

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

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In the Matter of the Publication and Distribution  
of the

Hawai'i Pattern Jury Instructions - Criminal

2009 SEP -4 PM 12:59  
CLERK APPELLATE COURTS  
STATE OF HAWAI'I  
*Deanna Williams*

FILED

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ORDER APPROVING PUBLICATION AND DISTRIBUTION  
OF HAWAI'I PATTERN JURY INSTRUCTIONS - CRIMINAL  
(By: Moon, C.J., for the court<sup>1</sup>)

Upon consideration the Standing Committee on Pattern Criminal Jury Instructions request to publish and distribute (1) revisions to Criminal Instructions 2.01, 2.02, 2.03, 2.04, and 3.03 and (2) the addition of Criminal Jury Instructions 9.61, 9.62, 10.03E, 10.03F, and 11.09 to the Hawai'i Pattern Jury Instructions - Criminal,

IT IS HEREBY ORDERED that the attached criminal jury instructions 2.01, 2.02, 2.03, 2.04, 3.03, 9.61, 9.62, 10.03E, 10.03F, and 11.09 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

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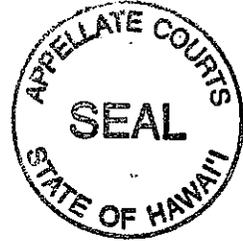
<sup>1</sup> Considered by: Moon, C.J., Nakayama, Acoba, Duffy, and Recktenwald, JJ.

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

DATED: Honolulu, Hawai'i, September 4, 2009.

FOR THE COURT:

  
Chief Justice



## 2.01 CAUTIONARY INSTRUCTION--RECESS

Members of the jury, we are about to take [our first] [a] recess and I want to remind you about a few things that are very important. A requirement of our judicial system is that you must reach your verdict based only on the evidence that you receive in the courtroom.

In order to ensure that both sides receive a fair trial, I will now explain some basic rules of law and procedure that you must follow throughout this trial, including during recesses, when you leave the court building at the end of the day, and at all other times until a verdict is received or you are otherwise excused from jury service.

1. Do not talk to anyone, including your fellow jurors, friends or members of your family about anything having to do with this trial, except to speak to court staff. This means that you must not discuss this case with anyone until the verdict is received or you are excused from jury service. No discussion also means no e-mailing, text messaging, tweeting, blogging or any other form of communication.
2. Do not speak with any person who is involved in the trial—even about something that has nothing to do with the trial. It is often difficult to determine who is involved in a trial, as persons waiting outside the courtroom or using the elevators or hallways may be witnesses or may

have an interest in the outcome of this trial. Be very cautious with whom you have conversations.

3. If anyone tries to talk to you about this case, I instruct you to tell that person the judge ordered you not to discuss this trial and excuse yourself. You must immediately tell my bailiff about any such contact.
4. Avoid contact with the parties or lawyers. They are instructed not to speak with you, except for brief greetings, such as good morning or good afternoon.
5. As jurors, you may discuss the case together only after all the evidence is presented, I instruct you on the law, and the attorneys complete their final arguments. After I tell you to begin your deliberations, you may discuss the case only in the jury room, and only when all jurors are present.
6. Because of the requirement that your verdict must be based only on the evidence received in the courtroom and instructions on the law, you must not read, listen to or watch any news reports about this trial, if there are any, regardless of whether the report is from the newspaper, radio, television, internet or any other source.
7. Do not research this case on your own or as a group by using a dictionary, encyclopedia, map, or reference materials, including online or other electronic sources. You are not permitted to search the Internet, for

example, using Google, or any other search engine or web site to look for information about this case or about the participants in the trial. The participants in a trial include the judge, lawyers, witnesses and the defendant. The Court understands that in your daily life it may be a common occurrence for you to look for more information about a product or an event, but the moment you try to gather information about this case or the participants, is the moment you contaminate the process you promised to uphold.

8. 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, tweeting, text messaging, or using the Internet in any way. Also, do not post or look at information about this case on a blog, forum, social network site, chat room, discussion board or any other web site.
9. 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.

10. If you see or hear anyone, including another juror, violate any of these rules, you must immediately tell the bailiff.
  
11. Finally, keep an open mind until all the evidence has been presented, the Court has instructed you on the law that applies in this case and final arguments have been given.

I may not repeat these rules to you before every recess, but keep them in mind throughout this trial.

## 2.01 CAUTIONARY INSTRUCTION--RECESS

Members of the jury, we are about to take [our first] [a] recess and I want to remind you about of a few things that are very especially important. Until I ask you to begin deliberations, you must not discuss this case with your fellow jurors. A requirement of our judicial system is that you must reach your verdict based only on the evidence that you receive in the courtroom.

