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SCMF-11-0000315

IN THE SUPREME COURT OF THE STATE OF HAWAI‘I

In the Matter of the Publication and Distribution
of the
Hawai‘i Pattern Jury Instructions - Criminal

ORDER APPROVING PUBLICATION AND DISTRIBUTION
OF HAWAI‘I PATTERN JURY INSTRUCTIONS - CRIMINAL
(By: Recktenwald, C.J., for the court¹)

Upon consideration of the request of the Standing
Committee on Pattern Criminal Jury Instructions to publish and
distribute the (1) repeal of Criminal Instruction 9.55A,
(2) addition of Criminal Instructions 3.19, 9.10A, 9.11A, 9.13A,
9.31B, 9.31C, 9.31D, 9.54, 9.54.1, 9.54.2, 9.54.3, 9.55, 9.55.1,
9.55.2, 9.55.3, 9.55.4, 9.55.5, 9.56, 9.56.1, 10.19.1A, 10.19.1B,
10.22.1A, 10.22.1B, 10.22.2A, 10.22.2B, 10.22.3A, 10.22.3B,
10.58, 10.59, 13.00A.1, 13.00A.2, 13.00A.3, 13.00A.4, 13.00A.5A,

¹ Considered by: Recktenwald, C. J., Nakayama, McKenna, and Pollack, JJ., and Intermediate Court of Appeals Chief Judge Nakamura, assigned by reason of vacancy.

13.00A.5B, 13.00A.6, 18.07A, and 18.07B, and (3) revision of Criminal Instructions 1.01, 3.17, 9.00, 9.10, 9.11, 9.12, 9.13, 9.14, 9.28, 9.29, 9.30, 9.30A, 9.31, 9.31A, 9.32, 9.54, 9.54A, 9.55, 11.06, 11.07A, 11.07B, 11.08, 13.45A, 13.45B, 13.46A, 13.46B, 13.47B, 13.47D, 13.48, 18.07, 19.1.1, 19.1.2, 19.3.1A, 19.3.1B, 19.3.2A, 19.3.2B, 19.3.3A, 19.3.3B, 19.3.4A, 19.3.4B, 19.3.5A, 19.3.5B, 19.3.6A, and 19.3.6B of the Hawai'i Pattern Jury Instructions - Criminal,

IT IS HEREBY ORDERED that the request is granted and the attached criminal jury instructions 1.01, 3.19, 9.00, 9.10, 9.10A, 9.11, 9.11A, 9.12, 9.13, 9.13A, 9.14, 9.28, 9.29, 9.30, 9.30A, 9.31, 9.31A, 9.31B, 9.31C, 9.31D, 9.32, 9.54, 9.54.1, 9.54.2, 9.54.3, 9.55, 9.55.1, 9.55.2, 9.55.3, 9.55.4, 9.55.5, 9.56, 9.56.1, 10.19.1A, 10.19.1B, 10.22.1A, 10.22.1B, 10.22.2A, 10.22.2B, 10.22.3A, 10.22.3B, 10.58, 10.59, 11.06, 11.07A, 11.07B, 11.08, 13.00A.1, 13.00A.2, 13.00A.3, 13.00A.4, 13.00A.5A, 13.00A.5B, 13.00A.6, 13.45A, 13.45B, 13.46A, 13.46B, 13.47B, 13.47D, 13.48, 18.07A, 18.07B, 19.1.1, 19.1.2, 19.3.1A, 19.3.1B, 19.3.2A, 19.3.2B, 19.3.3A, 19.3.3B, 19.3.4A, 19.3.4B, 19.3.5A, 19.3.5B, 19.3.6A, and 19.3.6B are approved for publication and distribution.

IT IS FURTHER ORDERED that this approval for publication and distribution is not and shall not be considered by this court or any other court to be an approval or judgment as

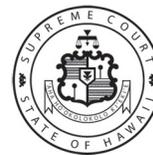
to the validity or correctness of the substance of any instruction.

DATED: Honolulu, Hawai'i, October 29, 2014.

FOR THE COURT:

/s/ Mark E. Recktenwald

Chief Justice



1.01. Preliminary Instructions to the Jury

(To be given after clerk administers oath to jury)

Members of the jury, now that you have been selected as jurors in this case, the court will give you some preliminary instructions about this trial so that you may have a better understanding of how this trial will be conducted and your responsibilities as jurors.

It will be helpful to understand the order in which a criminal trial proceeds. First, each lawyer will have an opportunity to give you an opening statement. The defense may decide not to give an opening statement, or it may give its opening statement either before or after the prosecution presents its case. An opening statement is not evidence. Its only purpose is to give you an overview of what the lawyers expect the evidence will show.

Next, the prosecution will present its evidence. Evidence usually includes the sworn testimony of witnesses and exhibits, such as photographs or documents. After the prosecution presents its evidence, the defense may choose to present evidence but is not required to do so. If the defense presents evidence, the prosecution may then present rebuttal evidence.

After all the evidence has been presented, I will instruct you on the law you must apply in this case.

The lawyers will then make their final arguments in which they talk about what facts have been or have not been proven by the evidence. Closing arguments are not evidence. The prosecution makes its closing argument first. The defense may then give a closing argument, and the prosecutor may give a rebuttal argument.

After closing arguments, you will go to the jury room to begin your deliberations.

As the judge in this case, I have three main duties: (1) I will make sure that the court proceedings are kept orderly; (2) I will determine what evidence may be received during this trial; and (3) I will instruct you on the law that you must apply in this case.

You will be the judges of the facts. You will decide what facts have been proven by the evidence. A very important part of your job will be deciding whether a witness is truthful, whether the witness' testimony is accurate, and how much weight or importance to give to the testimony.

Let me explain to you what is and is not evidence. The evidence in this case will come from the sworn testimony of witnesses and any exhibits received into evidence. A question asked by a lawyer is not evidence. Objections made by a lawyer are not

evidence. Questions asked and responses of jurors given during voir dire are not evidence. Opening statements and closing arguments of lawyers are not evidence. In addition, testimony I have excluded or stricken is not evidence.

During the course of this trial you may hear the lawyers make objections. It is a lawyer's duty to object when he or she believes it is appropriate or necessary. Objections help the court to keep out matters that are not relevant to the issues in this trial.

I will rule on objections according to the law. When I rule on objections or motions do not be concerned with the reasons for my rulings.

If I sustain an objection to a question and do not allow it to be answered, you must not speculate about what the answer might have been, nor draw any conclusion from the question itself. An unanswered question is not evidence.

At times you may be excused from the courtroom so that the lawyers can discuss legal matters with me. Under the law, some matters must be heard outside of your presence. At other times, the lawyers may approach me at the bench and hold a whispered discussion about legal matters. This is called a bench conference. Please do not be offended by our whispering and do not guess or speculate about the reasons for having the bench conference.

During this trial, you must not discuss this case with anyone, not even your friends, co-workers, family or household members. Do not allow anyone to discuss this case with you. If anyone asks you about this case, tell that person that you cannot discuss it. Do not talk to the defendant(s), the lawyers, the witnesses or anyone else connected with this case.

Throughout the course of this trial, including recesses during the day and when you are excused at the end of each day of trial, do not share information, opinions, or anything else about this case with others, personally or in writing, or through computers, cell phone messaging, personal electronic and media devices, or other forms of wireless communications. This includes, for example, communicating about this case through e-mail, instant messaging, text messaging, posting or looking at information about this case on a blog, forum, social network site, chat room, discussion board, or using the Internet or any electronic means in any other way.

You must not discuss this case, even among yourselves, until I instruct you to begin your deliberations. During your deliberations, you may discuss the case only in the jury room, and only when all jurors are present.

You must not investigate the case in any way. This means that you must not

visit any places mentioned during this trial, conduct experiments, consult any dictionaries, encyclopedias, or other reference materials.

Also, do not read, listen to, or watch anything about this case from any source, such as a television or radio broadcast, newspaper article or internet transmission. Your decision must be based only on the evidence you receive in this courtroom and the court's instructions on the law.

If you receive any information about this case from any source outside of this trial, even unintentionally, do not share that information with any other juror. If you do receive such information, or if anyone tries to influence you or any other juror, you must immediately tell the bailiff.

Keep an open mind throughout this trial. Do not make up your mind about the verdict or about any issue until after you have discussed the case with the other jurors during deliberations. Do not conclude from my rulings or from anything that I say or do during this trial that I favor one side over the other. Do not let bias, sympathy, prejudice, or public opinion influence you during this trial.

If you have a cell phone or other electronic device, keep it turned off while you are in the courtroom. Turned off means that the phone or other device is actually off and not in a silent or vibrating mode. After each recess, please double check to make sure your device is turned off. If someone needs to contact you in an emergency, the court can receive messages and deliver them to you without delay. The court's phone number will be provided to you. It is important that you do not use your cell phone or other device in the courtroom during these proceedings.

3.19 Eyewitness Testimony

The burden of proof is on the prosecution with reference to every element of a crime charged, and this burden includes the burden of proving beyond a reasonable doubt the identity of the defendant as the person responsible for the crime charged.

You must decide whether an eyewitness gave accurate testimony regarding identification.

In evaluating identification testimony, you may consider the following factors:

The opportunity of the witness to observe the person involved in the alleged criminal act;

The stress, if any, to which the witness was subject at the time of the observation;

The witness's ability, following the observation, to provide a description of the person;

The extent to which the defendant fits or does not fit the description of the person previously given by the witness;

The cross-racial or ethnic nature of the identification;

The witness's capacity to make an identification;

Evidence relating to the witness's ability to identify other participants in the alleged criminal act;

Whether the witness was able to identify the person in a photographic or physical lineup;

The period of time between the alleged criminal act and the witness's identification;

Whether the witness had prior contacts with the person;

The extent to which the witness is either certain or uncertain of the identification and whether the witness's assertions concerning certainty or uncertainty are well-founded;

Whether the witness's identification is in fact the product of his/her own recollection; and

Any other evidence relating to the witness's ability to make an identification.

Notes

This instruction is based on the model instruction approved in *State v. Cabagbag*, 127 Hawai'i 302, 277 P.3d 1027 (2012). *Cabagbag* held that "(1) in criminal cases, the circuit courts must give the jury a specific eyewitness identification instruction whenever identification evidence is a central issue in the case, and it is requested by the defendant, [and] (2) a circuit court may, in the exercise of its discretion, give the instruction if it believes the instruction is otherwise warranted in a particular case ..."

The court may wish to delete from the instruction those listed factors that do not apply in a given case.

9.00. Definitions of Terms Used in Chapter 9, Pattern Jury Instructions

“Bodily injury” means physical pain, illness, or any impairment of physical condition.

“Compulsion” means absence of consent, or a threat, express or implied, that places a person in fear of public humiliation, property damage, or financial loss.

“Dangerous instrument” means any firearm, whether loaded or not, and whether operable or not, or other weapon, device, instrument, material, or substance, whether animate or inanimate, which in the manner it is used or is intended to be used is known to be capable of producing death or serious bodily injury.

“Deviate sexual intercourse” means any act of sexual gratification between a person and an animal or a corpse, involving the sex organs of one and the mouth, anus, or sex organs of the other.

“Emergency worker” means any:

- (1) Law enforcement officer, including but not limited to any police officer, public safety officer, parole or probation officer, or any other officer of any county, state, federal, or military agency authorized to exercise law enforcement or police powers;
- (2) Firefighter, emergency medical services personnel, emergency medical technician, ambulance crewmember, or any other emergency response personnel;
- (3) Member of the Hawaii national guard on any duty or service done under or in pursuance of an order or call of the governor or the President of the United States or any proper authority;
- (4) Member of the United States Army, Air Force, Navy, Marines, or Coast Guard on any duty or service done under or in pursuance of an order or call of the President of the United States or any proper authority;
- (5) Member of the national guard from any other state ordered into service by any proper authority;
- (6) Person engaged in civil defense functions as authorized by the director of civil defense or as otherwise authorized under chapter 128; or
- (7) Person engaged in disaster relief by authorization of the director of disaster relief or as otherwise authorized under chapter 127.

“Labor” means work of economic or financial value.

“Married” includes persons legally married, and a male and female living together as husband and wife regardless of their legal status, but does not include spouses living apart.

“Mentally defective” means a person suffering from a disease, disorder, or defect which renders the person incapable of appraising the nature of his/her conduct.

“Mentally incapacitated” means a person rendered temporarily incapable of appraising or controlling his/her conduct as a result of the influence of a substance administered to him/her without his/her consent.

“Person” means a human being who has been born and is alive.

“Physically helpless” means a person who is unconscious or for any other reason physically unable to communicate unwillingness to an act.

“Public highway” shall have the same meaning as in section 264-1.

“Relative” means parent, ancestor, brother, sister, uncle, or legal guardian.

“Restrain” means to restrict a person's movement in such a manner as to interfere substantially with the person's liberty:

- (1) by means of force, threat, or deception; or
- (2) if the person is under the age of eighteen or incompetent, without the consent of the relative, person, or institution having lawful custody of the person.

“Serious bodily injury” means bodily injury which creates a substantial risk of death or which causes serious, permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ.

“Services” means a relationship between a person and the actor in which the person performs activities under the supervision of or for the benefit of the actor. Prostitution-related and obscenity-related activities are forms of “services.”

“Sexual contact” means any touching, other than acts of “sexual penetration”, of the sexual or other intimate parts of a person not married to the actor, or of the sexual or other intimate parts of the actor by the person, whether directly or through the clothing or other material intended to cover the sexual or other intimate parts.

“Sexual penetration” means:

- (1) Vaginal intercourse, anal intercourse, fellatio, deviate sexual intercourse, or any intrusion of any part of a person's body or of any object into the genital or anal opening of another person's body; it occurs upon any penetration, however slight, but emission is not required. "Genital opening" includes the anterior surface of the vulva or labia majora*; or
- (2) Cunnilingus or anilingus, whether or not actual penetration has occurred.

"Street" shall have the same meaning as in section 291C-1.

"Strong compulsion" means the use of or attempt to use one or more of the following to overcome a person:

- (1) A threat, express or implied, that places a person in fear of bodily injury to the individual or another person, or in fear that the person or another person will be kidnapped;
- (2) A dangerous instrument; or
- (3) Physical force.

"Substantial bodily injury" means:

- (1) A major avulsion, major laceration, or major penetration of the skin[†]; or
- (2) A burn of at least second degree severity; or
- (3) A bone fracture; or
- (4) A serious concussion; or
- (5) A tearing, rupture, or corrosive damage to the esophagus, viscera, or other internal organs.

"Vehicle" has the same meaning as in section 291E-1.

"Vulnerable user" means:

- (1) A pedestrian legally within a street or public highway;
- (2) A roadway worker actually engaged in work upon a street or public highway or in work upon utility facilities along a street or public highway, or engaged in the provision of emergency services within a street or public highway, including but not limited to:

- (A) Construction and maintenance workers; and
- (B) Police, fire, and other emergency responders; or
- (3) A person legally operating any of the following within the street or public highway:
 - (A) A bicycle;
 - (B) A moped;
 - (C) An electric personal assistive mobility device; or
 - (D) A wheelchair conveyance or other personal mobility device.

Notes

*Definition of “genital opening” applicable to offenses occurring on or after June 22, 2006.

†See *State v. Tanielu*, 82 Hawai‘i 373, 379, 922 P.2d 986, 992 (1996), holding that in “a plain reading of HRS § 707-700 ‘major’ modifies ‘avulsion, lacerations, or penetrations of the skin.’”

9.10. Negligent Homicide in the First Degree: H.R.S. § 707-702.5

[In Count (count number) of the Indictment/Complaint, the] [The] Defendant, (defendant's name), is charged with the offense of Negligent Homicide in the First Degree.

A person commits the offense of Negligent Homicide in the First Degree if he/she causes the death of another person by the operation of a vehicle in a negligent manner while under the influence of drugs or alcohol.

There are four material elements of the offense of Negligent Homicide in the First Degree, each of which the prosecution must prove beyond a reasonable doubt.

These four elements are:

1. That, on or about (date) in the [City and] County of (name of county), the Defendant caused the death of another person; and
2. That the Defendant did so by operating a vehicle; and
3. That the Defendant did so while under the influence of drugs or alcohol; and
4. That the Defendant acted negligently as to each of the foregoing elements.

Notes

H.R.S. §§ 707-702.5, 702-206(4).

For definition of states of mind, see instruction:

6.05 – “negligently”

For definition of terms defined by H.R.S. § 707-700, see instruction:

9.00 – “vehicle”

For instructions on offense of “driving under the influence of intoxicating liquor”, see instructions 16.02 through 16.05. The offense of “driving under the influence of drugs” is set forth in H.R.S. § 291-7.

The term “drugs” or “alcohol” may be stricken to conform with the charge.

**9.10A. Negligent Homicide in the First Degree – Vulnerable
User: H.R.S. § 707-702.5(1)(b)**

[In Count (count number) of the Indictment/Information/Complaint, the] [The] Defendant, (defendant's name), is charged with the offense of Negligent Homicide in the First Degree.

A person commits the offense of Negligent Homicide in the First Degree if he/she causes the death of a vulnerable user by the operation of a vehicle in a negligent manner.

There are three material elements of the offense of Negligent Homicide in the First Degree, each of which the prosecution must prove beyond a reasonable doubt.

These three elements are:

1. That, on or about (date) in the [City and] County of (name of county), the Defendant caused the death of a vulnerable user; and
2. That the Defendant did so by operating a vehicle; and
3. That the Defendant acted negligently as to each of the foregoing elements.

Notes

H.R.S. §§ 707-702.5(1)(b) and 702-206(4).

For definition of states of mind, see instruction:

6.05 – “negligently”

For definition of terms defined by § 707-700, see instruction:

9.00 – “public highway”

9.00 – “street”

9.00 – “vehicle”

9.00 – “vulnerable user”

9.11. Negligent Homicide in the Second Degree: H.R.S. § 707-703

[In Count (count number) of the Indictment/Complaint, the] [The] Defendant, (defendant's name), is charged with the offense of Negligent Homicide in the Second Degree.

A person commits the offense of Negligent Homicide in the Second Degree if he/she causes the death of another person by the operation of a vehicle in a negligent manner.

There are three material elements of the offense of Negligent Homicide in the Second Degree, each of which the prosecution must prove beyond a reasonable doubt.

These three elements are:

1. That, on or about (date) in the [City and] County of (name of county), the Defendant caused the death of another person; and
2. That the Defendant did so by operating a vehicle; and
3. That the Defendant acted negligently as to each of the foregoing elements.

Notes

H.R.S. §§ 707-703, 702-206(4).

For definition of states of mind, see instruction:

6.05 – “negligently”

For definition of terms defined by H.R.S. § 707-700, see instruction:

9.00 – “vehicle”

**9.11A. Negligent Homicide in the Second Degree – Vulnerable
User: H.R.S. § 707-703(1)(b)**

[In Count (count number) of the Indictment/Information/Complaint, the] [The] Defendant, (defendant's name), is charged with the offense of Negligent Homicide in the Second Degree.

A person commits the offense of Negligent Homicide in the Second Degree if he/she causes the death of a vulnerable user by the operation of a motor vehicle in a manner that constitutes simple negligence.

There are three material elements of the offense of Negligent Homicide in the Second Degree, each of which the prosecution must prove beyond a reasonable doubt.

These three elements are:

1. That, on or about (date) in the [City and] County of (name of county), the Defendant caused the death of a vulnerable user; and
2. That the Defendant did so by operating a vehicle; and
3. That the Defendant acted with simple negligence as to each of the foregoing elements.

A person acts with “simple negligence” with respect to the person’s conduct when the person should be aware of a risk that the person engages in that conduct.

A person acts with “simple negligence” with respect to attendant circumstances when the person should be aware of a risk that those circumstances exist.

A person acts with “simple negligence” with respect to a result of the person’s conduct when the person should be aware of a risk that the person’s conduct will cause that result.

