

CRIMINAL LAW: INTENT

ONLINE

PRESENTED BY:

DPS – Law Enforcement Academy
Santa Fe, New Mexico

Date: _____

GOALS

- Students will appreciate the importance of intent in criminal law.
- Students will learn about different kinds of intent.
- Students will recognize defenses that exist in proving intent in a criminal case.
- Students will become aware of what is necessary to prove intent in a criminal case.

OBJECTIVES

Upon completion of this course, students will be able to:

- Explain the importance of intent as a factor in proving a criminal case.
- Know the difference between general and specific intent.
- Explain different kinds of intent: constructive, presumed, and transferred intent.
- Define negligence and strict liability as alternatives to intent.
- Know when there is a legal duty to act.
- Know defenses to intent: insanity, intoxication (too intoxicated to form intent), age (too young to form intent), intelligence (ability to understand), mental illness.
- Explain what officers can do to reduce defenses to the element of intent.
- Awareness of additional defenses such as mistake of fact, ignorance of the law.
- Describe concepts including legal duty to act and failure to act.

SOURCES

- New Mexico Criminal and Traffic Manual
- New Mexico Statutes Annotated.
- State and federal case law.

ESTIMATED TIME Included in a ten hour block on Criminal Law.

PREPARED BY

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INTRODUCTION

One element the prosecution (and law enforcement) must prove in nearly every criminal case is intent. We shall discuss different types of intent: general intent, specific intent, transferred intent, constructive intent, etc.

We will examine defenses that can be raised to indicate we didn't prove intent: insanity, age (too young to know), ignorance of the law, voluntary intoxication, entrapment. The concept of intent is elusive but if we are aware of it, if we understand it, we can have better cases and be prepared for legal challenges.

In addition, we will discuss the importance of showing an act was **voluntary** and that the offender had **knowledge** the act (example: the property was stolen) was illegal.

Three major categories of intent:

- 1) Non-intent crimes.
- 2) Crimes of general intent.
- 3) Crimes of specific intent.

Non-intent crimes - Two types

- A) Negligent crimes
There is no intent but the person acted carelessly or recklessly. Examples: Negligent Arson or Involuntary Manslaughter.
- B) Strict Liability crimes
All that is required is that Defendant did something prohibited by law. Intent is not an element. It could be a violation of a regulation or statute. Examples: didn't pay taxes, speeding, parking tickets.

Crimes of General Intent

An intent to do a prohibited act including desiring a prohibited result. An important element for nearly all crimes.

Crimes of Specific Intent

- This is an additional form of intent, almost always found in the statute. It's required along with general criminal intent.
- Specific intent is an element of a crime requiring the state to prove that the defendant wanted to obtain an additional consequence or result.

Example: Burglary

Burglary consists of the **unauthorized entry** of any vehicle, watercraft, aircraft, dwelling or other structure, movable or immovable, with the **intent to commit any felony or theft therein**. NMSA 1978, Section 3016-3.

- **General intent:** unauthorized entry. This element is also a part of criminal trespass and breaking and entering. We need a specific intent to have burglary.
- **Specific intent** for burglary: with intent to commit a felony or theft therein.

Other examples of specific intent follow:

- Solicitation: The intent to have the person solicited commit a crime,
- Forgery: The intent to defraud,
- Assault: The intent to commit an attempted battery,
- Battery: The specific intent to injure a victim,
- Robbery: The specific intent to deprive the victim of his or her property.

How important is intent?

It is an element we must prove. In homicide cases, for example, intent is the main element that decides whether we have a first degree murder or involuntary manslaughter. A case from Roswell illustrates how intent can decide what charges to bring.

FACTS:

Defendant entered a convenience store in Roswell, New Mexico. He pushed the cashier toward the cash register and said, "Give me the money or I'm going to stab you." He then stabbed and slashed the cashier with a knife. Immediately thereafter, he stole money from the store register and took five dollars from the cashier's wallet. State v. Fuentes (1994).

Defendant was convicted of armed robbery and aggravated battery. He argued this was a violation of double jeopardy – the action happened very quickly and he felt only one offense should be charged. Do we have one offense or two?

Answer:

Court of Appeals looked at intent and decided that two different offenses had occurred. Robbery requires the specific intent to deprive the victim of his or her property; it is a crime primarily directed toward protection of property interest. Battery, on the other hand, requires the specific intent to injure the victim, which is not present in robbery.

