

## “KNOWINGLY” OR “KNOWING” CULPABILITY STANDARD

### BACKGROUND

This memorandum discusses the general definition and interpretation of the “knowingly” or “knowing” standard.

*Black’s Law Dictionary* defines “knowingly” as “[w]ith knowledge; consciously; intelligently; willfully; intentionally. An individual acts ‘knowingly’ when he acts with awareness of the nature of his conduct.”

### STATUTORY DEFINITIONS

North Dakota Century Code Section 12.1-02-02 provides for the requirements of the various levels of culpability. Section 12.1-02-02(1)(b) provides that a person engages in conduct “knowingly” if, “when he engages in the conduct, he knows or has a firm belief, unaccompanied by substantial doubt, that he is doing so, whether or not it is his purpose to do so.” Section 12.1-13-01, which contains the penalty for the disclosure of confidential information, provides that “[a] person is guilty of a class C felony if, in knowing violation of a statutory duty imposed on him as a public servant, he discloses any confidential information which he has acquired as a public servant.”

South Dakota Codified Laws Section 22-1-2 provides that “[t]he words ‘knowledge, knowingly’ and all derivatives thereof, import only a knowledge that the facts exist which bring the act or omission within the provisions of any statute. A person has knowledge when he is aware that the facts exist which bring the act or omission within the provisions of any statute. It does not require knowledge of the unlawfulness of such act or omission.”

According to Montana Code Section 45-2-101(34):

“Knowingly”—a person acts knowingly with respect to conduct or to a circumstance described by a statute defining an offense when the person is aware of the person’s own conduct or that the circumstance exists. A person acts knowingly with respect to the result of conduct described by a statute defining an offense when the person is aware that it is highly probable that the result will be caused by the person’s conduct. When knowledge of the existence of a particular fact is an element of an offense, knowledge is established if a person is aware of a high probability of its existence. Equivalent terms, such as “knowing” or “with knowledge”, have the same meaning.

Wisconsin Statutes Section 939.23(2) provides that “know” requires only that the actor believes that the specified fact exists.

The Model Penal Code § 2.02(2) addresses the topic of fault. According to the Model Penal Code, a person acts “purposely” when his conscious objective is to engage in certain conduct or cause a certain result. A person acts “knowingly” when he is aware that his conduct is of a particular nature or knows that his conduct will cause a particular result. A person acts recklessly when he knows of an unjustifiable risk and consciously disregards it.

### INTERPRETATION OF “KNOWINGLY” STANDARD

The word “knowingly” as part of the definition of a crime does not have a fixed and uniform meaning. The meaning of “knowingly” varies according to the context in which it is used and is often used to mean a person’s awareness of facts which make the personal conduct criminal. A person acts “knowingly” with respect to a result if the person is nearly certain that his or her conduct will cause the result. If the person is aware only of a substantial risk, the person acts “recklessly” with respect to the result. The narrow distinction between knowledge and recklessness lies in the degree of risk, “highly probable” versus “substantial”, of which the person is aware.

According to the Eighth Circuit Court of Appeals, “[a]n act is done ‘knowingly’ if a defendant is aware of the act and does not act through ignorance, mistake, or accident.” *U.S. v. Dockter*, 58 F.3d 1284 (8th Cir. 1995). Other authority states that the term “knowingly” as used in criminal statutes means that an accused person knew what he or she was doing or was consciously aware that his or her conduct was practically certain to cause the offense defined in the statute. According to a Tennessee court, a person may act knowingly without having any desire to cause or bring about a particular result by his act. *State v. Gray*, 960 S.W.2d 598 (Tenn. Crim. App. 1997). According to a Missouri court, it is not necessary to show that a person knew that a certain result would follow in order to show that he or she acted knowingly. *State v. Harris*, 825 S.W.2d 644 (Mo. Ct. App. E.D. 1992). Courts have drawn a distinction between a requirement of knowledge and a requirement of intent as elements of a crime. To act “intentionally” means that the person acted with a conscious objective to cause a result. To act “knowingly” means only that the person acted with an awareness of the nature or circumstances of the act.

In *State v. Kaufman*, 310 N.W.2d 709 (N.D. 1981), the North Dakota Supreme Court discussed the meaning of the “knowing” standard. According to the court, “[f]or the purposes of Title 12.1, N.D.C.C., a person acts ‘knowingly’ if, ‘when he engages in the

conduct, he knows or has a firm belief, unaccompanied by substantial doubt, that he is doing so, whether or not it is his purpose to do so'. § 12.1-02-02(1)(b),

N.D.C.C. Thus, 'knowledge' need not be absolute, but merely 'a firm belief, unaccompanied by substantial doubt'."