with, a minor 12, 13 or 14 years of age.
  - e. Continuous sexual abuse of a child or involving or using minors in drug offenses.
6. Shall be sentenced to a presumptive term of 20 years.
7. If the person has been previously convicted of one (1) predicate felony, the person shall be sentenced to a presumptive term of 30 years.
8. “Dangerous crimes against children” means any of the following committed against a minor under 15 year of age:
  - a. Second-degree murder.
  - b. Aggravated assault resulting in serious physical injury or committed by the use of

- a deadly weapon or dangerous instrument.
  - c. Sexual assault.
  - d. Molestation of a child.
  - e. Sexual conduct with a minor.
  - f. Commercial sexual exploitation of a minor.
  - g. Sexual exploitation of a minor.
  - h. Child abuse.
  - i. Kidnapping.
  - j. Sexual abuse.
  - k. Taking a child for the purpose of prostitution.
  - l. Child prostitution.
  - m. Involving or using minors in drug offenses.
  - n. Continuous sexual abuse of a child.
  - o. Attempted first-degree murder.
9. There are two (2) degrees of dangerous crimes against children:
- a. First degree if it is a completed offense.
  - b. Second degree if it is a preparatory offense.
10. A “Predicate Felony” means:
- a. Any felony involving child abuse, a sexual offense or conduct involving the intentional or knowing infliction of serious physical injury, or
  - b. The use or exhibition of a deadly weapon or dangerous instrument or a dangerous crime against children in the first or second degree.

**C. A.R.S. §13-709 – Offenses Committed in a School Safety Zone.****P. O. 2.1.13**

1. A person who commits a felony offense in a school zone (with the exception of A.R.S. §13-3411) is guilty of the same class of felony if it had not been a school zone except



that the court may impose a sentence one (1) year longer than the presumptive minimum or maximum.

2. In addition, the court may fine the person not less than two (2) thousand dollars.
3. Each school district governing board may place, and maintain, permanently affixed signs that are located in a visible manner at the main entrance of each school that identifies such school and grounds as a school safety zone.
4. "School" means any public or non-public kindergarten, common or high school.
5. "School Safety Zone" means:
  - a. The area within 300 feet of a school or grounds.
  - b. Public property within 1,000 feet of a school or grounds.
  - c. School bus.
  - d. School bus stop.

**X. CHAPTER 10 – PREPARATORY OFFENSES****P. O. 2.1.2****A. A.R.S. § 13-1001 – Attempt.****P. O. 2.1.2A**

1. A person commits attempt if, acting with the kind of culpability (mental state) otherwise required for commission of an offense, such person:
  - a. Intentionally engages in conduct that would constitute an offense if the attendant circumstances were as such person believes them to be.
    - i. Joe goes to the local Circle K with the intent to rob it. When he arrives at the front of the store, he discovers that it has been closed for inventory. This is an attempt.
    - ii. "A" points a gun at "B" thinking the gun is loaded and pulls the trigger, but the gun is empty. This was held to be an attempt in *State v. Damms*, 1960, 9 Wis. 2d 183, 100 N.W. 2d 592.
    - iii. "A" tries to perform an abortion on "B," but "B" turns out not to be pregnant. This is generally held to be an attempt (e.g., *People v. Huff*, 1930, 339 Ill. 328, 171 N.E. 261).
  - b. Intentionally does or omits to do anything which, under the circumstances as such believes them to be, is any step in a course of conduct planned to culminate in the commission of an offense.

- i. If Joe buys a gun he intends to use to hold up a bank, this alone would not be enough to constitute an attempt.
    - ii. If, however, he takes the gun and goes to the bank only to be scared away by the presence of police there, then this would constitute an attempt. *State v. Dumas, 1912, 118 Minn. 77, 136 N.W. 311.*
    - iii. At some point between these two (2) acts, the preparation for the crime ends and the attempt begins.
  - c. Engages in conduct intended to aid another to commit an offense, although the offense is not committed or attempted by the other person, provided his/her conduct would establish his/her complicity if the offense were committed or attempted by the other person.
2. It is no defense that it was impossible for the person to aid the other party's commission of the offense.
3. Please note: You cannot book a person for A.R.S. §13-1001. You would book the person for whatever crime was attempted.
  - a. Attempted burglary – A.R.S. §§13-1506, 13-1507 or 13-1508.
  - b. Attempted murder – A.R.S. §§13-1104 or 13-1105.
  - c. Attempted arson – A.R.S. §§13-1703 or 13-1704.
4. The crime of Attempt is one class less than the crime committed:
  - a. Class 2 felony if offense attempted is a Class 1 felony.
  - b. Class 3 felony if offense attempted is a Class 2 felony.
  - c. Class 4 felony if offense attempted is a Class 3 felony.
  - d. Class 5 felony if offense attempted is a Class 4 felony.
  - e. Class 6 felony if offense attempted is a Class 5 felony.
  - f. Class 1 misdemeanor if offense attempted is a Class 6 felony.
  - g. Class 2 misdemeanor if offense attempted is a Class 1 misdemeanor.
  - h. Class 3 misdemeanor if offense attempted is a Class 2 misdemeanor.

- i. Petty offense if offense attempted is a Class 3 misdemeanor or petty offense.

