

22.75 Issues In Violation Of Bail Bond By Possessing A Firearm

To sustain the charge of violation of bail bond by possessing a firearm, the State must prove the following propositions:

First Proposition: That the defendant had been admitted to bail;

Second Proposition: That the defendant knew a condition of his bail was that he not possess a firearm; and

Third Proposition: That the defendant violated this condition by [(intentionally) (knowingly)] possessing a firearm.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/32-10(a-5) (West 1994), added by P.A. 88-680, effective January 1, 1995.

Give Instruction 22.74.

P.A. 88-680 amended Section 32-10 by adding Subsection a-5, which provides that a person who violates a condition of bail bond by possessing a firearm in violation of his conditions of bail commits a Class 4 felony for a first violation and a Class 3 felony for a second violation.

Because Subsection a-5 does not include a mental state, the Committee decided to provide two alternative mental states pursuant to 720 ILCS 5/4-3(b) (West 1994) (formerly Ill.Rev.Stat. ch. 38, §4-3(b) (1991)). The Committee believes this action to be in accordance with *People v. Anderson*, 148 Ill.2d 15, 591 N.E.2d 461, 169 Ill.Dec. 288 (1992), which held that even though the criminal hazing statute listed no mental state, Section 4-3(b) still placed on the State the burden of proving either intent, knowledge, or recklessness.

In *People v. Gean*, 143 Ill.2d 281, 573 N.E.2d 818, 158 Ill.Dec. 5 (1991), *People v. Tolliver*, 147 Ill.2d 397, 589 N.E.2d 527, 168 Ill.Dec. 127 (1992), and *People v. Whitlow*, 89 Ill.2d 322, 433 N.E.2d 629, 60 Ill.Dec. 587 (1982), the supreme court used Section 4-3(b) to choose one or two, but not all three, of these mental states for particular offenses having no statutorily specified mental state. Consistent with these cases and the Committee's view that it would be inappropriate to speak of a defendant's "recklessly" possessing a firearm under Subsection a-5, the Committee has provided only the alternative mental states of "intentionally" and "knowingly." Select the mental state consistent with the charge.

The Committee also believes that the State must prove that defendant knew a condition of his bail was that he not possess a firearm.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in each proposition. See Instruction 5.03.