

Definition B-Reckless as to “circumstances” surrounding conduct

INSTRUCTION NO. ____

A person acts “recklessly” when (he)(she) is aware of a substantial and unjustifiable risk that certain circumstances exist relating to his conduct, consciously disregards the risk, and acts anyway.

The nature and extent of the risk must be such that disregarding it is a gross deviation from what an ordinary person would do in that situation.

Committee Note: Generally, it will be enough to use definition A, which focuses on recklessness with respect to the **result** of the actor’s conduct. However, where the applicable statutory provision requires recklessness as to the circumstances surrounding the actor’s conduct, this definition (definition B) should be used. In those cases where the statute requires persons to inform themselves of certain circumstances before they act, see e.g., Utah Code §76-10-1206, the following should be substituted for paragraph 1 of this instruction:

“The law sometimes requires persons to inform themselves of certain circumstances before they act. A person acts recklessly when (he)(she) is aware of a substantial and unjustifiable risk that such circumstances exist, consciously disregards that risk, and acts anyway.”

Note: Where the applicable statute specifically references “malicious” conduct, care should be exercised in ensuring that the definition for recklessness is appropriate to the circumstances. While the definition for recklessness includes the term “maliciously,” a review of those statutes leaves open the question whether that term is, in all cases, a direct substitute for “reckless” conduct. This matter has been referred to the Anomalies committee of the Utah Sentencing Commission for its review and action, including possible legislative re-drafting.