Once a crime has occurred, we generally need the following to help prove our case:

- 1) Criminal intent (also known as mens rea)

- 2) prohibited act (also known as actus rea)
- 3) concurrence (must have intent and prohibited act at the same time)

We need both intent and a prohibited act concurrently (at the same time) to have a crime. There is no crime for intent by itself nor is there a crime when a prohibited act occurs without intent. A few examples will help us better understand this:

- A picks up a gun, points it at B, pulls the trigger, and B dies. It looks like a homicide. But let's put a twist on this. A is three years old. Do we have a crime? What are we missing?

Answer:

There was an act but no intent (the offender is only three years old). Therefore, there is no crime.

- Jones is not present. Someone says, "When I see Jones, I'm going to beat him up!" It looks like an assault which involves the intent to commit an immediate battery. Do we have a crime? What are we missing?

Answer:

The offender may intend to beat up Jones but there is no indication that Jones is in fear of an immediate battery. Therefore, there is no crime.

Conclusion: **Must have act and intent at the same time.**

DIFFERENT KIND OF INTENT

Since intent is an important element, lawyers will argue about whether it has been established. But it can be a confusing concept. That's why, over the years, the courts have used additional terms to help clarify or understand intent.

We will briefly discuss constructive intent, presumed intent, and transferred intent.

Presumed intent

- Although not required to prove motive, the state is required to prove intent. And, unless there is a confession or statement, sometimes this can be difficult. Fortunately, we have the legal theory of presumed intent.

Example:

A fires a gun at B and is standing over A's body with a smoking gun. We can infer-presume – that the very doing of the act was intentional.

Constructive intent

- A person will do something so reckless that another person is injured. The

offender will argue that he didn't intend to injure the victim. If, however, the person was reckless, the courts will find the offender had a constructive intent.

- This occurs when a person intentionally engages in conduct which creates a high degree of risk or harm and is aware of the risk.
- Example: A passenger train goes by, filled with people. A person shoots at the train. The bullet hits someone in the train. The shooter's defense will be that he didn't intend to hit or kill anyone. The state will argue that he had a constructive intent – his action was so reckless that intent can be inferred.

Transferred intent

- A, with intent to kill B, shoots at B, misses, and the bullet intended for B kills C.
- A never intended to kill C but his "intent" will be transferred from B to C. He can be charged with the attempted murder of B and the murder of C.

An example of a case involving presumed and transferred intent.

Two cars with rival gang members were driving in downtown Albuquerque, New Mexico. Because of a summer festival, there were thousands of people in the downtown area. One gang member fired at the other car, missed, and the bullet continued for a block or two and killed a young lady from Farmington, New Mexico. His defense was that he didn't intend to kill her. Can the state show intent?

Answer:

We have constructive intent because of the reckless action of the offender. We may also have transferred intent if it can be shown that the offender had the intent to kill one person and killed another instead.

DEFENSES TO THE ELEMENT OF INTENT

These are some of the defenses we're likely to encounter in the courtroom. Knowing from the beginning about possible defenses can help us prepare better cases.

Voluntary intoxication

- Doesn't excuse the act but the jury may take it into consideration if intent is an issue. We need to show that defendant's ability to do other things while he was intoxicated indicates he was capable of forming intent.

Children

There is no established age but if a child is very young the prosecution will have to prove the child was capable of forming intent.

Intelligence

Not to be confused with the insanity defense. It does happen, however, that a defense lawyer will argue that his client, because of limited intelligence, was not capable of forming intent to commit a particular crime.

This defense is sometimes used in Miranda cases to show offender did not understand his or her Miranda rights.

Ignorance or mistake of fact

This is a defense when there isn't a concurrence of act and intent. Suppose someone picks up a coat, thinking it belongs to them, but in fact it belongs to someone else.

- There has been an illegal act – taking another person's coat – but there is no intent.
 - The mistake must be a reasonable one.
 - It must be reasonable enough to disapprove criminal intent or negligence.

Ignorance of the law, however, is not an excuse

- It is not a valid defense that the accused did not know the action was unlawful.
- Officers need to be aware that sometimes there can be some unfairness here. For example, a tourist driving in Santa Fe may not be aware that use of cell phones in a vehicle is prohibited. A tourist in Albuquerque may not know it is illegal to have people under twenty-one ride in the back of a pickup truck.

Entrapment

"I was just asking her for a date . . . I didn't realize she was an undercover police officer!" Defendant may argue he was entrapped or persuaded to commit a crime.

Insanity

- Not guilty by insanity! Although often used in the movies, complete with one expert fighting another, it is rare for a jury to return this verdict.
- The legal definition of insanity is not the same as the psychological definition; a person who is considered insane from the psychological standpoint may not be considered so in the legal sense.