Furthermore, In order to ensure that both sides receive a fair trial, I will now explain some basic rules of law and procedure that you must follow throughout this trial, including during recesses, when you leave the court building at the end of the day, and at all other times until a the verdict is received or you are otherwise excused from jury service, you are not to discuss the case with anyone. If anyone approaches you and tries to discuss the trial with you, please let me know about it immediately. Also, you must not read or listen to any news reports of the trial. Remember that you must not speak with any person who is involved in the trial even about something that has nothing to do with the trial. Finally, if you observe anyone, including a fellow juror, violate these instructions you must immediately report it to the court by written note through the bailiff.

If you need to speak with me about anything, simply give a note to the bailiff to give to me.

1. Do not talk to anyone, including your fellow jurors, friends or members of your family about anything having to do with this trial, except to speak to court staff. This means that you must not discuss this case with anyone until the verdict is received or you are excused from jury service. No discussion also means no e-mailing, text messaging, tweeting, blogging or any other form of communication.
  
2. Do not speak with any person who is involved in the trial—even about something that has nothing to do with the trial. It is often difficult to determine who is involved in a trial, as persons waiting outside the courtroom or using the elevators or hallways may be witnesses or may have an interest in the outcome of this trial. Be very cautious with whom you have conversations.
  
3. If anyone tries to talk to you about this case, I instruct you to tell that person the judge ordered you not to discuss this trial and excuse yourself. You must immediately tell my bailiff about any such contact.
  
4. Avoid contact with the parties or lawyers. They are instructed not to speak with you, except for brief greetings, such as good morning or good afternoon.
  
5. As jurors, you may discuss the case together only after all the evidence is presented, I instruct you on the law, and the attorneys complete their final

arguments. After I tell you to begin your deliberations, you may discuss the case only in the jury room, and only when all jurors are present.

6. Because of the requirement that your verdict must be based only on the evidence received in the courtroom and instructions on the law, you must not read, listen to or watch any news reports about this trial, if there are any, regardless of whether the report is from the newspaper, radio, television, internet or any other source.
  
7. Do not research this case on your own or as a group by using a dictionary, encyclopedia, map, or reference materials, including online or other electronic sources. You are not permitted to search the Internet, for example, using Google, or any other search engine or web site to look for information about this case or about the participants in the trial. The participants in a trial include the judge, lawyers, witnesses and the defendant. The Court understands that in your daily life it may be a common occurrence for you to look for more information about a product or an event, but the moment you try to gather information about this case or the participants, is the moment you contaminate the process you promised to uphold.
  
8. 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, tweeting, text messaging, or using the Internet in any way. Also, do not post or look at information about this case on a blog, forum, social network site, chat room, discussion board or any other web site.

9. 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.
10. If you see or hear anyone, including another juror, violate any of these rules, you must immediately tell the bailiff.
11. Finally, keep an open mind until all the evidence has been presented, the Court has instructed you on the law that applies in this case and final arguments have been given.

I may not repeat these rules things to you before every recess break that we take, but keep them in mind throughout this the trial.

## 2.02 DISCHARGE OF DEFENSE COUNSEL DURING TRIAL

Even though Defendant, (defendant's name), was at first represented by a lawyer, he/she has decided to continue this trial representing himself/herself [and not use the services of a lawyer]. He/She has a constitutional right to self-representation. The Defendant's decision to represent himself/herself has no bearing on whether he/she is guilty or not guilty of the charge[s], and it must have no effect on your consideration of the case.

### Notes

The final phrase of the first sentence of the instruction is bracketed in the event that stand-by counsel is appointed to assist the Defendant.

### Commentary

An accused "has the constitutional right to appear *pro se* and defend himself." *State v. Dickson*, 4 Haw.App. 614, 619, 673 P.2d 1036, 1041 (1983) (*citing Faretta v. California*, 422 U.S. 806 (1975)). The record must affirmatively reflect that the accused "was offered counsel but that he voluntarily, knowingly, and intelligently rejected the offer and waived that right." *Dickson*, 4 Haw.App. at 619, 673 P.2d at 1041 ("specific

waiver inquiry" factors set out). Although the waiver of a minor's right to counsel should be reviewed with great care, the right may nevertheless be waived if, based upon the totality of circumstances, the waiver is knowing and voluntary. *In the Interest of Doe*, 77 Hawai'i 46, 50, 881 P.2d 533, 537(1994) (citing *Medeiros v. State*, 63 Haw. 162, 163, 623 P.2d 86, 86 (1981)).

A defendant for whom counsel has been appointed has no per se right to change counsel, particularly when trial is underway. See *State v. Ahlo*, 2 Haw.App. 462, 634 P.2d 421 (1981); *State v. Torres*, 54 Haw. 502, 510 P.2d 494 (1973); see also *State v. Soto*, 60 Haw. 493, 495, 591 P.2d 119, 121 (1979) (preparation time for counsel should be sufficient to "assure the defendant of effective assistance of counsel").