A risk is within the meaning of this instruction if the person’s failure to perceive it, considering the nature and purpose of the person’s conduct and the circumstances known to the person, involves a deviation from the standard of care that a law-abiding person would observe in the same situation.

Notes

H.R.S. §§ 707-703(1)(b) and 707-704(2).

For definition of terms defined by § 707-700, see instruction:

9.00 – “public highway”

9.00 – “street”

9.00 – “vehicle”

9.00 – “vulnerable user”

9.12. Negligent Homicide in the Third Degree: H.R.S. § 707-704

[In Count (count number) of the Indictment/Complaint, the] [The] Defendant, (defendant's name), is charged with the offense of Negligent Homicide in the Third Degree.

A person commits the offense of Negligent Homicide in the Third Degree if he/she causes the death of another person by the operation of a vehicle in a manner which is simple negligence.

There are three material elements of the offense of Negligent Homicide in the Third Degree, each of which the prosecution must prove beyond a reasonable doubt.

These three elements are:

1. That, on or about (date) in the [City and] County of (name of county), the Defendant caused the death of another person; and
2. That the Defendant did so by operating a vehicle; and
3. That the Defendant acted with simple negligence as to each of the foregoing elements.

A person acts with simple negligence with respect to the person's conduct when the person should be aware of a risk that the person engages in that conduct.

A person acts with simple negligence with respect to attendant circumstances when the person should be aware of a risk that those circumstances exist.

A person acts with simple negligence with respect to a result of the person's conduct when the person should be aware of a risk that the person's conduct will cause that result.

A risk is within the meaning of "simple negligence" if the person's failure to perceive it, considering the nature and purpose of the person's conduct and the circumstances known to the person, involves a deviation from the standard of care that a law-abiding person would observe in the same situation.

Notes

H.R.S. § 707-704.

For definition of terms defined by H.R.S. § 707-700, see instruction:

9.00 – "vehicle"

9.13. Negligent Injury in the First Degree: H.R.S. § 707-705

[In Count (count number) of the Indictment/Complaint, the] [The] Defendant, (defendant's name), is charged with the offense of Negligent Injury in the First Degree.

A person commits the offense of Negligent Injury in the First Degree if he/she causes serious bodily injury to another person by the operation of a vehicle in a negligent manner.

There are three material elements of the offense of Negligent Injury in the First Degree, each of which the prosecution must prove beyond a reasonable doubt.

These three elements are:

1. That, on or about (date) in the [City and] County of (name of county), the Defendant caused serious bodily injury to another person; and
2. That the Defendant did so by operating a vehicle; and
3. That the Defendant acted negligently as to each of the foregoing elements.

Notes

H.R.S. §§ 707-705, 707-206(4).

For definition of states of mind, see instruction:

6.05 – “negligently”

For definition of terms defined by H.R.S. Chapter 707-700, see instruction:

9.00 – “serious bodily injury”

9.00 – “vehicle”

9.13A. Negligent Injury in the First Degree – Vulnerable User: H.R.S. § 707-705(1)(b)

[In Count (count number) of the Indictment/Information/Complaint, the] [The] Defendant, (defendant's name), is charged with the offense of Negligent Injury in the First Degree.

A person commits the offense of Negligent Injury in the First Degree if he/she causes substantial bodily injury to a vulnerable user by the operation of a motor vehicle in a negligent manner.

There are three material elements of the offense of Negligent Injury in the First Degree, each of which the prosecution must prove beyond a reasonable doubt.

These three elements are:

1. That, on or about (date) in the [City and] County of (name of county), the Defendant caused substantial bodily injury to a vulnerable user; and
2. That the Defendant did so by operating a motor vehicle; and
3. That the Defendant acted negligently as to each of the foregoing elements.

Notes

H.R.S. §§ 707-705(1)(b), § 702-206(4).

For definition of states of mind, see instruction:

6.05 – “negligently”

For definition of terms defined by § 707-700, see instruction:

9.00 – “public highway”

9.00 – “street”

9.00 – “vehicle”

9.00 – “vulnerable user”

9.14. Negligent Injury in the Second Degree: H.R.S. § 707-706

[In Count (count number) of the Indictment/Complaint, the] [The] Defendant, (defendant's name), is charged with the offense of Negligent Injury in the Second Degree.

A person commits the offense of Negligent Injury in the Second Degree if he/she causes substantial bodily injury to another person by the operation of a vehicle in a negligent manner.

There are three material elements of the offense of Negligent Injury in the Second Degree, each of which the prosecution must prove beyond a reasonable doubt.

These three elements are:

1. That, on or about (date) in the [City and] County of (name of county), the Defendant caused substantial bodily injury to another person; and
2. That the Defendant did so by operating a vehicle; and
3. That the Defendant acted negligently as to each of the foregoing elements.

Notes

H.R.S. §§ 707-706, 707-206(4).

For definition of states of mind, see instruction:

6.05 – “negligently”

For definition of terms defined by H.R.S. Chapter 707-700, see instruction:

9.00 – “substantial bodily injury”

9.00 – “vehicle”

**9.28. Terroristic Threatening in the First Degree – More Than One Occasion:
H.R.S. § 707-716(1)(a)**

[In Count (count number) of the Indictment/Complaint, the] [The] Defendant, (defendant's name), is charged with the offense of Terroristic Threatening in the First Degree.

A person commits the offense of Terroristic Threatening in the First Degree if, [with the intent to terrorize] [in reckless disregard of the risk of terrorizing] another person, he/she threatens, by word or conduct, to [cause bodily injury to another person] [cause serious damage or harm to property of another] [commit a felony] on more than one occasion for the same or a similar purpose.

There are five material elements of the offense of Terroristic Threatening in the First Degree, each of which the prosecution must prove beyond a reasonable doubt.

These five elements are:

1. That, on or about (date) in the [City and] County of (name of county), the Defendant threatened, by word or conduct, to [cause bodily injury to another person] [cause serious damage or harm to property of another] [commit a felony*]; and
2. That the Defendant did so [with the intent to terrorize] [in reckless disregard of the risk of terrorizing] another person; and
3. That the Defendant did so on more than one occasion; and
4. That the Defendant did so for the same or a similar purpose; and
5. That the Defendant acted [intentionally] [recklessly] as to elements 3 and 4.

The prosecution also must prove beyond a reasonable doubt that the threat was objectively capable of causing fear of bodily injury in a reasonable person at whom the threat was directed and who was familiar with the circumstances under which the threat was made, and:

(1) the threat on its face and in the circumstances in which it was made must have been so clear, unconditional, immediate, and specific as to the person threatened, that the threat communicated a seriousness of purpose and an imminent likelihood of being carried out; or

(2) the Defendant possessed the apparent ability to carry out the threat, such that the threat was reasonably likely to cause fear of bodily injury in (complainant's name).

The relevant attributes** of the Defendant and (complainant's name) must be taken into consideration in determining whether the threat, under the circumstances, was objectively capable of causing fear of bodily injury in a reasonable person.

[“Property of another” includes the pets and livestock of another.]

Notes

H.R.S. §§ 707-716(1)(a), 707-715(1), 702-206(1) and (3).

For definition of states of mind, see instructions:

6.02 – “intentionally”

6.04 – “recklessly”

For definition of terms defined by H.R.S. Chapter 707, see instruction:

9.00 – “bodily injury”

See *State v. Valdivia*, 95 Hawai'i 465, 24 P.3d 661 (2001), for discussion of a “true threat.”

See *State v. Nichols*, 111 Hawai'i 327, 141 P.3d 974 (2006) for discussion of “relevant attributes.”

*The court should identify whether applicable or included offenses are felonies, and instruct as to the elements of these felonies (and any applicable defenses that vitiate intent), if the felony offenses are not otherwise charged.

**Relevant attributes may include, but are not limited to, size, weight, occupation, training, and status of the Defendant and (complainant's name).

The instruction may need to be modified when the threat is to cause serious damage to property of another or to commit a felony.

**9.29. Terroristic Threatening in the First Degree--Common Scheme:
H.R.S. § 707-716(1)(b)**

[In Count (count number) of the Indictment/Complaint, the] [The] Defendant, (defendant's name), is charged with the offense of Terroristic Threatening in the First Degree.

A person commits the offense of Terroristic Threatening in the First Degree if, [with the intent to terrorize] [in reckless disregard of the risk of terrorizing] another person, he/she threatens, by word or conduct, to [cause bodily injury to another person] [cause serious damage or harm to property of another] [commit a felony] by threats made in a common scheme against different persons.

There are four material elements of the offense of Terroristic Threatening in the First Degree, each of which the prosecution must prove beyond a reasonable doubt.

These four elements are:

1. That, on or about (date) in the [City and] County of (name of county), the Defendant made threats, by word or conduct, to [cause bodily injury to another person] [cause serious damage or harm to property of another] [commit a felony*]; and
2. That the Defendant made each threat [with the intent to terrorize] [in reckless disregard of the risk of terrorizing] another person; and
3. That the threats were made in a common scheme against different persons; and
4. That the Defendant acted [intentionally] [recklessly] as to element 3.

The prosecution also must prove beyond a reasonable doubt that the threat was objectively capable of causing fear of bodily injury in a reasonable person at whom the threat was directed and who was familiar with the circumstances under which the threat was made, and:

(1) the threat on its face and in the circumstances in which it was made must have been so clear, unconditional, immediate, and specific as to the person threatened, that the threat communicated a seriousness of purpose and an imminent likelihood of being carried out; or

(2) the Defendant possessed the apparent ability to carry out the threat, such that the threat was reasonably likely to cause fear of bodily injury in (complainant's name).

The relevant attributes** of the Defendant and (complainant's name) must be taken into consideration in determining whether the threat, under the circumstances, was objectively capable of causing fear of bodily injury in a reasonable person.

["Property of another" includes the pets and livestock of another.]

Notes

H.R.S. §§ 707-716(1)(b), 707-715(1), 702-206(1) and (3).

For definition of states of mind, see instructions:

6.02 – “intentionally”

6.04 – “recklessly”

For definition of terms defined by H.R.S. Chapter 707, see instruction:

9.00 – “bodily injury”

See *State v. Valdivia*, 95 Hawai'i 465, 24 P.3d 661 (2001), for discussion of a “true threat.”

See *State v. Nichols*, 111 Hawai'i 327, 141 P.3d 974 (2006) for discussion of “relevant attributes.”

*The court should identify whether applicable or included offenses are felonies, and instruct as to the elements of these felonies (and any applicable defenses that vitiate intent), if the felony offenses are not otherwise charged.

**Relevant attributes may include, but are not limited to, size, weight, occupation, training, and status of the Defendant and (complainant's name).

The instruction may need to be modified when the threat is to cause serious damage to property of another or to commit a felony.

**9.30. Terroristic Threatening in the First Degree--Public Servant:
H.R.S. § 707-716(1)(c)**

[In Count (count number) of the Indictment/Complaint, the] [The] Defendant, (defendant's name), is charged with the offense of Terroristic Threatening in the First Degree.

A person commits the offense of Terroristic Threatening in the First Degree if, [with the intent to terrorize] [in reckless disregard of the risk of terrorizing] another person, he/she threatens, by word or conduct, to [cause bodily injury to another person] [cause serious damage or harm to the property of another] [commit a felony], the threat is against a public servant, and the threat arises out of the performance of the public servant's official duties.

There are five material elements of the offense of Terroristic Threatening in the First Degree, each of which the prosecution must prove beyond a reasonable doubt.

These five elements are:

1. That, on or about (date) in the [City and] County of (name of county), the Defendant threatened, by word or conduct, to [cause bodily injury to another person] [cause serious damage or harm to property of another] [commit a felony*]; and
2. That the Defendant did so [with the intent to terrorize] [in reckless disregard of the risk of terrorizing] another person; and
3. That the person threatened was, at the time, a public servant; and
4. That the threat arose out of the performance of the public servant's official duties; and
5. That the Defendant acted [intentionally] [recklessly] as to elements 3 and 4.

"Public servant" includes but is not limited to an educational worker.**

The prosecution also must prove beyond a reasonable doubt that the threat was objectively capable of causing fear of bodily injury in a reasonable person at whom the threat was directed and who was familiar with the circumstances under which the threat was made, and:

(1) the threat on its face and in the circumstances in which it was made must have been so clear, unconditional, immediate, and specific as to the person threatened, that the threat communicated a seriousness of purpose and an imminent likelihood of being carried out; or

(2) the Defendant possessed the apparent ability to carry out the threat, such that the threat was reasonably likely to cause fear of bodily injury in (complainant's name).

The relevant attributes*** of the Defendant and (complainant's name) must be taken into consideration in determining whether the threat, under the circumstances, was objectively capable of causing fear of bodily injury in a reasonable person.

["Property of another" includes the pets and livestock of another.]

Notes

H.R.S. §§ 707-716(1)(c), 707-715(1), 702-206(1), (2) and (3).

For definition of states of mind, see instructions:

6.02 – “intentionally”

6.03 – “knowingly”

6.04 – “recklessly”

For definition of “educational worker,” see H.R.S. § 707-711.

For definition of terms defined by H.R.S. Chapter 707, see instruction:

9.00 – “bodily injury”

For definition of terms not defined by H.R.S. Chapter 707, see instruction:

12.00 – “public servant”

See *State v. Valdivia*, 95 Hawai'i 465, 24 P.3d 661 (2001), for discussion of a “true threat.”

See *State v. Nichols*, 111 Hawai'i 327, 141 P.3d 974 (2006) for discussion of “relevant attributes.”

*The court should identify whether applicable or included offenses are felonies, and instruct as to the elements of these felonies (and any applicable defenses that vitiate intent), if the felony offenses are not otherwise charged.

**This definition would be included if the facts include a public servant who is an educational worker.

*** Relevant attributes may include, but are not limited to, size, weight, occupation, and training, and status of the Defendant and (complainant's name).

The instruction may need to be modified when the threat is to cause serious damage to property of another or to commit a felony.

**9.30A. Terroristic Threatening in the First Degree--
Emergency Medical Services Provider: H.R.S. § 707-716(1)(d)**

(Applicable to offenses occurring on or after May 21, 2007)

[In Count (count number) of the Indictment/Complaint, the] [The] Defendant, (defendant's name), is charged with the offense of Terroristic Threatening in the First Degree.

A person commits the offense of Terroristic Threatening in the First Degree if, [with the intent to terrorize] [in reckless disregard of the risk of terrorizing] another person he/she threatens, by word or conduct, to [cause bodily injury to another person] [cause serious damage or harm to the property of another] [commit a felony] and the threat is against an emergency medical services provider who was engaged in the performance of duty.

There are five material elements of the offense of Terroristic Threatening in the First Degree, each of which the prosecution must prove beyond a reasonable doubt.

These five elements are:

1. That, on or about (date) in the [City and] County of (name of county), the Defendant threatened, by word or conduct, to [cause bodily injury to another person] [cause serious damage or harm to property of another] [commit a felony*]; and
2. That the Defendant did so [with the intent to terrorize] [in reckless disregard of the risk of terrorizing] another person; and
3. That the person threatened was, at the time, an emergency medical services provider; and
4. That the person threatened was, at the time, engaged in the performance of duty; and
5. That the Defendant acted [intentionally] [recklessly] as to elements 3 and 4.

“Emergency medical services provider” means any mobile intensive care technician or emergency medical technician who is certified or licensed by the State of Hawai‘i, and physicians, physician’s assistants, nurses, nurse practitioners, certified registered nurse anesthetists, respiratory therapists, laboratory technicians, radiology technicians, and social workers providing services in the emergency room of a hospital.

The prosecution must also prove beyond a reasonable doubt that the threat was objectively capable of causing fear of bodily injury in a reasonable person at whom the threat was directed and who was familiar with the circumstances under which the threat was made, and:

- (1) the threat on its face and in the circumstances in which it was made must have been so clear, unconditional, immediate, and specific as to the person threatened, that the threat communicated a seriousness of purpose and imminent likelihood of being carried out; or

(2) the Defendant possessed the apparent ability to carry out the threat, such that the threat was reasonably likely to cause fear of bodily injury in (complainant's name).

The relevant attributes** of the Defendant and (complainant's name) must be taken into consideration in determining whether the threat, under the circumstances, was objectively capable of causing fear of bodily injury in a reasonable person.

["Property of another" includes the pets and livestock of another.]

Notes

H.R.S. §§ 707-716(1)(d), 707-715(1), 702-206(1), (2) and (3), and 321-222.

For definition of states of mind, see instructions:

6.02 – “intentionally”

6.03 – “knowingly”

6.04 – “recklessly”

See *State v. Valdivia*, 95 Hawai'i 465, 24 P.3d 661 (2001), for discussion of a “true threat.”

See *State v. Nichols*, 111 Hawai'i 327, 141 P.3d 974 (2006) for discussion of “relevant attributes.”

*The court should identify whether applicable or included offenses are felonies, and instruct as to the elements of these felonies (and any applicable defenses that vitiate intent), if the felony offenses are not otherwise charged.

**Relevant attributes may include, but are not limited to size, weight, occupation, and training, and status of the Defendant and (complainant's name).

The instruction may need to be modified when the threat is to cause serious damage to property of another or to commit a felony.

**9.31. Terroristic Threatening in the First Degree--
Dangerous Instrument: H.R.S. § 707-716(1)(e)**

(Applicable to offenses occurring on or after May 21, 2007)

[In Count (count number) of the Indictment/Complaint, the] [The] Defendant, (defendant's name), is charged with the offense of Terroristic Threatening in the First Degree.

A person commits the offense of Terroristic Threatening in the First Degree if, [with the intent to terrorize] [in reckless disregard of the risk of terrorizing] another person, he/she threatens, by word or conduct, to [cause bodily injury to another person] [cause serious damage or harm to property of another] [commit a felony] with the use of a dangerous instrument.

There are four material elements of the offense of Terroristic Threatening in the First Degree, each of which the prosecution must prove beyond a reasonable doubt.

These four elements are:

1. That, on or about (date) in the [City and] County of (name of county), the Defendant threatened, by word or conduct, to [cause bodily injury to another person] [cause serious damage or harm to property of another] [commit a felony*]; and
2. That the Defendant did so [with the intent to terrorize] [in reckless disregard of the risk of terrorizing] another person; and
3. That the Defendant did so with the use of a dangerous instrument; and
4. That the Defendant acted [intentionally] [recklessly] as to element 3.

The prosecution also must prove beyond a reasonable doubt that the threat was objectively capable of causing fear of bodily injury in a reasonable person at whom the threat was directed and who was familiar with the circumstances under which the threat was made, and:

(1) the threat on its face and in the circumstances in which it was made must have been so clear, unconditional, immediate, and specific as to the person threatened, that the threat communicated a seriousness of purpose and an imminent likelihood of being carried out; or

(2) the Defendant possessed the apparent ability to carry out the threat, such that the threat was reasonably likely to cause fear of bodily injury in (complainant's name).

The relevant attributes** of the Defendant and (complainant's name) must be taken into consideration in determining whether the threat, under the circumstances, was objectively capable of causing fear of bodily injury in a reasonable person.

[“Property of another” includes the pets and livestock of another.]

Notes

H.R.S. §§ 707-716(1)(e), 707-715(1), 702-206(1) and (3).

For definition of states of mind, see instructions:

6.02 – “intentionally”

6.04 – “recklessly”

For definition of terms defined by H.R.S. Chapter 707, see instructions:

9.00 – “bodily injury”

9.00 – “dangerous instrument”

See *State v. Valdivia*, 95 Hawai'i 465, 24 P.3d 661 (2001), for discussion of a “true threat.”

See *State v. Nichols*, 111 Hawai'i 327, 141 P.3d 974 (2006) for discussion of “relevant attributes.”

*The court should identify whether applicable or included offenses are felonies, and instruct as to the elements of these felonies (and any applicable defenses that vitiate intent), if the felony offenses are not otherwise charged.

