

4.5 Specific Intent

Comment

The Committee recommends avoiding instructions that distinguish between “specific intent” and “general intent.” The Ninth Circuit has stated: “Both the manual [on jury trial procedures] accompanying the Model Instructions and our case law discourage the use of generic intent instructions.” *United States v. Bell*, 303 F.3d 1187, 1191 (9th Cir. 2002). The “preferred practice” is to give an intent instruction that reflects the intent requirements of the offense charged. *Id.*

If the statute at issue is silent regarding the necessary mens rea of the crime, the court should examine the statute’s legislative history. *United States v. Nguyen*, 73 F.3d 887, 891 (9th Cir. 1995). *See also United States v. Barajas-Montiel*, 185 F.3d 947, 952 (9th Cir. 1999) (following *Nguyen* and holding that criminal intent is required for conviction of felony offenses of 8 U.S.C. § 1324(a)(2)(B)). If the court perceives an ambiguity regarding Congress’s intent to require a mens rea, the court should read such a requirement into the statute. *Nguyen*, 73 F.3d at 890-91. *Accord, United States v. Johal*, 428 F.3d 823, 826 (9th Cir. 2005) (requirement of some mens rea for conviction of crime is “firmly embedded”).

Most attempt crimes require specific intent. *See United States v. Gracidas-Ulibarry*, 231 F.3d 1188, 1192 (9th Cir. 2000) (en banc) (crime of attempted illegal reentry, for example, is specific intent offense).