Rule 10.1 of the Hawai'i Rules of the Circuit Courts provides that "withdrawal of counsel in cases pending before the circuit courts shall be effective only upon the approval of the court and shall be subject to the guidelines of Rule 1.16 of the Hawai'i Rules of Professional Conduct and other applicable law."

## 2.02 DISCHARGE OF DEFENSE COUNSEL DURING TRIAL

Even though Defendant, (defendant's name), was at first represented by a lawyer, he/she has decided to continue this trial representing himself/herself [and not use the services of a lawyer]. He/She has a perfect constitutional right to ~~do that self-~~ representation. ~~His/Her~~ The Defendant's decision to represent himself/herself has no bearing on whether he/she is guilty or not guilty of the charge[s], and it ~~should~~ must have no effect on your consideration of the case.

### Notes

The final phrase of the first sentence of the instruction is bracketed in the event that stand-by counsel is appointed to assist the Defendant.

### **Commentary**

An accused "has the constitutional right to appear *pro se* and defend himself." *State v. Dickson*, 4 Haw.App. 614, 619, 673 P.2d 1036, 1041 (1983) (citing *Faretta v. California*, 422 U.S. 806 (1975)). The record must affirmatively reflect that the accused "was offered counsel but that he voluntarily, knowingly, and intelligently rejected the offer and waived that right." *Dickson*, 4 Haw.App. at 619, 673 P.2d at 1041 ("specific

waiver inquiry" factors set out). Although the waiver of a minor's right to counsel should be reviewed with great care, the right may nevertheless be waived if, based upon the totality of circumstances, the waiver is knowing and voluntary. *In the Interest of Doe*, 77 Hawai'i 46, 50, 881 P.2d 533, 537(1994) (citing *Medeiros v. State*, 63 Haw. 162, 163, 623 P.2d 86, 86 (1981)).

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Rule 10.1 of the Hawai'i Rules of the Circuit Courts provides that "withdrawal of counsel in cases pending before the circuit courts shall be effective only upon the approval of the court and shall be subject to the guidelines of Rule 1.16 of the Hawai'i Rules of Professional Conduct and other applicable law."

## 2.03 OTHER CRIMES, WRONGS OR ACTS

You [are about to hear] [have heard] evidence that the Defendant at another time, may have [engaged in] [committed] other [crimes] [wrongs] [acts]. This evidence, if believed by you\*, may be considered only on the issue of Defendant's [motive to commit the offense charged] [opportunity to commit the offense charged] [intent to commit the offense charged] [preparation to commit the offense charged] [plan to commit the offense charged] [knowledge (specify knowledge required to commit the offense charged)] [identity as the person who committed the offense charged] [modus operandi] [alleged conduct having resulted from a mistake or accident]. Do not consider this evidence for any other purpose. You must not use this evidence to conclude that because the Defendant at another time may have [engaged in] [committed] other [crimes] [wrongs] [acts] that he/she is a person of bad character and therefore must have committed the offense[s] charged in this case.

In considering the evidence for the limited purpose for which it has been received, you must weigh it in the same manner as you would all other evidence in this case, and consider it along with all other evidence in this case.

### Notes

\* Where the other crime, wrong or act evidence is stipulated to have occurred by defense counsel, then the clause "if believed by you" should be omitted. The clause may also be subject to deletion where the evidence is adduced by proof of a prior

conviction.

### **Commentary**

This instruction is to be given at the time evidence of other crimes, wrongs or acts is admitted unless the defense objects on the record to the giving of the instruction. When given, Instruction No. 4.01 should be given at the end of the case, as appropriate.

## 2.03 OTHER CRIMES, WRONGS OR ACTS

You [are about to hear] [have heard] evidence that the Defendant at another time, may have [engaged in] [committed] other [crimes] [wrongs] [acts]. This evidence, if believed by you\*, may be considered only on the issue of Defendant's [motive to commit the offense charged] [opportunity to commit the offense charged] [intent to commit the offense charged] [preparation to commit the offense charged] [plan to commit the offense charged] [knowledge (specify knowledge required to commit the offense charged)] [identity as the person who committed the offense charged] [modus operandi] [alleged conduct having resulted from a mistake or accident]. Do not consider this evidence for any other purpose. You must not use this evidence to ~~determine~~ conclude that because the Defendant at another time may have [engaged in] [committed] other [crimes] [wrongs] [acts] that the Defendant he/she is a person of bad character and therefore must have committed the offense[s] charged in this case. Such evidence may be considered by you only on the issue of Defendant's [motive] [opportunity] [intent] [preparation] [plan] [knowledge] [identity] [modus operandi] [absence of mistake or accident] and for no other purpose.