**Relevant attributes may include, but are not limited to, size, weight, occupation, training, and status of the Defendant and (complainant's name).

The instruction may need to be modified when the threat is to cause serious damage to property of another or to commit a felony.

**9.31A. Terroristic Threatening in the First Degree--
Dangerous Instrument: H.R.S. § 707-716(1)(d)**

(Applicable to offenses occurring before May 21, 2007)

[In Count (count number) of the Indictment/Complaint, the] [The] Defendant, (defendant's name), is charged with the offense of Terroristic Threatening in the First Degree.

A person commits the offense of Terroristic Threatening in the First Degree if, [with the intent to terrorize] [in reckless disregard of the risk of terrorizing] another person, he/she threatens, by word or conduct, to [cause bodily injury to another person] [cause serious damage to property of another] [commit a felony] with the use of a dangerous instrument.

There are four material elements of the offense of Terroristic Threatening in the First Degree, each of which the prosecution must prove beyond a reasonable doubt.

These four elements are:

1. That, on or about (date) in the [City and] County of (name of county), the Defendant threatened, by word or conduct, to [cause bodily injury to another person] [cause serious damage to property of another] [commit a felony*]; and
2. That the Defendant did so [with the intent to terrorize] [in reckless disregard of the risk of terrorizing] another person; and
3. That the Defendant did so with the use of a dangerous instrument; and
4. That the Defendant acted [intentionally] [recklessly] as to element 3.

The prosecution also must prove beyond a reasonable doubt that the threat was objectively capable of causing fear of bodily injury in a reasonable person at whom the threat was directed and who was familiar with the circumstances under which the threat was made, and:

(1) the threat on its face and in the circumstances in which it was made must have been so clear, unconditional, immediate, and specific as to the person threatened, that the threat communicated a seriousness of purpose and an imminent likelihood of being carried out; or

(2) the Defendant possessed the apparent ability to carry out the threat, such that the threat was reasonably likely to cause fear of bodily injury in (complainant's name).

The relevant attributes** of the Defendant and (complainant's name) must be taken into consideration in determining whether the threat, under the circumstances, was objectively capable of causing fear of bodily injury in a reasonable person.

Notes

H.R.S. §§ 707-716(1)(d) (as existed before May 21, 2007), 707-715(1), 702-206(1) and (3).

For definition of states of mind, see instructions:

6.02 – “intentionally”

6.04 – “recklessly”

For definition of terms defined by H.R.S. Chapter 707, see instructions:

9.00 – “bodily injury”

9.00 – “dangerous instrument”

See *State v. Valdivia*, 95 Hawai'i 465, 24 P.3d 661 (2001), for discussion of a “true threat.”

See *State v. Nichols*, 111 Hawai'i 327, 141 P.3d 974 (2006) for discussion of “relevant attributes.”

*The court should identify whether applicable or included offenses are felonies, and instruct as to the elements of these felonies (and any applicable defenses that vitiate intent), if the felony offenses are not otherwise charged.

**Relevant attributes may include, but are not limited to, size, weight, occupation, training, and status of the Defendant and (complainant's name).

The instruction may need to be modified when the threat is to cause serious damage to property of another or to commit a felony.

9.31B. Terroristic Threatening in the First Degree – Defendant Subject to Restraining Order: H.R.S. § 707-716(1)(f)(i)

[In Count (count number) of the Indictment/Complaint, the] [The] Defendant, (defendant's name), is charged with the offense of Terroristic Threatening in the First Degree.

A person commits the offense of Terroristic Threatening in the First Degree if, [with the intent to terrorize] [in reckless disregard of the risk of terrorizing] another person, he/she threatens, by word or conduct, to [cause bodily injury to another person] [cause serious damage or harm to property of another] [commit a felony] after having been restrained, by order of a court [including an ex parte order] from [contacting] [threatening] [physically abusing] the person threatened pursuant to chapter 586 of the Hawaii Revised Statutes.

There are four material elements of the offense of Terroristic Threatening in the First Degree, each of which the prosecution must prove beyond a reasonable doubt.

These four elements are:

1. That, on or about (date) in the [City and] County of (name of county), the Defendant threatened, by word or conduct, to [cause bodily injury to another person] [cause serious damage or harm to property of another] [commit a felony*]; and
2. That the Defendant did so [with the intent to terrorize] [in reckless disregard of the risk of terrorizing] another person; and
3. That the Defendant did so after having been restrained by order of a court [including an ex parte order] from [contacting] [threatening] [physically abusing] the person threatened pursuant to chapter 586 of the Hawaii Revised Statutes; and
4. That the Defendant acted [intentionally] [recklessly] as to element 3.

The prosecution also must prove beyond a reasonable doubt that the threat was objectively capable of causing fear of bodily injury in a reasonable person at whom the threat was directed and who was familiar with the circumstances under which the threat was made, and:

(1) the threat on its face and in the circumstances in which it was made must have been so clear, unconditional, immediate, and specific as to the person threatened, that the threat communicated a seriousness of purpose and an imminent likelihood of being carried out; or

(2) the Defendant possessed the apparent ability to carry out the threat, such that the threat was reasonably likely to cause fear of bodily injury in (complainant's name).

The relevant attributes** of the Defendant and (complainant's name) must be taken into consideration in determining whether the threat, under the circumstances, was objectively capable of causing fear of bodily injury in a reasonable person.

[“Property of another” includes the pets and livestock of another.]

Notes

H.R.S. §§ 707-716(1)(f)(i), 707-715(1), 702-206(1) and (3).

For definition of states of mind, see instructions:

6.02 – “intentionally”

6.04 – “recklessly”

For definition of terms defined by H.R.S. Chapter 707, see instruction:

9.00 – “bodily injury”

See *State v. Valdivia*, 95 Hawai'i 465, 24 P.3d 661 (2001), for discussion of a “true threat.”

See *State v. Nichols*, 111 Hawai'i 327, 141 P.3d 974 (2006), for discussion of “relevant attributes.”

*The court should identify whether applicable or included offenses are felonies, and instruct as to the elements of these felonies (and any applicable defenses that vitiate intent), if the felony offenses are not otherwise charged.

**Relevant attributes may include, but are not limited to, size, weight, occupation, training, and status of the Defendant and (complainant's name).

The instruction may need to be modified when the threat is to cause serious damage to property of another or to commit a felony.

9.31C. Terroristic Threatening in the First Degree – Defendant Ordered to Leave Premises: H.R.S. § 707-716(1)(f)(ii)

[In Count (count number) of the Indictment/Complaint, the] [The] Defendant, (defendant's name), is charged with the offense of Terroristic Threatening in the First Degree.

A person commits the offense of Terroristic Threatening in the First Degree if, [with the intent to terrorize] [in reckless disregard of the risk of terrorizing] another person, he/she threatens, by word or conduct, to [cause bodily injury to another person] [cause serious damage or harm to property of another] [commit a felony], the person threatened is protected by an order of a police officer requiring the Defendant to leave the premises of the protected person pursuant to section 709-906(4) of the Hawaii Revised Statutes, and the threat was made during the effective period of the order.

There are five material elements of the offense of Terroristic Threatening in the First Degree, each of which the prosecution must prove beyond a reasonable doubt.

These five elements are:

1. That, on or about (date) in the [City and] County of (name of county), the Defendant threatened, by word or conduct, to [cause bodily injury to another person] [cause serious damage or harm to property of another] [commit a felony*]; and
2. That the Defendant did so [with the intent to terrorize] [in reckless disregard of the risk of terrorizing] another person; and
3. That the person threatened was protected by an order of a police officer requiring the Defendant to leave the premises of the protected person pursuant to section 709-906(4) of the Hawaii Revised Statutes; and
4. That the threat was made during the effective period of the order; and
5. That the Defendant acted [intentionally] [recklessly] as to elements 3 and 4.

The prosecution also must prove beyond a reasonable doubt that the threat was objectively capable of causing fear of bodily injury in a reasonable person at whom the threat was directed and who was familiar with the circumstances under which the threat was made, and:

(1) the threat on its face and in the circumstances in which it was made must have been so clear, unconditional, immediate, and specific as to the person threatened, that the threat communicated a seriousness of purpose and an imminent likelihood of being carried out; or

(2) the Defendant possessed the apparent ability to carry out the threat, such that the threat was reasonably likely to cause fear of bodily injury in (complainant's name).

The relevant attributes** of the Defendant and (complainant's name) must be taken into consideration in determining whether the threat, under the circumstances, was objectively capable of causing fear of bodily injury in a reasonable person.

An order of a police officer requiring the Defendant to leave the premises of the protected person pursuant to section 709-906(4) of the Hawaii Revised Statutes is effective for twenty-four hours after a written warning citation stating the date, time, and location of the warning and the penalties for violating it is given to the Defendant. [If the incident occurs after 12:00 p.m. on any Friday, or on any Saturday, Sunday, or legal holiday, the order to leave the premises is effective immediately upon the defendant's receipt of the written warning citation, but the twenty-four hour period shall be extended until 4:30 p.m. on the first day following the weekend or legal holiday.]

["Property of another" includes the pets and livestock of another.]

Notes

H.R.S. §§ 707-716(1)(f)(ii), 707-715(1), 702-206(1) and (3).

For definition of states of mind, see instructions:

6.02 – “intentionally”

6.04 – “recklessly”

For definition of terms defined by H.R.S. Chapter 707, see instruction:

9.00 – “bodily injury”

See *State v. Valdivia*, 95 Hawai'i 465, 24 P.3d 661 (2001), for discussion of a “true threat.”

See *State v. Nichols*, 111 Hawai'i 327, 141 P.3d 974 (2006), for discussion of “relevant attributes.”

*The court should identify whether applicable or included offenses are felonies, and instruct as to the elements of these felonies (and any applicable defenses that vitiate intent), if the felony offenses are not otherwise charged.

**Relevant attributes may include, but are not limited to, size, weight, occupation,

training, and status of the Defendant and (complainant's name).

The instruction may need to be modified when the threat is to cause serious damage to property of another or to commit a felony.

**9.31D. Terroristic Threatening in the First Degree – Simulated Firearm:
H.R.S. §707-716(1)(e)**

(Applicable to offenses occurring on or after July 2, 2013)

[In Count (count number) of the Indictment/Complaint, the] [The] Defendant, (defendant's name), is charged with the offense of Terroristic Threatening in the First Degree.

A person commits the offense of Terroristic Threatening in the First Degree if, [with the intent to terrorize] [in reckless disregard of terrorizing] another person, he/she threatens, by word or conduct, to [cause bodily injury to another person] [cause serious damage or harm to property of another] [commit a felony*] with the use of a simulated firearm.

There are four material elements of the offense of Terroristic Threatening in the First Degree, each of which the prosecution must prove beyond a reasonable doubt.

These four elements are:

1. That, on or about (date), in the [City and] County of [(name of county)], the Defendant threatened, by word or conduct, to [cause bodily injury to another person] [cause serious damage or harm to property of another] [commit a felony*]; and
2. That the Defendant did so [with the intent to terrorize] [in reckless disregard of the risk of terrorizing] another person; and
3. That the Defendant did so with the use of a simulated firearm; and
4. That the Defendant acted [intentionally] [recklessly] as to Element 3.

The prosecution also must prove beyond a reasonable doubt that the threat was objectively capable of causing fear of bodily injury in a reasonable person at whom the threat was directed and who was familiar with the circumstances under which the threat was made; and

(1) the threat on its face and in the circumstances in which it was made must have been so clear, unconditional, immediate, and specific as to the person threatened, that the threat communicated a seriousness of purpose and an imminent likelihood of being carried out; or

(2) the Defendant possessed the apparent ability to carry out the threat, such that the threat was reasonably likely to cause fear of bodily injury in (complainant's name).

The relevant attributes** of the Defendant and (complainant's name) must be taken into consideration in determining whether the threat, under the circumstances, was objectively capable of causing fear of bodily injury in a reasonable person.

[“Property of another” includes the pets and livestock of another.]

A “simulated firearm” means any object that:

- (1) substantially resembles a firearm;
- (2) can reasonably be perceived to be a firearm; or
- (3) is used or brandished as a firearm.

Notes

H.R.S. §§ 707-716(1)(e), 707-715(1), 702-206(1) and (3).

For definition of states of mind, see instructions:

6.02 – “intentionally”

6.04 – “recklessly”

For definition of terms defined by H.R.S. Chapter 707, see instructions:

9.00 – “bodily injury”

See *State v. Valdivia*, 95 Hawaii 465, 24 P.3d 661 (2001), for discussion of a “true threat.”

See *State v. Nichols*, 111 Hawaii 327, 141 P.3d 974 (2006), for discussion of “relevant attributes.”

*The court should identify whether applicable or included offenses are felonies, and instruct as to the elements of these felonies (and any applicable defenses that vitiate intent), if the felony offenses are not otherwise charged.

**Relevant attributes may include, but are not limited to, size, weight, occupation, training, and status of the Defendant and (complainant's name).

The instruction may need to be modified when the threat is to cause serious damage to property of another or to commit a felony.

9.32. Terroristic Threatening in the Second Degree: H.R.S. § 707-717

[In Count (count number) of the Indictment/Complaint, the] [The] Defendant, (defendant's name), is charged with the offense of Terroristic Threatening in the Second Degree.

A person commits the offense of Terroristic Threatening in the Second Degree if, [with the intent to terrorize] [in reckless disregard of the risk of terrorizing] another person, he/she threatens, by word or conduct, to [cause bodily injury to another person] [cause serious damage or harm to property of another] [commit a felony].

There are two material elements of the offense of Terroristic Threatening in the Second Degree, each of which the prosecution must prove beyond a reasonable doubt.

These two elements are:

1. That, on or about (date) in the [City and] County of (name of county), the Defendant threatened, by word or conduct, to [cause bodily injury to another person] [cause serious damage or harm to property of another] [commit a felony*]; and

2. That the Defendant did so [with the intent to terrorize] [in reckless disregard of the risk of terrorizing] another person.

The prosecution also must prove beyond a reasonable doubt that the threat was objectively capable of causing fear of bodily injury in a reasonable person at whom the threat was directed and who was familiar with the circumstances under which the threat was made, and:

(1) the threat on its face and in the circumstances in which it was made must have been so clear, unconditional, immediate, and specific as to the person threatened, that the threat communicated a seriousness of purpose and an imminent likelihood of being carried out; or

(2) the Defendant possessed the apparent ability to carry out the threat, such that the threat was reasonably likely to cause fear of bodily injury in (complainant's name).

The relevant attributes** of the Defendant and (complainant's name) must be taken into consideration in determining whether the threat, under the circumstances, was objectively capable of causing fear of bodily injury in a reasonable person.

["Property of another" includes the pets and livestock of another.]

Notes

H.R.S. §§ 707-717, 707-715(1), 702-206(1) and (3).

For definition of states of mind, see instructions:

6.02 – “intentionally”

6.04 – “recklessly”

For definition of terms defined by H.R.S. Chapter 707, see instruction:

9.00 – “bodily injury”

See *State v. Valdivia*, 95 Hawai'i 465, 24 P.3d 661 (2001), for discussion of a “true threat.”

See *State v. Nichols*, 111 Hawai'i 327, 141 P.3d 974 (2006), for discussion of “relevant attributes.”

*The court should identify whether applicable or included offenses are felonies, and instruct as to the elements of these felonies (and any applicable defenses that vitiate intent), if the felony offenses are not otherwise charged.

**Relevant attributes may include, but are not limited to, size, weight, occupation, training, and status of the Defendant and (complainant's name).

The instruction may need to be modified when the threat is to cause serious damage to property of another or to commit a felony.

**9.54. Promoting Child Abuse in the First Degree – Child Pornography:
H.R.S. § 707-750(1)(a)**

[In Count (count number) of the Indictment/Complaint, the] [The] Defendant, (defendant's name), is charged with the offense of Promoting Child Abuse in the First Degree.

A person commits the offense of Promoting Child Abuse in the First Degree if he/she, knowing or having reason to know its character and content, [produces] [participates in the preparation of] child pornography.

There are three material elements of the offense of Promoting Child Abuse in the First Degree, each of which the prosecution must prove beyond a reasonable doubt.

These three elements are:

1. That, on or about (date) in the [City and] County of (name of county), the Defendant [produced] [participated in the preparation of] child pornography; and
2. That the Defendant knew or had reason to know that he/she was doing so; and
3. That the Defendant knew or had reason to know the character and content of the child pornography.

“Child pornography” means any pornographic photograph, film, video, picture, or computer-generated image or picture, whether made or produced by electronic, mechanical, or other means, which depicts a minor engaging in sexual conduct, or which has been created, adapted, or modified to make it appear that an identifiable minor is engaging in sexual conduct.

“Community standards” means the standards of the State of Hawaii.

“Computer” means any electronic, magnetic, optical, electrochemical, or other high-speed data processing device performing logical, arithmetic, or storage functions, and includes all computer equipment connected or related to such a device in a computer system or computer network, but shall not include an automated typewriter or typesetter, a portable hand-held calculator, or other similar device.

“Lascivious” means tending to incite lust, to deprave the morals in respect to sexual relations, or to produce voluptuous or lewd emotions in the average person, applying contemporary community standards.

“Minor” means any person less than eighteen years old.

“Pornographic” means all of the following are present:

- (a) The average person, applying contemporary community standards would find that, taken as a whole, the material appeals to the prurient interest; and
- (b) The material depicts or describes sexual conduct in a patently offensive way; and
- (c) Taken as a whole, the material lacks serious literary, artistic, political, or scientific merit.

“Produces” means to produce, direct, manufacture, issue, publish, or advertise.

“Sadomasochistic abuse” means flagellation or torture by or upon a person as an act of sexual stimulation or gratification.

“Sexual conduct” means acts of masturbation, homosexuality, lesbianism, bestiality, sexual penetration, deviate sexual intercourse, sadomasochistic abuse, or lascivious exhibition of the genital or pubic area of a minor.

“Visual representation” refers to, but is not limited to, undeveloped film and videotape and data stored on computer disk or by electronic means that are capable of conversion into a visual image.

Notes

H.R.S. §§ 707-750, 702-206(2).

For definition of states of mind, see instruction:

6.03 – “knowingly”

For prima facie inference, see instruction 9.54.3.

9.54.1. Promoting Child Abuse in the First Degree--Pornographic Material: H.R.S. § 707-750(1)(b)

[In Count (count number) of the Indictment/Complaint, the] [The] Defendant, (defendant's name), is charged with the offense of Promoting Child Abuse in the First Degree.

A person commits the offense of Promoting Child Abuse in the First Degree if he/she, knowing or having reason to know its character and content, [produces] [participates in the preparation of] pornographic material that [employs] [uses] [contains] a minor [engaging] [assisting others to engage] in sexual conduct.

There are three material elements of the offense of Promoting Child Abuse in the First Degree, each of which the prosecution must prove beyond a reasonable doubt.

These three elements are:

1. That, on or about (date) in the [City and] County of (name of county), the Defendant [produced] [participated in the preparation of] pornographic material that [employed] [used] [contained] a minor [engaging] [assisting others to engage] in sexual conduct; and

2. That the Defendant knew or had reason to know that he/she was doing so; and

3. That the Defendant knew or had reason to know the character and content of the pornographic material.

“Community standards” means the standards of the State of Hawaii.

“Lascivious” means tending to incite lust, to deprave the morals in respect to sexual relations, or to produce voluptuous or lewd emotions in the average person, applying contemporary community standards.

“Material” means any printed matter, visual representation, or sound recording, and includes but is not limited to books, magazines, motion picture films, pamphlets, newspapers, pictures, photographs, and tape or wire recordings.

“Minor” means any person less than eighteen years old.

“Pornographic” means all of the following are present:

(a) The average person, applying contemporary community standards would find that, taken as a whole, the material appeals to the prurient interest; and

(b) The material depicts or describes sexual conduct in a patently offensive way; and

(c) Taken as a whole, the material lacks serious literary, artistic, political, or scientific merit.