Possible verdicts in New Mexico

- Guilty
- Not Guilty
- Not Guilty by Insanity

For a number of years there was another possible verdict called Guilty but Mentally Ill. This

verdict was eliminated in 2010.

ADDITIONAL LEGAL THEORIES TO ASSIST LAW ENFORCEMENT

As part of understanding intent, there are additional legal theories officers should be familiar with. These include:

- (1) Failure to Act
- (2) Legal duty to act
- (3) Was the act by offender a **voluntary** act?
- (4) Did the offender have **knowledge** he or she was committing a crime?

FAILURE TO ACT

- You arrive at a lake or river where someone has drowned. In talking to people, you realize that three young adults were nearby and could have saved the person but didn't. What, if anything, do you charge them with?
- Here comes the surprise: in New Mexico, and in most states, the person cannot be charged unless he or she had a legal duty to act.
- In fact, for many years, people were afraid to help someone because of the fear of a lawsuit if something went wrong. That's one reason the state legislature passed the Good Samaritan Act which provides some protection from liability for those who act in good faith. NMSA 1978, Section 24-10-3.

LEGAL DUTY TO ACT

- **In some of the following** statutes, there is no intent but a person can still be charged.
- It may be a statutory duty (nursing home, day care center).
- What does the state statute say about a person involved in a vehicle accident with injuries? NMSA 1978, Section 66-7-203.

Answer:

The driver of any vehicle involved in an accident resulting in injury to or death of any person or damage to any vehicle which is driven . . .by any person shall give his name, address and the registration number of the vehicle he is driving and shall upon request exhibit his driver's license to the person struck . . .and shall render to any person injured in such accident reasonable assistance . . . (can be misdemeanor or felony)

What about reporting child abuse?

- A duty to report child abuse. Every person, including a licensed physician, a resident or an intern examining, attending or treating a child; a law enforcement officer; a judge presiding during a proceeding; a registered nurse; a visiting nurse;

a schoolteacher; a school official; a social worker . . . or a member of the clergy . . . who knows or has a reasonable suspicion that a child is an abused or neglected child shall report the matter immediately to (1) a local law enforcement agency; (2) Children, Youth & Families Department, or (3) tribal law enforcement . . . NMSA 1978, Section 32A-4-3. (misdemeanor)

ACT MUST BE VOLUNTARY

Intent is an element we must prove when it's required. Sometimes we also have to prove the act by offender was voluntary in order to show intent.

- Sleep walking. A husband in California some years ago killed his wife. He shot her a number of times. His defense was that he was sleep walking. Is there intent to commit murder? Was this a voluntary act?

Answer:

Defendant was convicted of murder. He may have been asleep when he first shot her but he was awake when he continued shooting her.

FACTS:

Defendant was arrested for DWI and taken to Dona Ana County Detention Center. He was given a form which asked if he had drugs or weapons on him. If he said yes, he would be charged with possession only. But if he was evasive and contraband was found, he could be charged with bringing contraband into a jail.

He denied having contraband but a search revealed marijuana. He was charged with Bringing Contraband into a Jail. State v. Cole (2007).

- Is Bringing Contraband into a Jail the correct charge?

Answer:

No. Court of Appeals held this charge was incorrect because Defendant didn't voluntarily bring contraband into a jail. There is a difference between Defendant's voluntary act of possessing drugs prior to being arrested and the involuntary act of being transported to jail. Nor did he have a duty to incriminate himself.

The statute can be used when someone voluntarily brings contraband into a jail. For example, a corrections officer or a visitor trying to smuggle drugs in. Or it could be a person on work release bringing contraband in. Possession should have been charged here.

IN MANY STATUTES THE OFFENDER MUST HAVE KNOWLEDGE

- An officer is invited inside a house and becomes curious about a television set. The officer runs the serial number on the television set and finds it has been stolen. The homeowner says she purchased the television set at the flea market a few years before and had no idea it was stolen. What should the officer do?

Recommendation:

The state has to prove knowledge. Unless there are other factors, it is recommended that the officer not make an arrest.

- An officer stops a vehicle with two people in it. The driver of the vehicle refuses to talk to the officer. The passenger says he is a hitchhiker and didn't realize the vehicle was stolen. We're going to charge the driver with Receiving or transferring a Stolen Vehicle. What should the officer do about the passenger?

Answer:

Unless there are other factors, the officer should not arrest the passenger.

CONCLUSION

Intent is something we need to be aware of in proving a criminal case. In coming classes, as we discuss elements of different crimes, we need to remember the importance of proving intent.