In considering the evidence for the limited purpose for which it has been received, you must weigh it in the same manner as you would all other evidence in this case, and consider it along with all other evidence in this case.

### **Notes**

\* Where the other crime, wrong or act evidence is stipulated to have occurred by defense counsel, then the clause "if believed by you" should be omitted. The clause may also be subject to deletion where the evidence is adduced by proof of a prior conviction.

### **Commentary**

This instruction is to be given at the time evidence of other crimes, wrongs or acts is admitted unless the defense objects on the record to the giving of the instruction. When given, Instruction No. 4.01 should be given at the end of the case, as appropriate.

## 2.04 CAUTIONARY INSTRUCTION DURING TRIAL REGARDING TRANSCRIPT OF A RECORDING

[A video] [An audio] recording of the statement of (name of person) has been received in evidence and is about to be played for you. A written transcript of this recorded statement is being provided to you solely for your convenience to help you follow the conversation in the recording.

The recording itself is the evidence in this case. The transcript is not evidence. Therefore, what you hear on the recording is evidence. What you read in the transcript is not evidence, and the transcript will not be provided to you during your deliberations. If you believe that there is any difference between the recording and the transcript, you must be guided only by the recording and not by the transcript.

For example, if you cannot determine from the recording what particular words were spoken or who said a particular word or words, you must disregard the transcript with respect to those words or the transcript's identification of the speaker. It is for you to decide, based upon the recording, what words were spoken and the identity of the speaker.

[You will notice that portions of the recording and the transcript have been deleted. Do not concern yourself with these deletions and do not speculate about them.]

### Notes

O'Malley, Genig, and Lee, *Federal Jury Practice and Instructions*, Criminal (5th Ed.) §§ 11.09, 14.09 (as modified).

"The decision whether to allow the use of transcripts to assist jurors in listening to a tape recording lies within the sound discretion of the trial judge." *United States v. Bentley*, 706 F.2d 1498, 1507-1508 (8th Cir. 1983). If the instruction is also to be given as part of the closing instructions, it should be modified appropriately.

This instruction does not address the situation when the transcript is otherwise admissible.

**2.04 2.10 CAUTIONARY INSTRUCTION DURING TRIAL REGARDING TRANSCRIPT  
OF A TAPE RECORDED STATEMENT RECORDING**

[A video] [An audio] ~~tape~~ recording of the Defendant's statement of (name of person) has been received in evidence and is about to be played for you. A typewritten transcript of this ~~tape~~ recorded statement is being ~~furnished~~ provided to you solely for your convenience ~~in assisting to help you in following the conversation or in identifying the speakers in the recording.~~

The ~~tape recording~~ itself, however, is the evidence in the this case, and the The typewritten transcript is not evidence. Therefore, what ~~What~~ you hear on the ~~tape recording~~ is evidence. What you read in ~~on~~ the transcript is not evidence, and the transcript will not be provided to you during your deliberations. If you ~~perceive~~ believe that there is any ~~variation~~ difference between the ~~two~~ recording and the transcript, you ~~will~~ must be guided ~~solely~~ only by the ~~tape recording~~ and not by the transcript.

For example, if ~~If~~ you cannot, ~~for example,~~ determine from the ~~tape recording~~ that what particular words were spoken or if you cannot determine from the ~~tape recording~~ who said a particular word or words, you must disregard the transcript insofar as with respect to those words or the transcript's identification of the ~~that~~ speaker is concerned. It is for you to decide, based upon the recording, what words were spoken and the identity of the speaker.

[You will notice that portions of the ~~tape recorded interview~~ recording and the ~~statement~~ transcript have been deleted. Do not concern yourself with these deletions and do not speculate about them.]

## Notes

O'Malley, Genig, and Lee, *Federal Jury Practice and Instructions*, Criminal (5th Ed.) §§ 11.09, 14.09 (as modified).

"The decision whether to allow the use of transcripts to assist jurors in listening to a tape recording lies within the sound discretion of the trial judge." *United States v. Bentley*, 706 F.2d 1498, 1507-1508 (8th Cir. 1983). If the instruction is also to be given as part of the closing instructions, it should be modified appropriately.

This instruction does not address the situation when the transcript is otherwise admissible.

### **3.03 CONSIDER ONLY THE EVIDENCE**

You must consider only the evidence that has been presented to you in this case and inferences drawn from the evidence which are justified by reason and common sense.

The indictment/complaint/information is a mere formal accusation, and it is not evidence of the defendant's guilt. You must not be influenced at all because the defendant has been charged with an offense(s).

Trial procedures are governed by rules. When a lawyer believes that the rules require it, it is his or her duty to raise an objection. It is my responsibility to rule on such objections. You must not consider objections made by lawyers in your deliberations.

Statements or arguments made by lawyers are not evidence. You should consider their arguments to you, but you are not bound by their memory or interpretation of the evidence.