“Produces” means to produce, direct, manufacture, issue, publish, or advertise.

“Sadomasochistic abuse” means flagellation or torture by or upon a person as an act of sexual stimulation or gratification.

“Sexual conduct” means acts of masturbation, homosexuality, lesbianism, bestiality, sexual penetration, deviate sexual intercourse, sadomasochistic abuse, or lascivious exhibition of the genital or pubic area of a minor.

“Visual representation” refers to, but is not limited to, undeveloped film and videotape and data stored on computer disk or by electronic means that are capable of conversion into a visual image.

Notes

H.R.S. §§ 707-750, 702-206(2).

For definition of states of mind, see instruction:

6.03 – “knowingly”

For prima facie inference, see instruction 9.54.3.

**9.54.2. Promoting Child Abuse in the First Degree – Pornographic Performance:
H.R.S. § 707-750(1)(c)**

[In Count (count number) of the Indictment/Complaint, the] [The] Defendant, (defendant's name), is charged with the offense of Promoting Child Abuse in the First Degree.

A person commits the offense of Promoting Child Abuse in the First Degree if he/she, knowing or having reason to know its character and content, engages in a pornographic performance that [employs] [uses] [contains] a minor [engaging] [assisting others to engage] in sexual conduct.

There are three material elements of the offense of Promoting Child Abuse in the First Degree, each of which the prosecution must prove beyond a reasonable doubt.

These three elements are:

1. That, on or about (date) in the [City and] County of (name of county), the Defendant engaged in a pornographic performance that [employed] [used] [contained] a minor [engaging] [assisting others to engage] in sexual conduct; and
2. That the Defendant knew or had reason to know that he/she was doing so; and
3. That the Defendant knew or had reason to know the character and content of the pornographic performance.

“Community standards” means the standards of the State of Hawaii.

“Lascivious” means tending to incite lust, to deprave the morals in respect to sexual relations, or to produce voluptuous or lewd emotions in the average person, applying contemporary community standards.

“Minor” means any person less than eighteen years old.

“Performance” means any play, motion picture film, dance, or other exhibition performed before any audience.

“Pornographic” means all of the following are present:

- (a) The average person, applying contemporary community standards would find that, taken as a whole, the material appeals to the prurient interest; and
- (b) The material depicts or describes sexual conduct in a patently offensive way; and
- (c) Taken as a whole, the material lacks serious literary, artistic, political, or scientific merit.

“Sodomasochistic abuse” means flagellation or torture by or upon a person as an act of sexual stimulation or gratification.

“Sexual conduct” means acts of masturbation, homosexuality, lesbianism, bestiality, sexual penetration, deviate sexual intercourse, sadomasochistic abuse, or lascivious exhibition of the genital or pubic area of a minor.

Notes

H.R.S. §§ 707-750, 702-206(2).

For definition of states of mind, see instruction:

6.03 – “knowingly”

For prima facie inference, see instruction 9.54.3.

9.54.3. Inference: Promoting Child Abuse in the First Degree: H.R.S. § 707-750(3)

If you find beyond a reasonable doubt that the Defendant [[produced] [participated in the preparation of] child pornography] [[produced] [participated in the preparation of] pornographic material that [employed] [used] [contained] a minor [engaging] [assisting others to engage] in sexual conduct] [engaged in a pornographic performance that [employed] [used] [contained] a minor [engaging] [assisting others to engage] in sexual conduct], you may, but are not required to, infer that the Defendant engaged in such conduct with knowledge of the character and content of the [child pornography [produced] [prepared]] [pornographic material [produced] [prepared]] [pornographic performance engaged in]. If you do so infer, you must nevertheless consider all the evidence in the case in determining whether the State has proved beyond a reasonable doubt that the Defendant engaged in such conduct with knowledge of the character and content of the [child pornography [produced] [prepared]] [pornographic material [produced] [prepared]] [pornographic performance engaged in].

If you find beyond a reasonable doubt that the person who was [employed] [used] [contained] in the pornographic [material] [performance] was, at the time, a minor, you may, but are not required to, infer that the Defendant knew the person was a minor. If you do so infer, you must nevertheless consider all the evidence in the case in determining whether the State has proved beyond a reasonable doubt that the Defendant knew the person was a minor.

Notes

H.R.S. §§ 707-750(3), 702-206(2); HRE Rule 306(a)(3).

State v. Mitchell, 88 Hawai'i 216, 965 P.2d 149 (App. 1998); *State v. Tabigne*, 88 Hawai'i 296, 966 P.2d 608 (1998).

For definition of states of mind, see instruction:

6.03 – “knowingly”

9.55. Promoting Child Abuse in the Second Degree – Disseminating Child Pornography: H.R.S. § 707-751(1)(a)

[In Count (count number) of the Indictment/Complaint, the] [The] Defendant, (defendant's name), is charged with the offense of Promoting Child Abuse in the Second Degree.

A person commits the offense of Promoting Child Abuse in the Second Degree if he/she, knowing or having reason to know its character and content, disseminates child pornography.

There are three material elements of the offense of Promoting Child Abuse in the Second Degree, each of which the prosecution must prove beyond a reasonable doubt.

These three elements are:

1. That, on or about (date) in the [City and] County of (name of county), the Defendant disseminated child pornography; and
2. That the Defendant knew or had reason to know that he/she was doing so; and
3. That the Defendant knew or had reason to know the character and content of the child pornography.

“Child pornography” means any pornographic photograph, film, video, picture, or computer-generated image or picture, whether made or produced by electronic, mechanical, or other means, which depicts a minor engaging in sexual conduct, or which has been created, adapted, or modified to make it appear that an identifiable minor is engaging in sexual conduct.

“Community standards” means the standards of the State of Hawaii.

“Computer” means any electronic, magnetic, optical, electrochemical, or other high-speed data processing device performing logical, arithmetic, or storage functions, and includes all computer equipment connected or related to such a device in a computer system or computer network, but shall not include an automated typewriter or typesetter, a portable hand-held calculator, or other similar device.

“Disseminate” means to publish, sell, distribute, transmit, exhibit, present material, mail, ship, or transport by any means, including by computer, or to offer or agree to do the same.

“Lascivious” means tending to incite lust, to deprave the morals in respect to sexual relations, or to produce voluptuous or lewd emotions in the average person, applying contemporary community standards.

“Material” means any printed matter, visual representation, or sound recording and includes, but is not limited to, books, magazines, motion picture films, pamphlets, newspapers, pictures, photographs, and tape or wire recordings.

“Minor” means any person less than eighteen years old.

“Pornographic” means all of the following are present:

(a) The average person, applying contemporary community standards would find that, taken as a whole, the material appeals to the prurient interest; and

(b) The material depicts or describes sexual conduct in a patently offensive way; and

(c) Taken as a whole, the material lacks serious literary, artistic, political, or scientific merit.

“Sadomasochistic abuse” means flagellation or torture by or upon a person as an act of sexual stimulation or gratification.

“Sexual conduct” means acts of masturbation, homosexuality, lesbianism, bestiality, sexual penetration, deviate sexual intercourse, sadomasochistic abuse, or lascivious exhibition of the genital or pubic area of a minor.

“Visual representation” refers to, but is not limited to, undeveloped film and videotape and data stored on computer disk or by electronic means that are capable of conversion into a visual image.

Notes

H.R.S. §§ 707-751, 702-206(2).

For definition of states of mind, see instruction:

6.03 – “knowingly”

For prima facie inference, see instruction 9.55.5.

9.55.1. Promoting Child Abuse in the Second Degree – Reproducing Child Pornography: H.R.S. § 707-751(1)(b)

[In Count (count number) of the Indictment/Complaint, the] [The] Defendant, (defendant's name), is charged with the offense of Promoting Child Abuse in the Second Degree.

A person commits the offense of Promoting Child Abuse in the Second Degree if he/she, knowing or having reason to know its character and content, reproduces child pornography with intent to disseminate.

There are three material elements of the offense of Promoting Child Abuse in the Second Degree, each of which the prosecution must prove beyond a reasonable doubt.

These three elements are:

1. That, on or about (date) in the [City and] County of (name of county), the Defendant reproduced child pornography; and
2. That the Defendant did so with the intent to disseminate the child pornography; and
3. That the Defendant knew or had reason to know the character and content of the child pornography.

“Child pornography” means any pornographic photograph, film, video, picture, or computer-generated image or picture, whether made or produced by electronic, mechanical, or other means, which depicts a minor engaging in sexual conduct, or which has been created, adapted, or modified to make it appear that an identifiable minor is engaging in sexual conduct.

“Community standards” means the standards of the State of Hawaii.

“Computer” means any electronic, magnetic, optical, electrochemical, or other high-speed data processing device performing logical, arithmetic, or storage functions, and includes all computer equipment connected or related to such a device in a computer system or computer network, but shall not include an automated typewriter or typesetter, a portable hand-held calculator, or other similar device.

“Disseminate” means to publish, sell, distribute, transmit, exhibit, present material, mail, ship, or transport by any means, including by computer, or to offer or agree to do the same.

“Lascivious” means tending to incite lust, to deprave the morals in respect to sexual relations, or to produce voluptuous or lewd emotions in the average person,

applying contemporary community standards.

“Material” means any printed matter, visual representation, or sound recording and includes, but is not limited to, books, magazines, motion picture films, pamphlets, newspapers, pictures, photographs, and tape or wire recordings.

“Minor” means any person less than eighteen years old.

“Pornographic” means all of the following are present:

(a) The average person, applying contemporary community standards would find that, taken as a whole, the material appeals to the prurient interest; and

(b) The material depicts or describes sexual conduct in a patently offensive way; and

(c) Taken as a whole, the material lacks serious literary, artistic, political, or scientific merit.

“Sadomasochistic abuse” means flagellation or torture by or upon a person as an act of sexual stimulation or gratification.

“Sexual conduct” means acts of masturbation, homosexuality, lesbianism, bestiality, sexual penetration, deviate sexual intercourse, sadomasochistic abuse, or lascivious exhibition of the genital or pubic area of a minor.

“Visual representation” refers to, but is not limited to, undeveloped film and videotape and data stored on computer disk or by electronic means that are capable of conversion into a visual image.

Notes

H.R.S. §§ 707-751, 702-206(2).

For definition of states of mind, see instruction:

6.02 – “intentionally”

6.03 – “knowingly”

For prima facie inference, see instruction 9.55.5.

9.55.2. Promoting Child Abuse in the Second Degree – Disseminating Material Containing Child Pornography: H.R.S. § 707-751(1)(c)

[In Count (count number) of the Indictment/Complaint, the] [The] Defendant, (defendant's name), is charged with the offense of Promoting Child Abuse in the Second Degree.

A person commits the offense of Promoting Child Abuse in the Second Degree if he/she, knowing or having reason to know its character and content, disseminates any [book] [magazine] [periodical] [film] [videotape] [computer disk] [material] that contains an image of child pornography.

There are three material elements of the offense of Promoting Child Abuse in the Second Degree, each of which the prosecution must prove beyond a reasonable doubt.

These three elements are:

1. That, on or about (date) in the [City and] County of (name of county), the Defendant disseminated any [book] [magazine] [periodical] [film] [videotape] [computer disk] [material] that contained an image of child pornography; and
2. That the Defendant knew or had reason to know that he/she was doing so; and
3. That the Defendant knew or had reason to know the character and content of the [book] [magazine] [periodical] [film] [videotape] [computer disk] [material] that contained an image of child pornography.

“Child pornography” means any pornographic photograph, film, video, picture, or computer-generated image or picture, whether made or produced by electronic, mechanical, or other means, which depicts a minor engaging in sexual conduct, or which has been created, adapted, or modified to make it appear that an identifiable minor is engaging in sexual conduct.

“Community standards” means the standards of the State of Hawaii.

“Computer” means any electronic, magnetic, optical, electrochemical, or other high-speed data processing device performing logical, arithmetic, or storage functions, and includes all computer equipment connected or related to such a device in a computer system or computer network, but shall not include an automated typewriter or typesetter, a portable hand-held calculator, or other similar device.

“Disseminate” means to publish, sell, distribute, transmit, exhibit, present material, mail, ship, or transport by any means, including by computer, or to offer or agree to do the same.

“Lascivious” means tending to incite lust, to deprave the morals in respect to sexual relations, or to produce voluptuous or lewd emotions in the average person, applying contemporary community standards.

“Material” means any printed matter, visual representation, or sound recording and includes, but is not limited to, books, magazines, motion picture films, pamphlets, newspapers, pictures, photographs, and tape or wire recordings.

“Minor” means any person less than eighteen years old.

“Pornographic” means all of the following are present:

(a) The average person, applying contemporary community standards would find that, taken as a whole, the material appeals to the prurient interest; and

(b) The material depicts or describes sexual conduct in a patently offensive way; and

(c) Taken as a whole, the material lacks serious literary, artistic, political, or scientific merit.

“Sadomasochistic abuse” means flagellation or torture by or upon a person as an act of sexual stimulation or gratification.

“Sexual conduct” means acts of masturbation, homosexuality, lesbianism, bestiality, sexual penetration, deviate sexual intercourse, sadomasochistic abuse, or lascivious exhibition of the genital or pubic area of a minor.

“Visual representation” refers to, but is not limited to, undeveloped film and videotape and data stored on computer disk or by electronic means that are capable of conversion into a visual image.

Notes

H.R.S. §§ 707-751, 702-206(2).

For definition of states of mind, see instruction:

6.03 – “knowingly”

For prima facie inference, see instruction 9.55.5.

9.55.3. Promoting Child Abuse in the Second Degree – Disseminating Pornographic Material Employing a Minor: H.R.S. § 707-751(1)(d)

[In Count (count number) of the Indictment/Complaint, the] [The] Defendant, (defendant's name), is charged with the offense of Promoting Child Abuse in the Second Degree.

A person commits the offense of Promoting Child Abuse in the Second Degree if he/she, knowing or having reason to know its character and content, disseminates any pornographic material which [employs] [uses] [contains] a minor [engaging] [assisting others to engage] in sexual conduct.

There are three material elements of the offense of Promoting Child Abuse in the Second Degree, each of which the prosecution must prove beyond a reasonable doubt.

These three elements are:

1. That, on or about (date) in the [City and] County of (name of county), the Defendant disseminated pornographic material which [employed] [used] [contained] a minor [engaging] [assisting others to engage] in sexual conduct; and
2. That the Defendant knew or had reason to know that he/she was doing so; and
3. That the Defendant knew or had reason to know the character and content of the pornographic material.

“Community standards” means the standards of the State of Hawaii.

“Computer” means any electronic, magnetic, optical, electrochemical, or other high-speed data processing device performing logical, arithmetic, or storage functions, and includes all computer equipment connected or related to such a device in a computer system or computer network, but shall not include an automated typewriter or typesetter, a portable hand-held calculator, or other similar device.

“Disseminate” means to publish, sell, distribute, transmit, exhibit, present material, mail, ship, or transport by any means, including by computer, or to offer or agree to do the same.

“Lascivious” means tending to incite lust, to deprave the morals in respect to sexual relations, or to produce voluptuous or lewd emotions in the average person, applying contemporary community standards.

“Material” means any printed matter, visual representation, or sound recording and includes, but is not limited to, books, magazines, motion picture films, pamphlets,

newspapers, pictures, photographs, and tape or wire recordings.

“Minor” means any person less than eighteen years old.

“Pornographic” means all of the following are present:

(a) The average person, applying contemporary community standards would find that, taken as a whole, the material appeals to the prurient interest; and

(b) The material depicts or describes sexual conduct in a patently offensive way; and

(c) Taken as a whole, the material lacks serious literary, artistic, political, or scientific merit.

“Sadomasochistic abuse” means flagellation or torture by or upon a person as an act of sexual stimulation or gratification.

“Sexual conduct” means acts of masturbation, homosexuality, lesbianism, bestiality, sexual penetration, deviate sexual intercourse, sadomasochistic abuse, or lascivious exhibition of the genital or pubic area of a minor.

“Visual representation” refers to, but is not limited to, undeveloped film and videotape and data stored on computer disk or by electronic means that are capable of conversion into a visual image.

Notes

H.R.S. §§ 707-751, 702-206(2).

For definition of states of mind, see instruction:

6.03 – “knowingly”

For prima facie inference, see instruction 9.55.5.

9.55.4. Promoting Child Abuse in the Second Degree – Possessing Thirty or More Images of Child Pornography: H.R.S. § 707-751(1)(e)

[In Count (count number) of the Indictment/Complaint, the] [The] Defendant, (defendant's name), is charged with the offense of Promoting Child Abuse in the Second Degree.

A person commits the offense of Promoting Child Abuse in the Second Degree if he/she, knowing or having reason to know its character and content, possesses thirty or more images of any form of child pornography, and the content of a least one image contains [a minor who is younger than the age of twelve] [sodomasochistic abuse of a minor] [bestiality involving a minor].

There are three material elements of the offense of Promoting Child Abuse in the Second Degree, each of which the prosecution must prove beyond a reasonable doubt.

These three elements are:

1. That, on or about (date) in the [City and] County of (name of county), the Defendant possessed thirty or more images of any form of child pornography and the content of a least one image contained [a minor who was, at the time, younger than the age of twelve] [sodomasochistic abuse of a minor] [bestiality involving a minor]; and
2. That the Defendant knew or had reason to know that he was doing so; and
3. That the Defendant knew or had reason to know the character and content of each of the thirty or more images.

“Child pornography” means any pornographic photograph, film, video, picture, or computer-generated image or picture, whether made or produced by electronic, mechanical, or other means, which depicts a minor engaging in sexual conduct, or which has been created, adapted, or modified to make it appear that an identifiable minor is engaging in sexual conduct.

“Community standards” means the standards of the State of Hawaii.

“Computer” means any electronic, magnetic, optical, electrochemical, or other high-speed data processing device performing logical, arithmetic, or storage functions, and includes all computer equipment connected or related to such a device in a computer system or computer network, but shall not include an automated typewriter or typesetter, a portable hand-held calculator, or other similar device.

“Lascivious” means tending to incite lust, to deprave the morals in respect to sexual relations, or to produce voluptuous or lewd emotions in the average person, applying contemporary community standards.

“Material” means any printed matter, visual representation, or sound recording and includes, but is not limited to, books, magazines, motion picture films, pamphlets, newspapers, pictures, photographs, and tape or wire recordings.

“Minor” means any person less than eighteen years old.

“Pornographic” means all of the following are present:

(a) The average person, applying contemporary community standards would find that, taken as a whole, the material appeals to the prurient interest; and

(b) The material depicts or describes sexual conduct in a patently offensive way; and

(c) Taken as a whole, the material lacks serious literary, artistic, political, or scientific merit.

“Sadomasochistic abuse” means flagellation or torture by or upon a person as an act of sexual stimulation or gratification.

“Sexual conduct” means acts of masturbation, homosexuality, lesbianism, bestiality, sexual penetration, deviate sexual intercourse, sadomasochistic abuse, or lascivious exhibition of the genital or pubic area of a minor.

“Visual representation” refers to, but is not limited to, undeveloped film and videotape and data stored on computer disk or by electronic means that are capable of conversion into a visual image.

Notes

H.R.S. §§ 707-751, 702-206(2).

For definition of states of mind, see instruction:

6.03 – “knowingly”

For prima facie inference, see instruction 9.55.5.

**9.55.5. Inference: Promoting Child Abuse in the Second Degree:
H.R.S. § 707-751(3)**

If you find beyond a reasonable doubt that the Defendant [disseminated child pornography] [reproduced child pornography with intent to disseminate] [disseminated any [book] [magazine] [periodical] [film] [videotape] [computer disk] [material] that contained an image of child pornography] [disseminated any pornographic material that [employed] [used] [contained] a minor [engaging] [assisting others to engage] in sexual conduct] [possessed thirty or more images of any form of child pornography and the content of a least one image contained [a minor who is younger than the age of twelve] [sodomasochistic abuse of a minor] [bestiality involving a minor]], you may, but are not required to, infer that the Defendant possessed that material with knowledge of its character and content. If you do so infer, you must nevertheless consider all the evidence in the case in determining whether the State has proved beyond a reasonable doubt that the Defendant possessed that material with knowledge of its character and content.