**B. A.R.S. §13-1002 – Solicitation.****P. O. 2.1.2B**

1. A person, other than a peace officer acting in his/her official capacity within the scope of his/her authority and in the line of duty, commits solicitation if, with the intent to promote or facilitate the commission of a felony or misdemeanor, such person commands, encourages, requests or solicits another person to engage in conduct which would constitute the crime.
  - a. Pursuant to this section when “A,” intending to promote the commission of a specific crime, solicits “B” to commit it, “A’s” acts constitute the crime of solicitation even if “B” rejects the proposal.
  - b. The defendant’s alleged conduct in slowing down his vehicle to keep pace with the boy’s gait and offering him money for sex comprised solicitation. *People v. Spencer*, 1971, 66 Misd. 2d 658, 322 N.Y.S. 2d 266.
2. The crime of solicitation is two (2) classes less than the crime solicited.
3. Solicitation is:
  - a. A Class 3 felony if the offense solicited is a Class 1 felony.
  - b. A Class 4 felony if the offense solicited is a Class 2 felony.
  - c. A Class 5 felony if the offense solicited is a Class 3 felony.
  - d. A Class 6 felony if the offense solicited is a Class 4 felony.
  - e. A Class 1 misdemeanor if the offense solicited is a Class 5 felony.
  - f. A Class 2 misdemeanor if the offense solicited is a Class 6 felony.
  - g. A Class 3 misdemeanor if the offense solicited is any misdemeanor.

**C. A.R.S. §13-1003 – Conspiracy.****P. O. 2.1.2C**

1. A person commits conspiracy if, with the intent to promote or aid the commission of an offense, such person agrees with one (1) or more persons that at least one (1) of them or another person will engage in conduct constituting the offense and one (1) of the parties commits an overt act in furtherance of the offense, except that an overt act shall not be required if the object of the conspiracy was to commit:
  - a. Any felony on the person of another.

- b. First-degree burglary.
  - c. Arson of an occupied structure.
2. Note that conspiracy requires at least two (2) people who intend to promote or aid in the commission of crime. One (1) person, planning alone, cannot be charged with conspiracy.
  3. Under most circumstances this crime requires that at least one (1) of the conspirators commit an OVERT ACT in furtherance of the crime.
    - a. “Evidence that, after the defendant and others agreed to commit the crime, they traveled to the scene of the proposed crime to survey the area, and that one (1) co-conspirator brought an automobile to be used in the crime, demonstrated overt acts in furtherance of the conspiracy.” *People v. Ambrose*, 1975, 28 Ill. App. 3d 627, 329 N.E. 2d 11.
    - b. “Conversations among co-conspirators in forming and planning the conspiracy are not overt acts in furtherance.” *People ex rel. Conte v. Flood*, 1966, 53 Misc. 2d. 109, 277 N.Y.S. 2d 267.
  4. However, there are two (2) specific crimes and one (1) general crime classification that are exceptions to the “Overt Act” requirement. These are:
    - a. Conspiracy to commit any felony on the person of another.
    - b. Conspiracy to commit first-degree burglary.
    - c. Conspiracy to commit arson of an occupied structure.
  5. A.R.S. §13-1003(B) addresses the scope of the conspiratorial relationship and extends the offense to a person who knows, or has reason to know, that other persons have also conspired with his/her co-conspirator to commit the same offense.
  6. A.R.S. §13-1003(C) states that if two (2) people conspire to commit several offenses and they are the object of the same agreement, they are guilty of one (1) conspiracy to commit the higher offense.
  7. Conspiracy to commit a crime carries the same class of crime as if it were accomplished (i.e., conspiracy to commit a Class 3 felony is considered a Class 3 felony).

**D. A.R.S. §13-1004 – Facilitation.****P. O. 2.1.2D**

1. A person commits facilitation if, acting with knowledge that another person is committing or intends to commit an offense, the person knowingly provides the other person with means or opportunity for the commission of the offense.

2. Among the many illustrations of this type of conduct are the following:
    - a. A sporting goods salesman sells a gun to a man who he knows intends to use it to kill his wife.
    - b. A telephone company provides telephone services to a person with knowledge that the intended use is for bookmaking purposes.
    - c. A night watchman for a warehouse looks the other way when he sees a burglar friend about to break into the warehouse.
  3. This section does not apply to peace officers that act in their official capacity within the scope of their authority and in the line of duty.
- E. **A.R.S. §13-1005 – Renunciation of Attempt, Conspiracy, Solicitation or Facilitation.**
1. In a prosecution for attempt, conspiracy or facilitation, it is a defense that the defendant, under circumstances manifesting a voluntary and complete renunciation of his/her criminal intent, gave timely warning to law enforcement authorities or otherwise made a reasonable effort to prevent the crime.
  2. In a prosecution for solicitation, it is a defense that the defendant, under circumstances manifesting a voluntary and complete renunciation of the defendant's criminal intent completed both the following acts:
    - a. Notified the person solicited.
    - b. Gave timely warning to law enforcement authorities or otherwise made a reasonable effort to prevent the offense from occurring.

## **XI. CONCLUSION**

- A. Review of performance objectives.
- B. Final questions and answers.
- C. Instructor closing comment(s).