If I have said or done anything that has suggested to you that I favor either side, or if any of my statements or facial expressions has seemed to indicate an opinion as to which witnesses are, or are not, worthy of belief or what facts are or are not proved, or what inferences should be drawn from the evidence, I instruct you to disregard it. You must also disregard any remark I may have made, unless the remark was an instruction to you.

You must not be influenced by pity for the defendant or by passion or prejudice

against the defendant. Both the prosecution and the defendant have a right to demand, and they do demand and expect, that you will carefully and impartially consider and weigh all of the evidence and follow these instructions, and that you will reach a just verdict.

### 3.03 CONSIDER ONLY THE EVIDENCE

You must consider only the evidence which that has been presented to you in this case and ~~such inferences therefrom~~ drawn from the evidence ~~as may be~~ which are justified by reason and common sense.

The indictment/complaint/information is a mere formal accusation, and it is not evidence of the defendant's guilt. You must not be influenced at all because the defendant has been charged with an offense(s).

Trial procedures are governed by rules. When ~~an attorney~~ a lawyer believes that the rules require it, it is his or her duty to raise an objection. It is ~~within the province of the trial judge~~ my responsibility to rule on such objections. ~~During the course of this trial you have heard counsel make objections.~~ You must not consider objections raised made by counsel lawyers in your deliberations.

Statements or ~~remarks~~ arguments made by ~~counsel~~ lawyers are not evidence. You should consider their arguments to you, but you are not bound by their ~~recollections~~ memory or interpretations of the evidence. ~~You must also disregard any remark I may have made, unless the remark was an instruction to you.~~

If I have said or done anything which that has suggested to you that I ~~am inclined~~ to favor the ~~claims or positions of either [any] party~~ side, or if any of my statements or facial expressions or ~~statement of mine~~ has seemed to indicate an opinion relating as to which witnesses are, or are not, worthy of belief or what facts are or are not established

proved, or what inferences should be drawn ~~therefrom~~ from the evidence, I instruct you to disregard it. You must also disregard any remark I may have made, unless the remark was an instruction to you.

You must not be influenced by pity for the defendant or by passion or prejudice against the defendant. Both the prosecution and the defendant have a right to demand, and they do demand and expect, that you will ~~conscientiously and dispassionately~~ carefully and impartially consider and weigh all of the evidence and follow these instructions, and that you will reach a just verdict.

**9.61 ELECTRONIC ENTICEMENT OF A CHILD IN THE FIRST DEGREE:**

**H.R.S. § 707-756**

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

A person commits the offense of Electronic Enticement of a Child in the First Degree if he/she uses a computer, or any other electronic device, to intentionally or knowingly communicate [with a minor whom he/she knows to be under the age of eighteen years] [with another person in reckless disregard of the risk that the person is under the age of eighteen and the person is, in fact, under the age of eighteen] [with another person who represents himself/herself to be under the age of eighteen], with the intent to promote or facilitate the commission of [Murder in the First Degree] [Murder in the Second Degree] [(specify Class A felony)] [(specify offense listed in HRS § 846E-1)], agrees to meet [with the minor whom he/she knows to be under the age of eighteen] [with the other person in reckless disregard of the risk that the person is under the age of eighteen and who was, in fact, under the age of eighteen] [with the other person who represented himself/herself to be under the age of eighteen] and he/she intentionally or knowingly travels to the agreed upon meeting place at the agreed upon meeting time.

There are five material elements of the offense of Electronic Enticement of a Child 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 used a computer or any other electronic device; and
2. That the Defendant intentionally or knowingly did so to communicate with [a minor known by the Defendant to be under the age of eighteen] [another person in reckless disregard of the risk that the person was under the age of eighteen and the person was, in fact, under the age of eighteen] [another person who represented himself/herself to be under the age of eighteen]; and
3. That the Defendant agreed to meet [with the minor whom he/she knew to be under the age of eighteen] [with the other person in reckless disregard of the risk that the person was under the age of eighteen and who was, in fact, under the age of eighteen] [with the other person who represented himself/herself to be under the age of eighteen]; and
4. That the Defendant did so with the intent to promote or facilitate the commission of the offense of [Murder in the First Degree] [Murder in the Second Degree] [(specify Class A felony)] [(specify offense listed in HRS § 846E-1)]\*; and
5. That the Defendant intentionally or knowingly traveled to the agreed upon meeting place at the agreed upon meeting time.

#### Notes

H.R.S. § 707-756.

For definition of states of mind, see instruction:

6.02--"intentionally"

9.61 (proposed 07/06/09)

6.03—"knowingly"

\* The court should instruct as to the elements of the specified offense (and any applicable defenses) unless such offenses are otherwise charged.