If you find beyond a reasonable doubt that the person who was [employed] [used] [contained] in the pornographic material was, at the time, a minor, you may, but are not required to, infer that the Defendant knew the person was a minor. If you do so infer, you must nevertheless consider all the evidence in the case in determining whether the State has proved beyond a reasonable doubt that the Defendant knew the person was a minor.

Notes

H.R.S. §§ 707-751(3), 702-206(2); HRE Rule 306(a)(3).

State v. Mitchell, 88 Hawai'i 216, 965 P.2d 149 (App. 1998); *State v. Tabigne*, 88 Hawai'i 296, 966 P.2d 608 (1998).

For definition of states of mind, see instruction:

6.03 – “knowingly”

9.56. Promoting Child Abuse in the Third Degree: H.R.S. § 707-752

[In Count (count number) of the Indictment/Complaint, the] [The] Defendant, (defendant's name), is charged with the offense of Promoting Child Abuse in the Third Degree.

A person commits the offense of Promoting Child Abuse in the Third Degree if he/she, knowing or having reason to know its character and content, possesses [child pornography] [any [book] [magazine] [periodical] [film] [videotape] [computer disk] [electronically stored data] [material] that contains an image of child pornography] [any pornographic material that [employs] [uses] [contains] a minor [engaging] [assisting others to engage] in sexual conduct].

There are three material elements of the offense of Promoting Child Abuse in the Second Degree, each of which the prosecution must prove beyond a reasonable doubt.

These three elements are:

1. That, on or about (date) in the [City and] County of (name of county), the Defendant possessed [child pornography] [[a book] [a magazine] [a periodical] [a film] [a videotape] [a computer disk] [electronically stored data] [material] that contained an image of child pornography] [pornographic material that [employed] [used] [contained] a minor [engaging] [assisting others to engage] in sexual conduct]; and

2. That the Defendant knew or had reason to know that he/she was doing so; and

3. That the Defendant knew or had reason to know the character and content of the [child pornography] [[book] [magazine] [periodical] [film] [videotape] [computer disk] [electronically stored data] [material] that contained an image of child pornography] [pornographic material that [employed] [used] [contained] a minor [engaging] [assisting others to engage] in sexual conduct].

“Child pornography” means any pornographic photograph, film, video, picture, or computer-generated image or picture, whether made or produced by electronic, mechanical, or other means, which depicts a minor engaging in sexual conduct, or which has been created, adapted, or modified to make it appear that an identifiable minor is engaging in sexual conduct.

“Community standards” means the standards of the State of Hawaii.

“Computer” means any electronic, magnetic, optical, electrochemical, or other high-speed data processing device performing logical, arithmetic, or storage functions, and includes all computer equipment connected or related to such a device in a

computer system or computer network, but shall not include an automated typewriter or typesetter, a portable hand-held calculator, or other similar device.

“Lascivious” means tending to incite lust, to deprave the morals in respect to sexual relations, or to produce voluptuous or lewd emotions in the average person, applying contemporary community standards.

“Material” means any printed matter, visual representation, or sound recording and includes, but is not limited to, books, magazines, motion picture films, pamphlets, newspapers, pictures, photographs, and tape or wire recordings.

“Minor” means any person less than eighteen years old.

“Pornographic” means all of the following are present:

(a) The average person, applying contemporary community standards would find that, taken as a whole, the material appeals to the prurient interest; and

(b) The material depicts or describes sexual conduct in a patently offensive way; and

(c) Taken as a whole, the material lacks serious literary, artistic, political, or scientific merit.

“Sadomasochistic abuse” means flagellation or torture by or upon a person as an act of sexual stimulation or gratification.

“Sexual conduct” means acts of masturbation, homosexuality, lesbianism, bestiality, sexual penetration, deviate sexual intercourse, sadomasochistic abuse, or lascivious exhibition of the genital or pubic area of a minor.

“Visual representation” refers to, but is not limited to, undeveloped film and videotape and data stored on computer disk or by electronic means that are capable of conversion into a visual image.

Notes

H.R.S. §§ 707-752, 702-206(2).

For definition of states of mind, see instruction:

6.03 – “knowingly”

For prima facie inference, see instruction 9.56.1.

9.56.1. Inference: Promoting Child Abuse in the Third Degree: H.R.S. § 707-752(3)

If you find beyond a reasonable doubt that the Defendant possessed [child pornography] [any [book] [magazine] [periodical] [film] [videotape] [computer disk] [electronically stored data] [material] that contained an image of child pornography] [any pornographic material that [employed] [used] [contained] a minor [engaging] [assisting others to engage] in sexual conduct], you may, but are not required to, infer that the Defendant possessed that material with knowledge of its character and content. If you do so infer, you must nevertheless consider all the evidence in the case in determining whether the State has proved beyond a reasonable doubt that the Defendant possessed that material with knowledge of its character and content.

If you find beyond a reasonable doubt that the person who was [employed] [used] [contained] in the pornographic material was, at the time, a minor, you may, but are not required to, infer that the Defendant knew the person was a minor. If you do so infer, you must nevertheless consider all the evidence in the case in determining whether the State has proved beyond a reasonable doubt that the Defendant knew the person was a minor.

Notes

H.R.S. §§ 707-752(3), 702-206(2); HRE Rule 306(a)(3).

State v. Mitchell, 88 Hawai'i 216, 965 P.2d 149 (App. 1998); *State v. Tabigne*, 88 Hawai'i 296, 966 P.2d 608 (1998).

For definition of states of mind, see instruction:

6.03 – “knowingly”

10.19.1A. Theft in the First Degree – Appropriation of Property: H.R.S. §§708-830(3) and 708-830.5(1)(a)

[In Count (count number) of the Indictment/Complaint, the] [The] Defendant, (defendant's name), is charged with the offense of Theft in the First Degree.

A person commits the offense of Theft in the First Degree if he/she obtains or exerts control over the property of another, the value of which exceeds \$20,000, that he/she knows [to have been lost or mislaid] [to have been delivered under a mistake as to the [nature or amount of the property] [identity of the recipient] [(insert other fact)]*] and, with the intent to deprive the owner of the property, he/she fails to take reasonable measures to discover and notify the owner of the property.

There are six material elements of the offense of Theft in the First Degree, each of which the prosecution must prove beyond a reasonable doubt.

These six elements are:

1. That on or about (date) in the [City and] County of (name of county), the Defendant obtained or exerted control over the property of another; and
2. That the Defendant did so intentionally; and
3. That the Defendant knew the property [to have been lost or mislaid] [to have been delivered under a mistake as to the [nature or amount of the property] [identity of the recipient] [(insert other fact)]*]; and
4. That, with the intent to deprive the owner of the property, the Defendant failed to take reasonable measures to discover and notify the owner of the property; and
5. That the Defendant was aware or believed that the value of the property exceeded \$20,000; and
6. That the value of the property exceeded \$20,000.

Notes

H.R.S. §§703-830(3) and 708-831(1)(b).

For definition of states of mind, see instruction:

6.02 – “intentionally”

6.03 – “knowingly”

For definition of terms defined by H.R.S. Chapter 708, see instructions:

10.00 – “control over the property”

10.00 – “deprive”

10.00 – “obtain”

10.00 – “owner”

10.00 – “property”

10.00 – “property of another”

10.00A(1) – “value”

For prima facie inference and defense regarding Defendant’s state of mind as to the value of the services, see instruction 10.00A(2).

For statutory defense, see instruction 10.11A.

*This alternative should be consistent with the charging document.

**10.19.1B. Theft in the Second Degree – Appropriation of Property:
H.R.S. §§708-830(3) and 708-831(1)(b)**

[In Count (count number) of the Indictment/Complaint, the] [The] Defendant, (defendant's name), is charged with the offense of Theft in the Second Degree.

A person commits the offense of Theft in the Second Degree if he/she obtains or exerts control over the property of another, the value of which exceeds \$300, that he/she knows [to have been lost or mislaid] [to have been delivered under a mistake as to the [nature or amount of the property] [identity of the recipient] [(insert other fact)]*] and, with the intent to deprive the owner of the property, he/she fails to take reasonable measures to discover and notify the owner of the property.

There are six material elements of the offense of Theft in the Second Degree, each of which the prosecution must prove beyond a reasonable doubt.

These six elements are:

1. That on or about (date) in the [City and] County of (name of county), the Defendant obtained or exerted control over the property of another; and
2. That the Defendant did so intentionally; and
3. That the Defendant knew the property [to have been lost or mislaid] [to have been delivered under a mistake as to the [nature or amount of the property] [identity of the recipient] [(insert other fact)]*]; and
4. That, with the intent to deprive the owner of the property, the Defendant failed to take reasonable measures to discover and notify the owner of the property; and
5. That the Defendant was aware or believed that the value of the property exceeded \$300; and
6. That the value of the property exceeded \$300.

Notes

H.R.S. §§703-830(3) and 708-831(1)(b).

For definition of states of mind, see instruction:

6.02 – “intentionally”

6.03 – “knowingly”

For definition of terms defined by H.R.S. Chapter 708, see instructions:

10.00 – “control over the property”

10.00 – “deprive”

10.00 – “obtain”

10.00 – “owner”

10.00 – “property”

10.00 – “property of another”

10.00A(1) – “value”

For prima facie inference and defense regarding Defendant’s state of mind as to the value of the services, see instruction 10.00A(2).

For statutory defense, see instruction 10.11A.

*This alternative should be consistent with the charging document.

**10.22.1A. Theft in the First Degree -- Diversion of Services:
H.R.S. §§708-830(5) and 708-830.5(1)(a)**

[In Count (count number) of the Indictment/Complaint, the] [The] Defendant, (defendant's name), is charged with the offense of Theft in the First Degree.

A person commits the offense of Theft in the First Degree if, having control over the disposition of services of another to which he/she is not entitled, he/she intentionally diverts those services to his/her own benefit or to the benefit of a person not entitled to those services, and the value of those services exceeds \$20,000.

There are six material elements of the offense of Theft in the First Degree, each of which the prosecution must prove beyond a reasonable doubt.

These six elements are:

1. That on or about (date) in the [City and] County of (name of county), the Defendant had control over the disposition of services of another person; and
2. That the Defendant was not entitled to those services; and
3. That the Defendant diverted those services [to his/her own benefit] [to the benefit of a person not entitled to the services]; and
4. That the Defendant acted intentionally as to elements 1, 2, and 3; and
5. That the Defendant was aware or believed that the value of the services exceeded \$20,000; and
6. That the value of the services exceeded \$20,000.

Notes

H.R.S. §§703-830(5) and 708-831(1)(b).

For definition of states of mind, see instruction:

6.02 – “intentionally”

For definition of terms defined by H.R.S. Chapter 708, see instructions:

10.00 – “services”

10.00A(1) – “value”

For prima facie inference and defense regarding Defendant's state of mind as to the value of the services, see instruction 10.00A(2).

For statutory defense, see instruction 10.11A.

**10.22.1B. Theft in the Second Degree -- Diversion of Services:
H.R.S. §§708-830(5) and 708-831(1)(b)**

[In Count (count number) of the Indictment/Complaint, the] [The] Defendant, (defendant's name), is charged with the offense of Theft in the Second Degree.

A person commits the offense of Theft in the Second Degree if, having control over the disposition of services of another to which he/she is not entitled, he/she intentionally diverts those services to his/her own benefit or to the benefit of a person not entitled to those services, and the value of those services exceeds \$300.

There are six material elements of the offense of Theft in the Second Degree, each of which the prosecution must prove beyond a reasonable doubt.

These six elements are:

1. That on or about (date) in the [City and] County of (name of county), the Defendant had control over the disposition of services of another person; and
2. That the Defendant was not entitled to those services; and
3. That the Defendant diverted those services [to his/her own benefit] [to the benefit of a person not entitled to the services]; and
4. That the Defendant acted intentionally as to elements 1, 2, and 3; and
5. That the Defendant was aware or believed that the value of the services exceeded \$300; and
6. That the value of the services exceeded \$300.

Notes

H.R.S. §§703-830(5) and 708-831(1)(b).

For definition of states of mind, see instruction:

6.02 – “intentionally”

For definition of terms defined by H.R.S. Chapter 708, see instructions:

10.00 – “services”

10.00A(1) – “value”

For prima facie inference and defense regarding Defendant's state of mind as to the value of the services, see instruction 10.00A(2).

For statutory defense, see instruction 10.11A.

10.22.2A. Theft in the First Degree -- Failure To Make Required Disposition of Funds: H.R.S. §§708-830(6)(a) and 708-830.5(1)(a)

[In Count (count number) of the Indictment/Complaint, the] [The] Defendant, (defendant's name), is charged with the offense of Theft in the First Degree.

A person commits the offense of Theft in the First Degree if he/she intentionally obtains property from anyone [upon an agreement] [subject to a known legal obligation] to make specified payment or other disposition [from the property or its proceeds] [from his/her own property reserved in equivalent amount], deals with the property as his/her own, and fails to make the required payment or disposition, and the value of the property exceeds \$20,000.

There are seven material elements of the offense of Theft in the First Degree, each of which the prosecution must prove beyond a reasonable doubt.

These seven elements are:

1. That on or about (date) in the [City and] County of (name of county), the Defendant obtained property from anyone; and
2. That the Defendant did so [upon an agreement] [subject to a known legal obligation] to make specified payment or other disposition [from the property or its proceeds] [from his/her own property reserved in equivalent amount]; and
3. That the Defendant dealt with the property as his/her own; and
4. That the Defendant failed to make the required payment or disposition;
and
5. That the Defendant acted intentionally as to elements 1, 2, 3 and 4; and
6. That the Defendant was aware or believed that the value of the property exceeded \$20,000; and
7. That the value of the property exceeded \$20,000.

[It does not matter that it is impossible to identify particular property as belonging to the other person at the time of the Defendant's failure to make the required payment or disposition.]

[If you find beyond a reasonable doubt that the Defendant was an officer or employee of the government or a financial institution, you may, but are not required to, infer that he/she knew of his/her legal obligations with respect to making payments and other dispositions. If you do so infer, you must nevertheless consider all the evidence

in the case in determining whether the State has proved beyond a reasonable doubt that the Defendant knew of his/her legal obligation with respect to making payments and other dispositions.]

[If you find beyond a reasonable doubt that [the Defendant, as an officer or an employee of the government or a financial institution, failed to pay or account upon lawful demand] [an audit reveals a falsification of accounts], you may, but are not required to, infer that the Defendant intentionally dealt with the property as his/her own. If you do so infer, you must nevertheless consider all the evidence in the case in determining whether the State has proved beyond a reasonable doubt that the Defendant intentionally dealt with the property as his/her own.]

Notes

H.R.S. §§703-830(6)(a) and 708-831(1)(b).

For definition of states of mind, see instruction:

6.02 – “intentionally”

For definition of terms defined by H.R.S. Chapter 708, see instructions:

10.00 – “obtain”

10.00 – “property”

10.00A(1) – “value”

For prima facie inference and defense regarding Defendant’s state of mind as to the value of the services, see instruction 10.00A(2).

For statutory defense, see instruction 10.11A.

10.22.2B. Theft in the Second Degree -- Failure To Make Required Disposition of Funds: H.R.S. §§708-830(6)(a) and 708-831(1)(b)

[In Count (count number) of the Indictment/Complaint, the] [The] Defendant, (defendant's name), is charged with the offense of Theft in the Second Degree.

A person commits the offense of Theft in the Second Degree if he/she intentionally obtains property from anyone [upon an agreement] [subject to a known legal obligation] to make specified payment or other disposition [from the property or its proceeds] [from his/her own property reserved in equivalent amount], deals with the property as his/her own, and fails to make the required payment or disposition, and the value of the property exceeds \$300.

There are seven material elements of the offense of Theft in the Second Degree, each of which the prosecution must prove beyond a reasonable doubt.

These seven elements are:

1. That on or about (date) in the [City and] County of (name of county), the Defendant obtained property from anyone; and
2. That the Defendant did so [upon an agreement] [subject to a known legal obligation] to make specified payment or other disposition [from the property or its proceeds] [from his/her own property reserved in equivalent amount]; and
3. That the Defendant dealt with the property as his/her own; and
4. That the Defendant failed to make the required payment or disposition;
and
5. That the Defendant acted intentionally as to elements 1, 2, 3 and 4; and
6. That the Defendant was aware or believed that the value of the property exceeded \$300; and
7. That the value of the property exceeded \$300.

[It does not matter that it is impossible to identify particular property as belonging to the other person at the time of the Defendant's failure to make the required payment or disposition.]

[If you find beyond a reasonable doubt that the Defendant was an officer or employee of the government or a financial institution, you may, but are not required to, infer that he/she knew of his/her legal obligations with respect to making payments and other dispositions. If you do so infer, you must nevertheless consider all the evidence

in the case in determining whether the State has proved beyond a reasonable doubt that the Defendant knew of his/her legal obligation with respect to making payments and other dispositions.]

[If you find beyond a reasonable doubt that [the Defendant, as an officer or an employee of the government or a financial institution, failed to pay or account upon lawful demand] [an audit reveals a falsification of accounts], you may, but are not required to, infer that the Defendant intentionally dealt with the property as his/her own. If you do so infer, you must nevertheless consider all the evidence in the case in determining whether the State has proved beyond a reasonable doubt that the Defendant intentionally dealt with the property as his/her own.]

Notes

H.R.S. §§703-830(6)(a) and 708-831(1)(b).

For definition of states of mind, see instruction:

6.02 – “intentionally”

For definition of terms defined by H.R.S. Chapter 708, see instructions:

10.00 – “obtain”

10.00 – “property”

10.00A(1) – “value”

For prima facie inference and defense regarding Defendant’s state of mind as to the value of the services, see instruction 10.00A(2).

For statutory defense, see instruction 10.11A.

10.22.3A. Theft in the First Degree -- Failure To Make Required Disposition of Funds: H.R.S. §§708-830(6)(b) and 708-830.5(1)(a)

[In Count (count number) of the Indictment/Complaint, the] [The] Defendant, (defendant's name), is charged with the offense of Theft in the First Degree.

A person commits the offense of Theft in the First Degree if he/she intentionally obtains personal services from an employee [with an agreement] [subject to a known legal obligation] to make a payment or other disposition of funds to a third person on account of the employment, and fails to make the payment or disposition at the proper time, and the value of the services exceeds \$20,000.

There are six material elements of the offense of Theft in the First Degree, each of which the prosecution must prove beyond a reasonable doubt.

These six elements are:

1. That on or about (date) in the [City and] County of (name of county), the Defendant obtained personal services from an employee; and
2. That the Defendant did so [with an agreement] [subject to a known legal obligation] to make a payment or other disposition of funds to a third person on account of the employment; and
3. That the Defendant failed to make the payment or disposition at the proper time; and
4. That the Defendant acted intentionally as to elements 1, 2, and 3; and
5. That the Defendant was aware or believed that the value of the services exceeded \$20,000; and
6. That the value of the services exceeded \$20,000.

Notes

H.R.S. §§703-830(6)(b) and 708-831(1)(b).

For definition of states of mind, see instruction:

6.02 – “intentionally”

For definition of terms defined by H.R.S. Chapter 708, see instructions:

10.00 – “obtain”

10.00 – “services”

10.00A(1) – “value”

For prima facie inference and defense regarding Defendant’s state of mind as to the value of the services, see instruction 10.00A(2).

For statutory defense, see instruction 10.11A.

