

22.74 Definition Of Violation Of Bail Bond By Possessing A Firearm

A person commits the offense of violation of bail bond [by possessing a firearm] when he has been admitted to bail and when he [(intentionally) (knowingly)] violates a condition of his bail bond that he not possess a firearm by [(intentionally) (knowingly)] possessing a firearm.

Committee Note

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

Give Instruction 22.75.

Use the bracketed phrase “by possessing a firearm” when the defendant is charged with two different bail bond violations, and it is necessary to distinguish between the violations.

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.

Use applicable bracketed material.