**9.61 ELECTRONIC ENTICEMENT OF A CHILD IN THE FIRST DEGREE:**

**H.R.S. § 707-756**

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

A person commits the offense of Electronic Enticement of a Child in the First Degree if he/she uses a computer, or any other electronic device, to intentionally or knowingly communicate [with a minor whom he/she knows to be under the age of eighteen years] [with another person in reckless disregard of the risk that the person is under the age of eighteen and the person is, in fact, under the age of eighteen] [with another person who represents himself/herself to be under the age of eighteen], with the intent to promote or facilitate the commission of [Murder in the First Degree] [Murder in the Second Degree] [(specify Class A felony)] [(specify offense listed in HRS § 846E-1)], agrees to meet [with the minor whom he/she knows to be under the age of eighteen] [with the other person in reckless disregard of the risk that the person is under the age of eighteen and who was, in fact, under the age of eighteen] [with the other person who represented himself/herself to be under the age of eighteen] and he/she intentionally or knowingly travels to the agreed upon meeting place at the agreed upon meeting time.

There are five material elements of the offense of Electronic Enticement of a Child 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 used a computer or any other electronic device; and
2. That the Defendant intentionally or knowingly did so to communicate with [a minor known by the Defendant to be under the age of eighteen] [another person in reckless disregard of the risk that the person was under the age of eighteen and the person was, in fact, under the age of eighteen] [another person who represented himself/herself to be under the age of eighteen]; and
3. That the Defendant agreed to meet [with the minor whom he/she knew to be under the age of eighteen] [with the other person in reckless disregard of the risk that the person was under the age of eighteen and who was, in fact, under the age of eighteen] [with the other person who represented himself/herself to be under the age of eighteen]; and
4. That the Defendant did so with the intent to promote or facilitate the commission of the offense of [Murder in the First Degree] [Murder in the Second Degree] [(specify Class A felony)] [(specify offense listed in HRS § 846E-1)]\*; and
5. That the Defendant intentionally or knowingly traveled to the agreed upon meeting place at the agreed upon meeting time.

**Notes**

H.R.S. § 707-756.

For definition of states of mind, see instruction:

6.02--"intentionally"

9.61 (proposed 07/06/09)

6.03—"knowingly"

\* The court should instruct as to the elements of the specified offense (and any applicable defenses) unless such offenses are otherwise charged.

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Q

## 9.62 ELECTRONIC ENTICEMENT OF A CHILD IN THE SECOND DEGREE

### H.R.S. § 707-757

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

A person commits the offense of Electronic Enticement of a Child in the Second Degree if he/she uses a computer, or any other electronic device, to intentionally or knowingly communicate [with a minor whom he/she knows to be under the age of eighteen] [with another person in reckless disregard of the risk that the person is under the age of eighteen and the person is, in fact, under the age of eighteen] [with another person who represents himself/herself to be under the age of eighteen], and, with the intent to promote or facilitate the commission of a felony, agrees to meet [with the minor whom he/she knows to be under the age of eighteen] [with the other person in reckless disregard of the risk that the person is under the age of eighteen and the person is, in fact, under the age of eighteen] [with another person who represents himself/herself to be under the age of eighteen], and intentionally or knowingly travels to the agreed upon meeting place at the agreed upon meeting time.

There are five material elements of the offense of Electronic Enticement of a Child in the Second Degree, each of which the prosecution must prove beyond a reasonable doubt.

These five elements are:

9.62 (proposed 07/06/09)

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

2. That the Defendant intentionally or knowingly did so to communicate with [a minor known by Defendant to be under the age of eighteen] [another person in reckless disregard of the risk that the person was under the age of eighteen and the person was, in fact, under the age of eighteen] [another person who represented himself/herself to be under the age of eighteen]; and

3. That the Defendant agreed to meet [with the minor whom he/she knew to be under the age of eighteen] [with the other person in reckless disregard of the risk that the person was under the age of eighteen and who was, in fact, under the age of eighteen] [with the other person who represented himself/herself to be under the age of eighteen]; and

4. That he/she did so with the intent to promote or facilitate the commission of the offense of (specify felony)\*; and

5. That he/she intentionally or knowingly traveled to the agreed upon meeting place at the agreed upon meeting time.

#### Notes

H.R.S. § 707-757.

For definition of states of mind, see instruction:

6.02--"intentionally"

6.03--"knowingly"

\* The court should instruct as to the elements of the specified felony offense (and any applicable defenses) unless that offense is otherwise charged.