10.22.3B. Theft in the Second Degree -- Failure To Make Required Disposition of Funds: H.R.S. §§708-830(6)(b) and 708-831(1)(b)

[In Count (count number) of the Indictment/Complaint, the] [The] Defendant, (defendant's name), is charged with the offense of Theft in the Second Degree.

A person commits the offense of Theft in the Second Degree if he/she intentionally obtains personal services from an employee [with an agreement] [subject to a known legal obligation] to make a payment or other disposition of funds to a third person on account of the employment, and fails to make the payment or disposition at the proper time, and the value of the services exceeds \$300.

There are six material elements of the offense of Theft in the Second Degree, each of which the prosecution must prove beyond a reasonable doubt.

These six elements are:

1. That on or about (date) in the [City and] County of (name of county), the Defendant obtained personal services from an employee; and
2. That the Defendant did so [with an agreement] [subject to a known legal obligation] to make a payment or other disposition of funds to a third person on account of the employment; and
3. That the Defendant failed to make the payment or disposition at the proper time; and
4. That the Defendant acted intentionally as to elements 1, 2, and 3; and
5. That the Defendant was aware or believed that the value of the services exceeded \$300; and
6. That the value of the services exceeded \$300.

Notes

H.R.S. §§703-830(6)(b) and 708-831(1)(b).

For definition of states of mind, see instruction:

6.02 – “intentionally”

For definition of terms defined by H.R.S. Chapter 708, see instructions:

10.00 – “obtain”

10.00 – “services”

10.00A(1) – “value”

For prima facie inference and defense regarding Defendant’s state of mind as to the value of the services, see instruction 10.00A(2).

For statutory defense, see instruction 10.11A.

10.58. False Labeling of Hawaii-Grown Coffee: H.R.S. § 708-871.5

[In Count (count number) of the Indictment/Information/Complaint, the] [The] Defendant, (defendant's name), is charged with the offense of False Labeling of Hawaii-Grown Coffee.

A person commits the offense of False Labeling of Hawaii-Grown Coffee if he/she knowingly [transports] [distributes] [advertises] [sells] Hawaii-grown [green] [cherry] [parchment] coffee that is falsely labeled with regard to the geographic origin of the Hawaii-grown coffee.

There are three material elements of the offense of False Labeling of Hawaii-Grown Coffee, each of which the prosecution must prove beyond a reasonable doubt.

These three elements are:

1. That, on or about (date), in the [City and] County of (name of county), the Defendant [transported] [distributed] [advertised] [sold] Hawaii-grown [green] [cherry] [parchment] coffee; and
2. That the coffee was falsely labeled with regard to its geographic origin;
and
3. That the Defendant acted knowingly as to each of the foregoing elements.

["Cherry coffee" means the unprocessed fruit of the coffee plant.]

["Geographic origin" means the geographic areas designated as follows:

- (a) Hamakua is the Hamakua district on the island of Hawaii, as designated by the State of Hawaii tax map;
- (b) Hawaii is the State of Hawaii;
- (c) Kau is the Kau district on the island of Hawaii, as designated by the State of Hawaii tax map;
- (d) Kauai is the island of Kauai;
- (e) Maui is the island of Maui;
- (f) Molokai is the island of Molokai; and
- (g) Oahu is the island of Oahu.]

["Green coffee" means the agricultural commodity comprised of green coffee beans.]

["Parchment coffee" means the dried product that remains when coffee cherries are processed by removing the coffee seeds from the pulp.]

Notes

H.R.S. § 708-871.5

For definition of states of mind, see instructions:

6.02 - "intentionally"

6.03 - "knowingly"

For definition of terms defined by H.R.S. Chapter 708, see instructions:

10.00 - "distributes"

For definition of "possession," see instruction 6.06.

10.59. False Labeling of Hawaii-Grown Coffee: H.R.S. § 708-871.5 (Possess With Intent to Sell)

[In Count (count number) of the Indictment/Information/Complaint, the] [The] Defendant, (defendant's name), is charged with the offense of False Labeling of Hawaii-Grown Coffee.

A person commits the offense of False Labeling of Hawaii-Grown Coffee if he/she knowingly possesses with intent to sell coffee that is falsely labeled with regard to the geographic origin of the Hawaii-grown coffee.

There are four material elements of the offense of False Labeling of Hawaii-Grown Coffee, each of which the prosecution must prove beyond a reasonable doubt.

These four elements are:

1. That, on or about (date), in the [City and] County of (name of county), the Defendant possessed Hawaii-grown [green] [cherry] [parchment] coffee; and
2. That the Defendant did so with intent to sell the coffee; and
3. That the coffee was falsely labeled with regard to its geographic origin;
and
4. That the Defendant acted knowingly as to elements 1 and 3.

["Cherry coffee" means the unprocessed fruit of the coffee plant.]

["Geographic origin" means the geographic areas designated as follows:

- (a) Hamakua is the Hamakua district on the island of Hawaii, as designated by the State of Hawaii tax map;
- (b) Hawaii is the State of Hawaii;
- (c) Kau is the Kau district on the island of Hawaii, as designated by the State of Hawaii tax map;
- (d) Kauai is the island of Kauai;
- (e) Maui is the island of Maui;
- (f) Molokai is the island of Molokai; and
- (g) Oahu is the island of Oahu.]

["Green coffee" means the agricultural commodity comprised of green coffee beans.]

["Parchment coffee" means the dried product that remains when coffee cherries are processed by removing the coffee seeds from the pulp.]

Notes

H.R.S. § 708-871.5

For definition of states of mind, see instructions:

6.02 - "intentionally"

6.03 - "knowingly"

For definition of terms defined by H.R.S. Chapter 708, see instructions:

10.00 - "distributes"

For definition of "possession," see instruction 6.06.

11.06. Abuse of Family or Household Members: H.R.S. § 709-906(1)

[In Count (count number) of the Indictment/Complaint, the] [The] Defendant, (defendant's name), is charged with the offense of Abuse of Family or Household Members.

A person commits the offense of Abuse of Family or Household Members if he/she intentionally, knowingly, or recklessly physically abuses a family or household member.

There are three material elements of the offense of Abuse of Family ~~and~~ or Household Members, each of which the prosecution must prove beyond a reasonable doubt.

These three elements are:

1. That, on or about (date) in the [City and] County of (name of county), the Defendant physically abused (name of complainant); and

2. That, at that time, the Defendant and (name of complainant) were family or household members; and

3. That the Defendant did so intentionally, knowingly, or recklessly as to each of the foregoing elements.

“Family or household member” means spouses or reciprocal beneficiaries,* former spouses or reciprocal beneficiaries,* persons in a dating relationship, persons who have a child in common,** parents, children, persons related by consanguinity,** and persons jointly residing or formerly residing in the same dwelling unit.

Notes

H.R.S. §§ 709-906 (1), 702-206 (1), (2) and (3).

For definition of states of mind, see instructions:

6.02—“intentionally”

6.03—“knowingly”

6.04—“recklessly”

For definition of “dating relationship,” see HRS § 586-1.

For definition of “reciprocal beneficiaries,” see H.R.S. § 572C-3.

For degrees of consanguinity within which marriage is prohibited, see H.R.S. § 572-1.

* Effective 7/1/97—Act 383, Hawai'i Session Laws 1997

** Effective 7/1/98—Act 172, Hawai'i Session Laws 1998

**11.07A. Abuse of Family or Household Members – Stipulation as to Third Offense
Within Two Years: H.R.S. § 709-906(7)**

[In Count (count number) of the Indictment/Complaint, the] [The] Defendant, (defendant's name), is charged with the offense of Abuse of Family or Household Members.

A person commits the offense of Abuse of Family or Household Members if he/she intentionally, knowingly, or recklessly physically abuses a family or household member, and the Defendant had previously been convicted two or more times of misdemeanor offenses, the last of which occurred within two years of the date of the charged offense.

There are four material elements of the offense of Abuse of Family or Household Members, each of which the prosecution must prove beyond a reasonable doubt.

These four elements are:

1. That, on or about (date) in the [City and] County of (name of county), the Defendant physically abused (name of complainant); and

2. That, at that time, the Defendant and (name of complainant) were family or household members; and

3. That, at that time, the Defendant had two or more misdemeanor convictions, the last of which occurred within two years of (specify date); and

4. That the Defendant acted intentionally, knowingly, or recklessly as to each of the foregoing elements.

“Family or household member” means spouses or reciprocal beneficiaries, former spouses or reciprocal beneficiaries, persons in a dating relationship, persons who have a child in common, parents, children, persons related by consanguinity, and persons jointly residing or formerly residing in the same dwelling unit.

“Physically abuse” means to engage in conduct that injures, hurts, or damages a person’s body.

Notes

H.R.S. §§ 709-906 (1) and (7), 702-206(1), (2) and (3).

For definition of states of mind, see instructions:

6.02 – “intentionally”

6.03 – “knowingly”

6.04 – “recklessly”

For definition of “dating relationship,” see HRS § 586-1.

For definition of “reciprocal beneficiaries,” see H.R.S. § 572C-3.

For degrees of consanguinity within which marriage is prohibited, see H.R.S. § 572-1.

11.07B. Abuse of Family or Household Members – Third Offense Within Two Years: H.R.S. § 709-906(7)

[In Count (count number) of the Indictment/Complaint, the] [The] Defendant, (defendant's name), is charged with the offense of Abuse of Family or Household Members.

A person commits the offense of Abuse of Family or Household Members if he/she intentionally, knowingly, or recklessly physically abuses a family or household member, within two years of a second or subsequent conviction.

There are four material elements of the offense of Abuse of Family or Household Members, each of which the prosecution must prove beyond a reasonable doubt.

These four elements are:

1. That, on or about (date) in the [City and] County of (name of county), the Defendant physically abused (name of complainant); and

2. That, at that time, the Defendant and (name of complainant) were family or household members; and

3. That the Defendant had been previously convicted of a second or subsequent offense of Abuse of Family or Household Members within two years of (date of incident); and

4. That the Defendant acted intentionally, knowingly, or recklessly as to each of the foregoing elements.

“Family or household member” means spouses or reciprocal beneficiaries, former spouses or reciprocal beneficiaries, persons in a dating relationship, persons who have a child in common, parents, children, persons related by consanguinity, and persons jointly residing or formerly residing in the same dwelling unit.

“Physically abuse” means to engage in conduct that injures, hurts, or damages a person’s body.

Notes

H.R.S. §§ 709-906 (1) and (7), 702-206(1), (2) and (3).

For definition of states of mind, see instructions:

6.02 – “intentionally”

6.03 – “knowingly”

6.04 – “recklessly”

For definition of “dating relationship,” see HRS § 586-1.

For definition of “reciprocal beneficiaries,” see H.R.S. § 572C-3.

For degrees of consanguinity within which marriage is prohibited, see H.R.S. § 572-1.

11.08 Abuse of Family or Household Members – Impeding Breathing or Circulation: H.R.S. § 709-906(8)

[In Count (count number) of the Indictment/Complaint, the] [The] Defendant, (defendant's name), is charged with the offense of Abuse of Family or Household Members.

A person commits the offense of Abuse of Family or Household Members if he/she physically abuses a family or household member by intentionally or knowingly impeding the normal breathing or circulation of the blood of that person by applying pressure on his/her throat or neck.

There are four material elements of the offense of Abuse of Family or Household Members, each of which the prosecution must prove beyond a reasonable doubt.

These four elements are:

1. That, on or about (date) in the [City and] County of (name of county), the Defendant physically abused (name of complainant); and
2. That the Defendant did so by impeding the normal breathing or circulation of the blood of (name of complainant) by applying pressure on his/her throat or neck; and
3. That, at that time, the Defendant and (name of complainant) were family or household members; and
4. That the Defendant acted intentionally or knowingly as to each of the foregoing elements.

“Family or household member” means spouses or reciprocal beneficiaries,* former spouses or reciprocal beneficiaries,* persons in a dating relationship, persons who have a child in common,** parents, children, persons related by consanguinity,** and persons jointly residing or formerly residing in the same dwelling unit.

Notes

H.R.S. §§ 709-906 (1) and (8), 702-206 (1) and (2).

For definition of states of mind, see instructions:

6.02 - “intentionally”

6.03 - “knowingly”

For definition of “dating relationship,” see HRS § 586-1.

For definition of “reciprocal beneficiaries,” see H.R.S. § 572C-3.

For degrees of consanguinity within which marriage is prohibited, see H.R.S. § 572-1.

* Effective 7/1/97—Act 383, Hawai`i Session Laws 1997

** Effective 7/1/98—Act 172, Hawai`i Session Laws 1998

13.00A.1. Promoting Prostitution in the First Degree: H.R.S. §712-1202

[In Count (count number) of the Indictment/Complaint, the] [The] Defendant, (defendant's name), is charged with the offense of Promoting Prostitution in the First Degree.

A person commits the offense of Promoting Prostitution in the First Degree if he/she knowingly [advances prostitution by compelling or inducing a person by force, threat, fraud, or intimidation to engage in prostitution] [profits from the advancement of prostitution by another who compels or induces a person by force, threat, fraud, or intimidation to engage in prostitution] [[advances] [profits] from prostitution of a person less than eighteen years old].

There are two material elements of the offense of Promoting Prostitution in the First Degree, each of which the prosecution must prove beyond a reasonable doubt.

These two elements are:

1. That on or about (date) in the [City and] County of (name of county), the Defendant [advanced prostitution by compelling or inducing a person by force, threat, fraud, or intimidation to engage in prostitution] [profited from the advancement of prostitution by another who compelled or induced a person by force, threat, fraud, or intimidation to engage in prostitution] [[advanced] [profited] from prostitution of a person less than eighteen years old]; and

2. That the Defendant did so knowingly.

[A person "advances prostitution" if, acting other than as a prostitute or a patron of a prostitute, the person knowingly [causes or aids a person to commit or engage in prostitution] [procures or solicits patrons for prostitution] [provides persons for prostitution purposes] [permits premises to be regularly used for prostitution purposes] [operates or assists in the operation of a house of prostitution or a prostitution enterprise] [engages in any conduct designed to institute, aid, or facilitate an act or enterprise of prostitution].]

[A person "profits from prostitution" if, acting other than as a prostitute receiving compensation for personally-rendered prostitution services, the person accepts or receives money or other property pursuant to an agreement or understanding with any person whereby the person participates or is to participate in the proceeds of prostitution activity.]

"Fraud" means making material false statements, misstatements, or omissions.

"Prostitution" means to [engage in, or agree or offer to engage in, sexual conduct with another person for a fee] [pay, agree to pay, or offer to pay a fee to another to

engage in sexual conduct].

“Threat” means a threat by word or conduct to do any of the following:

- (a) Cause bodily injury in the future to the person threatened or to any other person;
- (b) Cause damage to property or cause damage to a computer, computer system, or computer network, including any impairment to the integrity or availability of data, a program, a system, a network, or computer services;
- (c) Subject the person threatened or any other person to physical confinement or restraint;
- (d) Commit a penal offense;
- (e) Accuse some person of any offense or cause a penal charge to be instituted against some person;
- (f) Expose a secret or publicize an asserted fact, whether true or false, tending to subject some person to hatred, contempt, or ridicule, or to impair the threatened person's credit or business repute;
- (g) Reveal any information sought to be concealed by the person threatened or any other person;
- (h) Testify or provide information or withhold testimony or information with respect to another's legal claim or defense;
- (i) Take or withhold action as a public servant, or cause a public servant to take or withhold such action;
- (j) Bring about or continue a strike, boycott, or other similar collective action, to obtain property that is not demanded or received for the benefit of the group that the defendant purports to represent;
- (k) Destroy, conceal, remove, confiscate, or possess any actual or purported passport, or any other actual or purported government identification document, or other immigration document, of another person; or
- (l) Do any other act that would not in itself substantially benefit the defendant but that is calculated to harm substantially some person with respect to the threatened person's health, safety, business, calling, career, financial condition, reputation, or personal relationships.

Notes

H.R.S. §§712-1200, 712-1201, 712-1202, 707-764(1), 707-700, and 708-890.
For definition of states of mind, see instruction:

6.03 – “knowingly”

For definition of terms defined by H.R.S. Chapter 707, see instructions:

9.00 – “deviate sexual intercourse”

9.00 – “sexual conduct”

9.00 – “sexual contact”

9.00 – “sexual penetration”

13.00A.2. Promoting Prostitution in the Second Degree: H.R.S. §712-1203

[In Count (count number) of the Indictment/Complaint, the] [The] Defendant, (defendant's name), is charged with the offense of Promoting Prostitution in the Second Degree.

A person commits the offense of Promoting Prostitution in the Second Degree if he/she knowingly [advances] [profits from] prostitution.

There are two material elements of the offense of Promoting Prostitution in the Second Degree, each of which the prosecution must prove beyond a reasonable doubt.

These two elements are:

1. That on or about (date) in the [City and] County of (name of county), the Defendant [advanced] [profited from] prostitution; and
2. That the Defendant did so knowingly.

[A person "advances prostitution" if, acting other than as a prostitute or a patron of a prostitute, the person knowingly [causes or aids a person to commit or engage in prostitution] [procures or solicits patrons for prostitution] [provides persons for prostitution purposes] [permits premises to be regularly used for prostitution purposes] [operates or assists in the operation of a house of prostitution or a prostitution enterprise] [engages in any conduct designed to institute, aid, or facilitate an act or enterprise of prostitution].]

[A person "profits from prostitution" if, acting other than as a prostitute receiving compensation for personally-rendered prostitution services, the person accepts or receives money or other property pursuant to an agreement or understanding with any person whereby the person participates or is to participate in the proceeds of prostitution activity.]

"Prostitution" means to [engage in, or agree or offer to engage in, sexual conduct with another person for a fee] [pay, agree to pay, or offer to pay a fee to another to engage in sexual conduct].

Notes

H.R.S. §§712-1200, 712-1201, 712-1203, and 707-700.

For definition of states of mind, see instruction:

6.03 – "knowingly"

For definition of terms defined by H.R.S. Chapter 707, see instructions:
9.00 – “deviate sexual intercourse”

9.00 – “sexual conduct”

9.00 – “sexual contact”

9.00 – “sexual penetration”

13.00A.3. Promoting Travel for Prostitution: H.R.S. §712-1208

[In Count (count number) of the Indictment/Complaint, the] [The] Defendant, (defendant's name), is charged with the offense of Promoting Travel for Prostitution.

A person commits the offense of Promoting Travel for Prostitution if he/she knowingly [sells] [offers to sell] travel services that [include] [facilitate] travel for the purpose of engaging in what would be prostitution if occurring in the state.

There are two material elements of the offense of Promoting Travel for Prostitution, each of which the prosecution must prove beyond a reasonable doubt.

These two elements are:

1. That on or about (date) in the [City and] County of (name of county), the Defendant [sold] [offered to sell] travel services that [included] [facilitated] travel for the purpose of engaging in what would be prostitution if occurring in the state; and
2. That the Defendant did so knowingly.

“Prostitution” means to [engage in, or agree or offer to engage in, sexual conduct with another person for a fee] [pay, agree to pay, or offer to pay a fee to another to engage in sexual conduct].

“Travel services” includes transportation by air, sea, or rail; related ground transportation; hotel accommodations; or package tours, whether offered on a wholesale or retail basis.*

Notes

H.R.S. §§ 712-1200, 712-1201, 712-1208, 707-700, and 468L-1.

For definition of states of mind, see instruction:

6.03 – “knowingly”

For definition of “sexual conduct,” see H.R.S. § 712-1200(2)

For definition of terms defined by H.R.S. Chapter 707, see instructions:

9.00 – “deviate sexual intercourse”

9.00 – “married”

9.00 – “sexual contact”

9.00 – “sexual penetration”

*See H.R.S. § 486L-1 as to hotels and air carriers excluded from the definition of “travel services.”

13.00A.4. Habitual Solicitation of Prostitution: H.R.S. §712-1209.5

[In Count (count number) of the Indictment/Complaint, the] [The] Defendant, (defendant's name), is charged with the offense of Habitual Solicitation of Prostitution.