**9.62 ELECTRONIC ENTICEMENT OF A CHILD IN THE SECOND DEGREE**

**H.R.S. § 707-757**

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

A person commits the offense of Electronic Enticement of a Child in the Second Degree if he/she uses a computer, or any other electronic device, to intentionally or knowingly communicate [with a minor whom he/she knows to be under the age of eighteen] [with another person in reckless disregard of the risk that the person is under the age of eighteen and the person is, in fact, under the age of eighteen] [with another person who represents himself/herself to be under the age of eighteen], and, with the intent to promote or facilitate the commission of a felony, agrees to meet [with the minor whom he/she knows to be under the age of eighteen] [with the other person in reckless disregard of the risk that the person is under the age of eighteen and the person is, in fact, under the age of eighteen] [with another person who represents himself/herself to be under the age of eighteen], and intentionally or knowingly travels to the agreed upon meeting place at the agreed upon meeting time.

There are five material elements of the offense of Electronic Enticement of a Child in the Second 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 used a computer or any other electronic device; and

2. That the Defendant intentionally or knowingly did so to communicate with [a minor known by Defendant to be under the age of eighteen] [another person in reckless disregard of the risk that the person was under the age of eighteen and the person was, in fact, under the age of eighteen] [another person who represented himself/herself to be under the age of eighteen]; and

3. That the Defendant agreed to meet [with the minor whom he/she knew to be under the age of eighteen] [with the other person in reckless disregard of the risk that the person was under the age of eighteen and who was, in fact, under the age of eighteen] [with the other person who represented himself/herself to be under the age of eighteen]; and

4. That he/she did so with the intent to promote or facilitate the commission of the offense of (specify felony)\*; and

5. That he/she intentionally or knowingly traveled to the agreed upon meeting place at the agreed upon meeting time.

**Notes**

H.R.S. § 707-757.

For definition of states of mind, see instruction:

6.02—"intentionally"

6.03—"knowingly"

\* The court should instruct as to the elements of the specified felony offense (and any applicable defenses) unless that offense is otherwise charged.



**10.03E CRIMINAL TRESPASS IN THE FIRST DEGREE:**

**H.R.S. § 708-813(1)(a)**

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

A person commits the offense of Criminal Trespass in the First Degree if he/she knowingly enters or remains unlawfully [in a dwelling] [in or upon the premises of a hotel or apartment building].

There are two material elements of the offense of Criminal Trespass 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 entered or remained unlawfully [in a dwelling] [in or upon the premises of a hotel or apartment building]; and

2. That the Defendant did so knowingly.

## Notes

H.R.S. § 708-813(1)(a).

For definition of states of mind, see instruction:

6.03—"knowingly"

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

10.00---"apartment building"

10.00—"dwelling"

10.00—"enter or remain unlawfully"

10.00---"hotel"

10.00---"premises"

10.03E (proposed 07/06/09)

**10.03E CRIMINAL TRESPASS IN THE FIRST DEGREE:**

**H.R.S. § 708-813(1)(a)**

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

A person commits the offense of Criminal Trespass in the First Degree if he/she  
knowingly enters or remains unlawfully [in a dwelling] [in or upon the premises of a hotel  
or apartment building].

There are two material elements of the offense of Criminal Trespass 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 entered or remained unlawfully [in a dwelling] [in or upon the premises of a  
hotel or apartment building]; and

2. That the Defendant did so knowingly.

**Notes**

H.R.S. § 708-813(1)(a).

For definition of states of mind, see instruction:

6.03—"knowingly"

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

10.00---"apartment building"

10.00—"dwelling"

10.00—"enter or remain unlawfully"

10.00---"hotel"

10.00---"premises"

10.03E (proposed 07/06/09)

**10.03F CRIMINAL TRESPASS IN THE SECOND DEGREE:**

**H.R.S. § 708-814(1)(a)**

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

A person commits the offense of Criminal Trespass in the Second Degree if he/she knowingly enters or remains unlawfully in or upon premises that are [enclosed in a manner designed to exclude intruders] [fenced].

There are three material elements to the offense of Criminal Trespass 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 entered or remained unlawfully in or upon premises; and
2. That the premises were [enclosed in a manner designed to exclude intruders] [fenced]; and

3. That the Defendant did so knowingly.

**Notes**

H.R.S. § 708-814 (1)(a).

For definition of states of mind, see instruction:

6.03—"knowingly"

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

10.00—"enter or remain unlawfully"

10.00---"premises"

10.03F (proposed 07/06/09)

**10.03F CRIMINAL TRESPASS IN THE SECOND DEGREE:**

**H.R.S. § 708-814(1)(a)**

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

A person commits the offense of Criminal Trespass in the Second Degree if  
he/she knowingly enters or remains unlawfully in or upon premises that are [enclosed in  
a manner designed to exclude intruders] [fenced].

There are three material elements to the offense of Criminal Trespass 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 entered or remained unlawfully in or upon premises; and

2. That the premises were [enclosed in a manner designed to exclude intruders]  
[fenced]; and

3. That the Defendant did so knowingly.

**Notes**

H.R.S. § 708-814 (1)(a).

For definition of states of mind, see instruction:

6.03—"knowingly"

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

10.00—"enter or remain unlawfully"

10.00---"premises"

## 11.09 VIOLATION OF AN ORDER FOR PROTECTION:

### H.R.S. § 586-11

[In Count (count number) of the Indictment/Complaint/Petition, the] [The] Defendant (defendant's name) is charged with the offense of Violation of an Order for Protection.

A person commits the offense of Violation of an Order for Protection if he/she intentionally or knowingly engages in conduct prohibited by an Order for Protection issued by a Judge of the Family Court that was then in effect. There are four material elements of the offense of Violation of an Order for Protection, each of which the prosecution must prove beyond a reasonable doubt. These four elements are:

1. That, on or about (date), an Order for Protection, issued by a Judge of the Family Court pursuant to Chapter 586 of the Hawaii Revised Statutes\*, prohibiting the Defendant from engaging in certain conduct\*\*, was in effect; and
2. That, on or about (date), in the [City and] County of (name of county), the Defendant intentionally or knowingly engaged in conduct\*\*\*, and
3. That the Defendant knew, at that time, that such conduct\*\*\* was prohibited by the Order for Protection; and
4. That the Defendant was given notice of the Order for Protection prior to engaging in such conduct by having [received a copy of the Order by

personal delivery] [received a copy of the Order by certified mail] [been present at the hearing at which the Order was issued].

### Notes

H.R.S. §§ 586-11, 586-6

\* Orders for protection issued pursuant to H.R.S. Chapter 586 are set forth in H.R.S. § 586-5.5. Pursuant to H.R.S. § 586-21, orders for protection also include any valid protective orders issued by a court or tribunal of another state, tribe, or territory of the United States as defined in 18 U.S.C. § 2266, and meet the criteria for presumptive validity as set forth in H.R.S. § 586-22. Pursuant to H.R.S. § 586-23, the filing of a foreign protective order with the family court shall not be required for enforcement of the foreign protective order in this state. Where the protective order was not issued by a Family Court Judge pursuant to Chapter 586, this instruction is to be modified accordingly.

\*\* The Court should appropriately specify the particular conduct prohibited.

\*\*\* If the alleged conduct is specified in the charging document or bill of particulars, the Court may specify the particular conduct involved.

Where there is evidence of multiple instances of conduct allegedly violating the Order of Protection, an *Arceo* instruction would be appropriate. See 8.02--Unanimity Instruction-Generic.



**11.09 VIOLATION OF AN ORDER FOR PROTECTION:**

**H.R.S. § 586-11**

[In Count (count number) of the Indictment/Complaint/Petition, the] [The] Defendant (defendant's name) is charged with the offense of Violation of an Order for Protection.

A person commits the offense of Violation of an Order for Protection if he/she intentionally or knowingly engages in conduct prohibited by an Order for Protection issued by a Judge of the Family Court that was then in effect. There are four material elements of the offense of Violation of an Order for Protection, each of which the prosecution must prove beyond a reasonable doubt. These four elements are:

1. That, on or about (date), an Order for Protection, issued by a Judge of the Family Court pursuant to Chapter 586 of the Hawaii Revised Statutes\*, prohibiting the Defendant from engaging in certain conduct\*\*, was in effect; and
2. That, on or about (date), in the [City and] County of (name of county), the Defendant intentionally or knowingly engaged in conduct\*\*\*, and
3. That the Defendant knew, at that time, that such conduct\*\*\* was prohibited by the Order for Protection; and
4. That the Defendant was given notice of the Order for Protection prior to engaging in such conduct by having [received a copy of the Order by personal delivery] [received a copy of the Order by certified mail] [been present at the hearing at which the Order was issued].

## Notes

H.R.S. §§ 586-11, 586-6

\* Orders for protection issued pursuant to H.R.S. Chapter 586 are set forth in H.R.S. ' 586-5.5. Pursuant to H.R.S. ' 586-21, orders for protection also include any valid protective orders issued by a court or tribunal of another state, tribe, or territory of the United States as defined in 18 U.S.C. ' 2266, and meet the criteria for presumptive validity as set forth in H.R.S. ' 586-22. Pursuant to H.R.S. § 586-23, the filing of a foreign protective order with the family court shall not be required for enforcement of the foreign protective order in this state. Where the protective order was not issued by a Family Court Judge pursuant to Chapter 586, this instruction is to be modified accordingly.

\*\* The Court should appropriately specify the particular conduct prohibited.

\*\*\* If the alleged conduct is specified in the charging document or bill of particulars, the Court may specify the particular conduct involved.

Where there is evidence of multiple instances of conduct allegedly violating the Order of Protection, an Arceo instruction would be appropriate. See 8.02--Unanimity Instruction-Generic.