A person commits the offense of Habitual Solicitation of Prostitution if he/she is a habitual prostitution offender and [pays] [agrees to pay] [offers to pay] a fee to another person to engage in sexual conduct.

There are three material elements of the offense of Habitual Solicitation of Prostitution, each of which the prosecution must prove beyond a reasonable doubt.

These three elements are:

1. That on or about (date) in the [City and] County of (name of county), the Defendant was a habitual prostitution offender; and
2. That the Defendant [paid] [agreed to pay] [offered to pay] a fee to another person to engage in sexual conduct; and
3. That the Defendant acted intentionally, knowingly, or recklessly as to each of the foregoing elements.

A person is a “habitual prostitution offender” if the person, at the time of the conduct for which he/she is charged, had two or more convictions within ten years of the instant offense for [Prostitution, in violation of section 712-1200(1)(b)] [Street Solicitation of Prostitution, in violation of section 712-1207(1)(b)] [Habitual Solicitation of Prostitution, in violation of section 712-1209.5] [an offense of any other jurisdiction that is comparable to [Prostitution, in violation of section 712-1200(1)(b)] [Street Solicitation of Prostitution, in violation of section 712-1207(1)(b)] [Habitual Solicitation of Prostitution, in violation of section 712-1209.5]] [a combination of (list in the conjunctive two or more offenses from among the foregoing bracketed alternatives)]. The convictions must have occurred on separate dates and be based on separate incidents on separate dates.

“Conviction” means a judgment on the verdict or a finding of guilt, or a plea of guilty or nolo contendere that, at the time of the instant offense, has not been expunged by pardon, reversed, or set aside.

Notes

H.R.S. § 712-1209.5

For the basis of the applicable state of mind see H.R.S. § 702-204.

For definition of states of mind, see instructions:

6.02 – “intentionally”

6.03 – “knowingly”

6.04 – “recklessly”

For definition of “sexual conduct,” see H.R.S. § 712-1200(2)

For definition of terms defined by H.R.S. Chapter 707, see instructions:

9.00 – “deviate sexual intercourse”

9.00 – “married”

9.00 – “sexual contact”

9.00 – “sexual penetration”

When the Defendant stipulates to element 1 and the state of mind applicable to it, instructions 13.00A.5A and 13.00A.5B should be given in place of the instant instruction.

13.00A.5A. Habitual Solicitation of Prostitution: H.R.S. §712-1209.5 – (When Defendant Stipulates to Prior Convictions)

[In Count (count number) of the Indictment/Complaint, the] [The] Defendant, (defendant's name), is charged with the offense of Solicitation of Prostitution.

A person commits the offense of Solicitation of Prostitution if, he/she had two or more predicate convictions within ten years of the instant offense and he/she [pays] [agrees to pay] [offers to pay] a fee to another person to engage in sexual conduct.

There are three material elements of the offense of Solicitation of Prostitution, each of which the prosecution must prove beyond a reasonable doubt.

These three elements are:

1. That on or about (date) in the [City and] County of (name of county), the Defendant had two or more predicate convictions within ten years of the instant offense; and
2. That the Defendant [paid] [agreed to pay] [offered to pay] a fee to another person to engage in sexual conduct; and
3. That the Defendant acted intentionally, knowingly, or recklessly as to each of the foregoing elements.

Notes

H.R.S. § 712-1209.5

For the basis of the applicable state of mind see H.R.S. § 702-204.

For definition of states of mind, see instructions:

6.02 – “intentionally”

6.03 – “knowingly”

6.04 – “recklessly”

For definition of “sexual conduct,” see H.R.S. § 712-1200(2)

For definition of terms defined by H.R.S. Chapter 707, see instructions:

9.00 – “deviate sexual intercourse”

9.00 – “married”

9.00 – “sexual contact”

9.00 – “sexual penetration”

When the Defendant stipulates to element 1 and the state of mind applicable to it, this instruction and instruction 13.00A.5B should be given in place of instruction 13.00A.4.

Consistent with *State v. Murray*, 116 Hawai`i 3, 169 P.3d 955 (2007), the offense is referred to in the body of the instruction as “Solicitation of Prostitution” rather than “Habitual Solicitation of Prostitution.” See notes accompanying instruction 13.00A.5B.

The court should consider obtaining, on the record, the Defendant’s consent to the omission of the term “habitual” from references to the title of the offense in the instructions or otherwise during the trial.

**13.00A.5B. Habitual Solicitation of Prostitution – Stipulation as to Prior Conviction Element and Applicable State of Mind; Limiting Instruction:
H.R.S. § 712-1209.5**

The Defendant and the prosecution have stipulated, and you must therefore accept as proved beyond a reasonable doubt that, on (insert date of charged offense), the Defendant (Defendant's name) had two or more predicate convictions within ten years of the instant offense, and that the Defendant acted intentionally, knowingly, or recklessly as to those convictions. You must not consider this stipulation for any other purpose.

Notes

This instruction and instruction 13.00A.5A should be given whenever the Defendant stipulates to the prior convictions that comprise the attendant circumstance element of the offense and the state of mind applicable to that element. The court should also consider giving variations of instructions 3.06 (stipulations) and 4.01 (evidence admitted for a limited purpose) immediately after the stipulation is read to the jury.

See *State v. Murray*, 116 Hawai'i 3, 169 P.3d 955 (2007) (“failure to allow the defendant to use the stipulation procedure would not be considered harmless error”). Under *Murray*, if the defense requests the stipulation procedure: (1) the defendant should be allowed to stipulate to the fact of the required prior convictions; (2) the stipulation may be accepted only after engaging the defendant in an on-the-record colloquy to ensure a knowing and voluntary waiver of his/her right to have the “prior conviction element” proved beyond a reasonable doubt and decided by a jury; (3) the jury should be instructed that the defendant has stipulated to this particular element of the charged offense to make it plain that this element is considered proved beyond a reasonable doubt; (4) the instruction must be carefully crafted to omit any reference to the “name or nature” of the previous convictions; (5) the instruction should ensure that the prior convictions are not considered by the jury for any purpose other than conclusively establishing the “prior convictions element;” and (6) the court must preclude any mention of the name or nature of the prior convictions at any point during the trial, *i.e.*, jury selection, opening statements, presentation of evidence, closing arguments, or instructions.

Consistent with (4) and (6) of the *Murray* requirements enumerated above, in the body of this instruction (and instruction 13.00A.5A as well), the offense is referred to as “Solicitation of Prostitution” rather than “Habitual Solicitation of Prostitution.”

13.00A.6 Solicitation of a Minor for Prostitution: H.R.S. §712-__

[In Count (count number) of the Indictment/Complaint, the] [The] Defendant (defendant's name) is charged with the offense of Solicitation of a Minor for Prostitution.

A person commits the offense of Solicitation of a Minor for Prostitution if he/she, being eighteen years of age or older, offers or agrees to pay a fee to a minor to engage in sexual conduct.

There are four material elements of the offense of Solicitation of a Minor for Prostitution, each of which the prosecution must prove beyond a reasonable doubt.

These four elements are:

1. That on or about (date) in the [City and] County of (name of county), the Defendant [offered] [agreed] to pay a fee to a minor; and
2. The Defendant did so to engage in sexual conduct with that minor; and
3. That at that time, Defendant was eighteen years of age or older; and
4. That the Defendant acted intentionally, knowingly, or recklessly as to each of the foregoing elements.

“Minor” means any person less than eighteen years old.

Notes

H.R.S. § 712-__

For the basis of the applicable state of mind see H.R.S. § 702-204.

For definition of states of mind, see instructions:

6.02 – “intentionally”

6.03 – “knowingly”

6.04 – “recklessly”

For definition of “sexual conduct,” see H.R.S. § 712-1200(2)

For definition of terms defined by H.R.S. Chapter 707, see instructions:

9.00 – “deviate sexual intercourse”

9.00 – “married”

9.00 – “sexual contact”

9.00 – “sexual penetration”

13.45A. Promoting a Controlled Substance in or on Schools, Public Parks, or Public Housing Projects or Complexes: H.R.S. § 712-1249.6(1)(a) (Distribute In/On Property)

[In Count (count number) of the Indictment/Information/Complaint, the] [The] Defendant, (defendant's name), is charged with the offense of Promoting a Controlled Substance in or on [Schools] [Public Parks] [Public Housing Projects or Complexes].

A person commits the offense of Promoting a Controlled Substance in or on [Schools] [Public Parks] [Public Housing Projects or Complexes] if he/she knowingly distributes a controlled substance in or on the real property comprising a [school] [public park] [public housing project or complex].

There are three material elements of the offense of Promoting a Controlled Substance in or on [Schools] [Public Parks] [Public Housing Projects or Complexes], each of which the prosecution must prove beyond a reasonable doubt.

These three elements are:

1. That, on or about (date) in the [City and] County of (name of county), the Defendant distributed a controlled substance; and
2. That the Defendant did so in or on the real property comprising a [school] [public park] [public housing project or complex]; and
3. That the Defendant acted knowingly as to each of the foregoing elements.

“School” means any public or private preschool, kindergarten, elementary, intermediate, middle, secondary, or high school.

“Public housing project or complex” means a housing project directly controlled, owned, developed, or managed by the Hawaii public housing authority pursuant to the federal or state low-rent housing program.

Notes

H.R.S. §§ 712-1249.6(1)(a), (6), and (7), 702-206(2).

For definition of “controlled substance,” see H.R.S. § 329-1.

For definition of states of mind, see instruction:

6.03 - “knowingly”

For definition of terms defined by H.R.S. Chapter 712, see instruction:

13.00 - "to distribute"

13.45B. Promoting a Controlled Substance in or on Schools, Public Parks, or Public Housing Projects or Complexes: H.R.S. § 712-1249.6(1)(a) (Possess In/On Property)

[In Count (count number) of the Indictment/Information/Complaint, the] [The] Defendant, (defendant's name), is charged with the offense of Promoting a Controlled Substance in or on [Schools] [Public Parks] [Public Housing Projects or Complexes].

A person commits the offense of Promoting a Controlled Substance in or on [Schools] [Public Parks] [Public Housing Projects or Complexes] if he/she knowingly possesses with intent to distribute a controlled substance in or on the real property comprising a [school] [public park] [public housing project or complex].

There are four material elements of the offense of Promoting a Controlled Substance in or on [Schools] [Public Parks] [Public Housing Projects or Complexes], each of which the prosecution must prove beyond a reasonable doubt.

These four elements are:

1. That, on or about (date) in the [City and] County of (name of county), the Defendant possessed a controlled substance; and
2. That the Defendant did so in or on the real property comprising a [school] [public park] [public housing project or complex]; and
3. That the Defendant did so with intent to distribute the controlled substance in or on such property; and
4. That the Defendant acted knowingly as to elements 1 and 2.

“School” means any public or private preschool, kindergarten, elementary, intermediate, middle, secondary, or high school.

“Public housing project or complex” means a housing project directly controlled, owned, developed, or managed by the Hawaii public housing authority pursuant to the federal or state low-rent housing program.

Notes

H.R.S. §§ 712-1249.6(1)(a), (6), and (7), 702-206(1) and (2).

For definition of “controlled substance,” see H.R.S. § 329-1.

For definition of states of mind, see instruction:

6.02 - “intentionally”

6.03 - “knowingly”

For definition of terms defined by H.R.S. Chapter 712, see instruction:

13.00 - “to distribute”

For definition of “possession,” see instruction 6.06

13.46A. Promoting a Controlled Substance Near Schools, Public Parks, or Public Housing Projects or Complexes: H.R.S. § 712-1249.6(1)(b) (Distribute Within 750 Feet of Property)

[In Count (count number) of the Indictment/Information/Complaint, the] [The] Defendant, (defendant's name), is charged with the offense of Promoting a Controlled Substance Near [Schools] [Public Parks] [Public Housing Projects or Complexes].

A person commits the offense of Promoting a Controlled Substance Near [Schools] [Public Parks] [Public Housing Projects or Complexes] if he/she knowingly distributes a controlled substance within seven hundred and fifty feet of the real property comprising a [school] [public park] [public housing project or complex].

There are three material elements of the offense of Promoting a Controlled Substance Near [Schools] [Public Parks] [Public Housing Projects or Complexes], each of which the prosecution must prove beyond a reasonable doubt.

These three elements are:

1. That, on or about (date) in the [City and] County of (name of county), the Defendant distributed a controlled substance; and
2. That the Defendant did so within seven hundred and fifty feet of the real property comprising a [school] [public park] [public housing project or complex]; and
3. That the Defendant acted knowingly as to each of the foregoing elements.

“School” means any public or private preschool, kindergarten, elementary, intermediate, middle, secondary, or high school.

“Public housing project or complex” means a housing project directly controlled, owned, developed, or managed by the Hawaii public housing authority pursuant to the federal or state low-rent housing program.

Notes

H.R.S. §§ 712-1249.6(1)(b), (6), and (7), 702-206(2).

For definition of “controlled substance,” see H.R.S. § 329-1.

For definition of states of mind, see instruction:

6.03 - “knowingly”

For definition of terms defined by H.R.S. Chapter 712, see instruction:

13.00 - "to distribute"

13.46B. Promoting a Controlled Substance Near Schools, Public Parks, or Public Housing Projects or Complexes: H.R.S. § 712-1249.6(1)(b) (Possess Within 750 Feet of Property)

[In Count (count number) of the Indictment/Information/Complaint, the] [The] Defendant, (defendant's name), is charged with the offense of Promoting a Controlled Substance Near [Schools] [Public Parks] [Public Housing Projects or Complexes].

A person commits the offense of Promoting a Controlled Substance Near [Schools] [Public Parks] [Public Housing Projects or Complexes] if he/she knowingly possesses with intent to distribute a controlled substance within seven hundred and fifty feet of the real property comprising a [school] [public park] [public housing project or complex].

There are four material elements of the offense of Promoting a Controlled Substance Near [Schools] [Public Parks] [Public Housing Projects or Complexes], each of which the prosecution must prove beyond a reasonable doubt.

These four elements are:

1. That, on or about (date) in the [City and] County of (name of county), the Defendant possessed a controlled substance; and
2. That the Defendant did so within seven hundred and fifty feet of the real property comprising a [school] [public park] [public housing project or complex]; and
3. That the Defendant did so with intent to distribute the controlled substance within seven hundred and fifty feet of such property; and
4. That the Defendant acted knowingly as to elements 1 and 2.

“School” means any public or private preschool, kindergarten, elementary, intermediate, middle, secondary, or high school.

“Public housing project or complex” means a housing project directly controlled, owned, developed, or managed by the Hawaii public housing authority pursuant to the federal or state low-rent housing program.

Notes

H.R.S. §§ 712-1249.6(1)(b), (6), and (7), 702-206(1) and (2).

For definition of “controlled substance,” see H.R.S. § 329-1.

For definition of states of mind, see instruction:

6.02 - “intentionally”

6.03 - “knowingly”

For definition of terms defined by H.R.S. Chapter 712, see instruction:

13.00 - “to distribute”

For definition of “possession,” see instruction 6.06

**13.47B. Promoting a Controlled Substance on School Vehicles:
H.R.S. § 712-1249.6(1)(c) (Possess on Vehicles)**

[In Count (count number) of the Indictment/Complaint, the] [The] Defendant, (defendant's name), is charged with the offense of Promoting a Controlled Substance On School Vehicles.

A person commits the offense of Promoting a Controlled Substance On School Vehicles if he/she knowingly possesses with intent to distribute a controlled substance while on any school vehicle.

There are four material elements of the offense of Promoting a Controlled Substance On School Vehicles, each of which the prosecution must prove beyond a reasonable doubt.

These four elements are:

1. That, on or about (date) in the [City and] County of (name of county), the Defendant possessed a controlled substance; and
2. That the Defendant did so on a school vehicle; and
3. That the Defendant did so with intent to distribute the controlled substance while on a school vehicle; and
4. That the Defendant acted knowingly as to elements 1 and 2.

“School vehicle” means any publicly or privately owned motor vehicle used to transport pupils to and from a school, school functions, or school-related events [except [vehicles used to transport pupils attending schools above the twelfth grade or pupils over eighteen years of age] [privately-owned passenger vehicles when the transportation is provided without compensation of any kind] [vehicles used to transport pupils together with other passengers as part of the regularly scheduled operation of a mass transit system] [privately-owned vehicles when the transportation is provided by a community association or nonprofit corporation, duly incorporated with the department of commerce and consumer affairs, which operates for the purpose of promoting recreation, health, safety, ridesharing, or social group functions]].

“School” means any public or private preschool, kindergarten, elementary, intermediate, middle, secondary, or high school.

Notes

H.R.S. §§ 712-1249.6(1)(c) and (6), 702-206(1) and (2), 286-181.

For definition of “controlled substance,” see H.R.S. § 329-1.

For definition of states of mind, see instructions:

6.02–“intentionally”

6.03–“knowingly”

For definition of terms defined by H.R.S. Chapter 712, see instruction:

13.00–“to distribute”

For definition of “possession,” see instruction 6.06.

For the purposes of this section, “school vehicle” means every school vehicle as defined in section 286-181 and any regulations adopted pursuant to that section. This jury instruction incorporates that statutory section as of the time of drafting. Counsel should review the current versions of section 286-181 and any regulations adopted pursuant to that section for any changes before using this instruction.

**13.47D. Promoting a Controlled Substance Near School Vehicles:
H.R.S. § 712-1249.6(1)(c) (Possess Near Vehicles)**

[In Count (count number) of the Indictment/Complaint, the] [The] Defendant, (defendant's name), is charged with the offense of Promoting a Controlled Substance Near School Vehicles.

A person commits the offense of Promoting a Controlled Substance Near School Vehicles if he/she knowingly possesses with intent to distribute a controlled substance within ten feet of a parked school vehicle during the time that the vehicle is in service or waiting to transport school children.

There are four material elements of the offense of Promoting a Controlled Substance Near School Vehicles, each of which the prosecution must prove beyond a reasonable doubt.

These four elements are:

1. That, on or about (date) in the [City and] County of (name of county), the Defendant possessed a controlled substance; and
2. That the Defendant did so within ten feet of a parked school vehicle during the time that the vehicle was in service or waiting to transport school children; and
3. That the Defendant did so with intent to distribute the controlled substance within ten feet of a parked school vehicle during the time that the vehicle was in service or waiting to transport school children; and
4. That the Defendant acted knowingly as to elements 1 and 2.

“School vehicle” means any publicly or privately owned motor vehicle used to transport pupils to and from a school, school functions, or school-related events [except [vehicles used to transport pupils attending schools above the twelfth grade or pupils over eighteen years of age] [privately-owned passenger vehicles when the transportation is provided without compensation of any kind] [vehicles used to transport pupils together with other passengers as part of the regularly scheduled operation of a mass transit system] [privately-owned vehicles when the transportation is provided by a community association or nonprofit corporation, duly incorporated with the department of commerce and consumer affairs, which operates for the purpose of promoting recreation, health, safety, ridesharing, or social group functions]].

“School” means any public or private preschool, kindergarten, elementary, intermediate, middle, secondary, or high school.

Notes

H.R.S. §§ 712-1249.6(1)(c) and (6), 702-206(1) and (2), 286-181.

For definition of “controlled substance,” see H.R.S. § 329-1.

For definition of states of mind, see instructions:

6.02--“intentionally”

6.03--“knowingly”

For definition of terms defined by H.R.S. Chapter 712, see instruction:

13.00--“to distribute”

For definition of “possession,” see instruction 6.06.

For the purposes of this section, “school vehicle” means every school vehicle as defined in section 286-181 and any regulations adopted pursuant to that section. This jury instruction incorporates that statutory section as of the time of drafting. Counsel should review the current versions of section 286-181 and any regulations adopted pursuant to that section for any changes before using this instruction.

13.48. Promoting a Controlled Substance Near Schools, Public Parks, or Public Housing Projects or Complexes: H.R.S. § 712-1249.6(1)(d) (Manufacture Methamphetamine Within 750 Feet of Property)

[In Count (count number) of the Indictment/Information/Complaint, the] [The] Defendant, (defendant's name), is charged with the offense of Promoting a Controlled Substance Near [Schools] [Public Parks] [Public Housing Projects or Complexes].

A person commits the offense of Promoting a Controlled Substance Near [Schools] [Public Parks] [Public Housing Projects or Complexes] if he/she knowingly manufactures methamphetamine or any of its salts, isomers, and salts of isomers, within seven hundred and fifty feet of the real property comprising a [school] [public park] [public housing project or complex].

There are three material elements of the offense of Promoting a Controlled Substance Near [Schools] [Public Parks] [Public Housing Projects or Complexes], each of which the prosecution must prove beyond a reasonable doubt.

These three elements are:

1. That, on or about (date) in the [City and] County of (name of county), the Defendant manufactured methamphetamine or any of its salts, isomers, and salts of isomers; and
2. That the Defendant did so within seven hundred and fifty feet of the real property comprising a [school] [public park] [public housing project or complex]; and
3. That the Defendant acted knowingly as to each of the foregoing elements.

“School” means any public or private preschool, kindergarten, elementary, intermediate, middle, secondary, or high school.

“Public housing project or complex” means a housing project directly controlled, owned, developed, or managed by the Hawaii public housing authority pursuant to the federal or state low-rent housing program.

Notes

H.R.S. §§ 712-1249.6(1)(b), (6), and (7), 702-206(2).

For definition of “controlled substance,” see H.R.S. § 329-1.

For definition of states of mind, see instruction:

6.03 - “knowingly”

For definition of terms defined by H.R.S. Chapter 712, see instruction:

13.00 - “manufacture”

**18.07A. Use of a Computer in the Commission of a Separate Crime:
H.R.S. § 708-893(a)**

[In Count (count number) of the Indictment, the] [The] Defendant, (defendant's name) is charged with the offense of Use of a Computer In the Commission of a Separate Crime.

A person commits the offense of Use of a Computer In the Commission of a Separate Crime if he/she intentionally uses a computer to obtain control over the property of the victim to commit theft in the [first] [second] degree.

There are four material elements of the offense of Use of a Computer In the Commission of a Separate Crime, each of which the prosecution must prove beyond a reasonable doubt.

These four elements are:

1. That, on or about (date) in the [City and] County of (name of county), the Defendant used a computer; and
2. That the Defendant did so to obtain control over the property of the victim;
and
3. That the Defendant did so to commit theft in the [first] [second] degree*;
and
4. That the Defendant acted intentionally as to each of the foregoing elements.

Notes

H.R.S. § 708-893(a).

For definition of states of mind, see instructions:

6.02 - "intentionally"

For a definition of terms defined by H.R.S. Chapter 708 Part IX, see instruction 18.00.

*The court should instruct as to the elements of theft in the first or second degree, as the case may be, unless that offense is otherwise charged.

**18.07B. Use of a Computer in the Commission of a Separate Crime:
H.R.S. § 708-893(b)**

[In Count (count number) of the Indictment, the] [The] Defendant, (defendant's name) is charged with the offense of Use of a Computer In the Commission of a Separate Crime.

A person commits the offense of Use of a Computer In the Commission of a Separate Crime if he/she knowingly uses a computer to identify, select, solicit, persuade, coerce, entice, induce, procure, pursue, surveil, contact, harass, annoy, or alarm the victim or intended victim of [custodial interference in the first degree] [custodial interference in the second degree] [sexual assault in the second degree] [sexual assault in the third degree] [sexual assault in the fourth degree] [promoting child abuse in the second degree] [harassment] [harassment by stalking] [promoting pornography for minors].

There are two material elements of the offense of Use of a Computer In the Commission of a Separate Crime, each of which the prosecution must prove beyond a reasonable doubt.

These two elements are:

1. That, on or about (date) in the [City and] County of (name of county), the Defendant knowingly used a computer; and

2. That the Defendant did so knowingly to identify, select, solicit, persuade, coerce, entice, induce, procure, pursue, surveil, contact, harass, annoy, or alarm the victim or intended victim of [custodial interference in the first degree] [custodial interference in the second degree] [sexual assault in the second degree] [sexual assault in the third degree] [sexual assault in the fourth degree] [promoting child abuse in the second degree] [harassment] [harassment by stalking] [promoting pornography for minors].*

Notes

H.R.S. §§ 708-893(b), 707-726, 707-727, 707-731, 707-732, 707-733, 707-751, 711-1106, 711-1106.5, 712-1215.

For definition of states of mind, see instructions:

6.03 – “knowingly”

For definition of terms defined by H.R.S. Chapter 708, see instruction 18.00.

*The court should instruct as to the elements of the included offense, unless such offense is otherwise charged.

19.1.1. Instruction that May Be Given at Outset of Trial on Issue of Guilt or Innocence

The prosecution may seek an extended term of imprisonment in this case if the defendant is convicted. If this occurs, there may be a separate sentencing hearing. At that hearing, additional evidence may be presented and the jury will be given additional instructions. At the conclusion of that hearing, the jury will be asked to determine facts relevant to the court's sentencing decision.

Notes

The decision whether to give this instruction is left to the court's discretion.

19.1.2. Instruction to Be Given at Outset of Sentencing Hearing

Members of the jury, the purpose of this hearing is to determine whether defendant may be subject to an extended term of imprisonment for the offense of (specify offense).

For the defendant to be subject to {an extended term of imprisonment the prosecution must prove beyond a reasonable doubt that the defendant is [a persistent offender,] [a professional criminal,] [a dangerous person,] [a multiple offender,] [an offender against the elderly, handicapped or a minor eight years of age of younger,] [and/or] [a hate crime offender] and that {an extended term of imprisonment is necessary for the protection of the public.

This hearing will proceed similarly to the trial in this case. Each lawyer will have an opportunity to give an opening statement. The prosecution will then present evidence to you. The defense may present evidence but is not required to do so. If the defense presents evidence, the prosecution will have the opportunity to present rebuttal evidence. Following the presentation of evidence, the court will read its jury instructions to you. The prosecution and defense will then have an opportunity to give closing arguments.

After closing arguments, you will begin your deliberations to answer certain questions which will be provided to you on special interrogatory forms. In answering these questions, you are to consider evidence that is presented to you during this hearing [, in addition to evidence that was presented to you during the trial in this case].

19.3.1A. Persistent Offender: H.R.S. § 706-662(1)

The prosecution has alleged that the Defendant, (defendant's name), is a persistent offender and that an extended term of imprisonment is necessary for the protection of the public. The prosecution has the burden of proving these allegations beyond a reasonable doubt. It is your duty to decide whether the prosecution has done so by answering the following two questions on a special interrogatory that will be provided to you:

1. Has the prosecution proved beyond a reasonable doubt that the Defendant is a persistent offender in that he/she has previously been convicted of two or more felonies committed at different times when the Defendant was eighteen years of age or older?

2. Has the prosecution proved beyond a reasonable doubt that it is necessary for the protection of the public to extend the Defendant's sentence from a [possible five year term of imprisonment] [possible ten year term of imprisonment] [possible twenty year term of imprisonment] [possible life term of imprisonment] to a [possible ten year term of imprisonment] [possible twenty year term of imprisonment] [possible life term of imprisonment] [definite life term of imprisonment]?

You must answer each of these questions separately. Your answers must be unanimous.

19.3.1B. Persistent Offender: H.R.S. § 706-662(1) – Special Interrogatory

You must answer the following two questions separately. Your answers must be unanimous.

1. Has the prosecution proved beyond a reasonable doubt that the Defendant is a persistent offender in that he/she has previously been convicted of two or more felonies committed at different times when the Defendant was eighteen years of age or older?

Yes _____

No _____

2. Has the prosecution proved beyond a reasonable doubt that it is necessary for the protection of the public to extend the Defendant's sentence from a [possible five year term of imprisonment] [possible ten year term of imprisonment] [possible twenty year term of imprisonment] [possible life term of imprisonment] to a [possible ten year term of imprisonment] [possible twenty year term of imprisonment] [possible life term of imprisonment] [definite life term of imprisonment]?

Yes _____

No _____

Date: _____

FOREPERSON

19.3.2A. Professional Criminal: H.R.S. § 706-662(2)

The prosecution has alleged that the Defendant, (defendant's name), is a professional criminal and that an extended term of imprisonment is necessary for the protection of the public. The prosecution has the burden of proving these allegations beyond a reasonable doubt. It is your duty to decide whether the prosecution has done so by answering the following two questions on a special interrogatory that will be provided to you:

1. Has the prosecution proved beyond a reasonable doubt that the Defendant is a professional criminal in that [the circumstances of the crime show that the defendant has knowingly engaged in criminal activity as a major source of livelihood] [the defendant has substantial income or resources not explained to be derived from a source other than criminal activity]?

2. Has the prosecution proved beyond a reasonable doubt that it is necessary for the protection of the public to extend the Defendant's sentence from a [possible five year term of imprisonment] [possible ten year term of imprisonment] possible twenty year term of imprisonment] [possible life term of imprisonment] to a [possible ten year term of imprisonment] [possible twenty year term of imprisonment] [possible life term of imprisonment] [definite life term of imprisonment]?

You must answer each of these questions separately. Your answers must be unanimous.

19.3.2B. Professional Criminal: H.R.S. § 706-662(2) – Special Interrogatory

You must answer the following two questions separately. Your answers must be unanimous.

1. Has the prosecution proved beyond a reasonable doubt that the Defendant is a professional criminal in that [the circumstances of the crime show that the defendant has knowingly engaged in criminal activity as a major source of livelihood] [the defendant has substantial income or resources not explained to be derived from a source other than criminal activity]?

Yes _____

No _____

2. Has the prosecution proved beyond a reasonable doubt that it is necessary for the protection of the public to extend the Defendant's sentence from a [possible five year term of imprisonment] [possible ten year term of imprisonment] possible twenty year term of imprisonment] [possible life term of imprisonment] to a [possible ten year term of imprisonment] possible twenty year term of imprisonment] [possible life term of imprisonment] [definite life term of imprisonment]?

Yes _____

No _____

Date: _____

FOREPERSON

19.3.3A. Dangerous Person: H.R.S. § 706-662(3)

The prosecution has alleged that the Defendant, (defendant's name), is a dangerous person and that an extended term of imprisonment is necessary for the protection of the public. The prosecution has the burden of proving these allegations beyond a reasonable doubt. It is your duty to decide whether the prosecution has done so by answering the following two questions on a special interrogatory that will be provided to you:

1. Has the prosecution proved beyond a reasonable doubt that the Defendant is a dangerous person in that: (a) he/she has been subjected to a psychiatric or psychological evaluation that documents a significant history of dangerousness to others resulting in criminally violent conduct; and (b) this history makes the defendant a serious danger to others?

2. Has the prosecution proved beyond a reasonable doubt that it is necessary for the protection of the public to extend the Defendant's sentence from a [possible five year term of imprisonment] [possible ten year term of imprisonment] [possible twenty year term of imprisonment] [possible life term of imprisonment] to a [possible ten year term of imprisonment] [possible twenty year term of imprisonment] [possible life term of imprisonment] [definite life term of imprisonment]?

You must answer each of these questions separately. Your answers must be unanimous.

19.3.3B. Dangerous Person: H.R.S. § 706-662(3) – Special Interrogatory

You must answer the following two questions separately. Your answers must be unanimous.

1. Has the prosecution proved beyond a reasonable doubt that the Defendant is a dangerous person in that: (a) he/she has been subjected to a psychiatric or psychological evaluation that documents a significant history of dangerousness to others resulting in criminally violent conduct; and (b) this history makes the defendant a serious danger to others?

Yes _____

No _____

2. Has the prosecution proved beyond a reasonable doubt that it is necessary for the protection of the public to extend the Defendant's sentence from a [possible five year term of imprisonment] [possible ten year term of imprisonment] [possible twenty year term of imprisonment] [possible life term of imprisonment] to a [possible ten year term of imprisonment] [possible twenty year term of imprisonment] [possible life term of imprisonment] [definite life term of imprisonment]?

Yes _____

No _____

Date: _____

FOREPERSON

19.3.4A. Multiple Offender: H.R.S. § 706-662(4)

The prosecution has alleged that the Defendant, (defendant's name), is a multiple offender and that an extended term of imprisonment is necessary for the protection of the public. The prosecution has the burden of proving these allegations beyond a reasonable doubt. It is your duty to decide whether the prosecution has done so by answering the following two questions on a special interrogatory that will be provided to you:

1. Has the prosecution proved beyond a reasonable doubt that the Defendant is a multiple offender in that [[he/she is [being sentenced for two or more felonies] [already under sentence of imprisonment for any felony]] [the maximum terms of imprisonment authorized for each of the defendant's crimes, if made to run consecutively, [would equal or exceed in length the maximum of the extended term imposed] [would equal or exceed forty years]]?

2. Has the prosecution proved beyond a reasonable doubt that it is necessary for the protection of the public to extend the Defendant's sentence from a [possible five year term of imprisonment] [possible ten year term of imprisonment] [possible twenty year term of imprisonment] [possible life term of imprisonment] to a [possible ten year term of imprisonment] [possible twenty year term of imprisonment] [possible life term of imprisonment] [definite life term of imprisonment]?

You must answer each of these questions separately. Your answers must be unanimous.

19.3.4B. Multiple Offender: H.R.S. § 706-662(4) – Special Interrogatory

You must answer the following two questions separately. Your answers must be unanimous.

1. Has the prosecution proved beyond a reasonable doubt that the Defendant is a multiple offender in that [[he/she is [being sentenced for two or more felonies] [already under sentence of imprisonment for any felony]] [the maximum terms of imprisonment authorized for each of the defendant's crimes, if made to run consecutively, [would equal or exceed in length the maximum of the extended term imposed] [would equal or exceed forty years]]?

Yes _____

No _____

2. Has the prosecution proved beyond a reasonable doubt that it is necessary for the protection of the public to extend the Defendant's sentence from a [possible five year term of imprisonment] [possible ten year term of imprisonment] [possible twenty year term of imprisonment] [possible life term of imprisonment] to a [possible ten year term of imprisonment] [possible twenty year term of imprisonment] [possible life term of imprisonment] [definite life term of imprisonment]?

Yes _____

No _____

Date: _____

FOREPERSON

**19.3.5A. Offender Against the Elderly, Handicapped or a Minor:
H.R.S. § 706-662(5)**

The prosecution has alleged that the Defendant, (defendant's name), is an offender against [the elderly] [the handicapped] [a minor eight years of age or younger] and that an extended term of imprisonment is necessary for the protection of the public. The prosecution has the burden of proving these allegations beyond a reasonable doubt. It is your duty to decide whether the prosecution has done so by answering the following two questions on a special interrogatory that will be provided to you:

1. Has the prosecution proved beyond a reasonable doubt that the Defendant is an offender against [the elderly] [the handicapped] [a minor eight years of age or younger] in that: (a) he/she committed or attempted to commit [murder] [manslaughter] [sexual assault in the [first] [second] [third] degree] [robbery] [assault in the [first] [second] degree] [burglary] [kidnapping]; and (b) in the course of committing or attempting to commit the crime, he/she inflicted serious or substantial bodily injury upon a person who was [sixty years of age or older] [[blind] [a paraplegic] [a quadriplegic]] [eight years of age or younger]; and (c) the person's status was known or reasonably should have been known to the Defendant?

2. Has the prosecution proved beyond a reasonable doubt that it is necessary for the protection of the public to extend the Defendant's sentence from a [possible five year term of imprisonment] [possible ten year term of imprisonment] [possible twenty year term of imprisonment] [possible life term of imprisonment] to a [possible ten year term of imprisonment] [possible twenty year term of imprisonment] [possible life term of imprisonment] [definite life term of imprisonment]?

You must answer each of these questions separately. Your answers must be unanimous.

**19.3.5B. Offender Against the Elderly, Handicapped or a Minor:
H.R.S. § 706-662(5) – Special Interrogatory**

You must answer the following two questions separately. Your answers must be unanimous.

1. Has the prosecution proved beyond a reasonable doubt that the Defendant is an offender against [the elderly] [the handicapped] [a minor eight years of age or younger] in that: (a) he/she committed or attempted to commit [murder] [manslaughter] [sexual assault in the [first] [second] [third] degree] [robbery] [assault in the [first] [second] degree] [burglary] [kidnapping]; and (b) in the course of committing or attempting to commit the crime, he/she inflicted serious or substantial bodily injury upon a person who was [sixty years of age or older] [[blind] [a paraplegic] [a quadriplegic]] [eight years of age or younger]; and (c) the person's status was known or reasonably should have been known to the Defendant?

Yes _____

No _____

2. Has the prosecution proved beyond a reasonable doubt that it is necessary for the protection of the public to extend the Defendant's sentence from a [possible five year term of imprisonment] [possible ten year term of imprisonment] [possible twenty year term of imprisonment] [possible life term of imprisonment] to a [possible ten year term of imprisonment] [possible twenty year term of imprisonment] [possible life term of imprisonment] [definite life term of imprisonment]?

Yes _____

No _____

Date: _____

FOREPERSON

19.3.6A. Hate Crime Offender: H.R.S. § 706-662(6)

The prosecution has alleged that the Defendant, (defendant's name), is a hate crime offender and that an extended term of imprisonment is necessary for the protection of the public. The prosecution has the burden of proving these allegations beyond a reasonable doubt. It is your duty to decide whether the prosecution has done so by answering the following two questions on a special interrogatory that will be provided to you:

1. Has the prosecution proved beyond a reasonable doubt that the Defendant is a hate crime offender in that he/she (a) has been convicted of (specify a crime under chapter 707, 708, or 711); (b) intentionally selected [a victim] [the property that was the object of the crime] because of hostility toward the actual or perceived [race] [religion] [disability] [ethnicity] [national origin] [gender identity or expression]* [sexual orientation] of any person?

2. Has the prosecution proved beyond a reasonable doubt that it is necessary for the protection of the public to extend the Defendant's sentence from a [possible five year term of imprisonment] [possible ten year term of imprisonment] [possible twenty year term of imprisonment] [possible life term of imprisonment] to a [possible ten year term of imprisonment] [possible twenty year term of imprisonment] [possible life term of imprisonment] [definite life term of imprisonment]?

You must answer each of these questions separately. Your answers must be unanimous.

Notes

*If this alternative is selected, include the following definition:

["Gender identity or expression" includes a person's actual or perceived gender, as well as a person's gender identity, gender-related self-image, gender-related appearance, or gender-related expression, regardless of whether that gender identity, gender-related self-image, gender-related appearance, or gender-related expression is different from that traditionally associated with the person's sex at birth.]

19.3.6B. Hate Crime Offender: H.R.S. § 706-662(6) – Special Interrogatory

You must answer the following two questions separately. Your answers must be unanimous.

1. Has the prosecution proved beyond a reasonable doubt that the Defendant is a hate crime offender in that he/she (a) has been convicted of (specify a crime under chapter 707, 708, or 711); and (b) intentionally selected [a victim] [the property that was the object of the crime] because of hostility toward the actual or perceived [race] [religion] [disability] [ethnicity] [national origin] [gender identity or expression] [sexual orientation] of any person?

Yes _____

No _____

2. Has the prosecution proved beyond a reasonable doubt that it is necessary for the protection of the public to extend the Defendant's sentence from a [possible five year term of imprisonment] [possible ten year term of imprisonment] [possible twenty year term of imprisonment] [possible life term of imprisonment] to a [possible ten year term of imprisonment] [possible twenty year term of imprisonment] [possible life term of imprisonment] [definite life term of imprisonment]?

Yes _____

No _____

Date: _____

FOREPERSON