

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

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FILED

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

Upon consideration of the Pattern Criminal Jury Instructions Standing Committee's request to publish and distribute (1) revisions to Criminal Instructions 10.21, 10.27, 10.28, 10.32, 10.33, 10.34, 10.35, 10.36, 10.37, 10.38, and (2) the addition of Criminal Jury Instructions 16.08, 16.09, 16.10, and 16.11 to the Hawai'i Pattern Jury Instructions - Criminal,

IT IS HEREBY ORDERED, that the attached criminal jury instructions 10.21, 10.27, 10.28, 10.32, 10.33, 10.34, 10.35, 10.36, 10.37, 10.38, 16.08, 16.09, 16.10, and 16.11 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

¹ Considered by: Moon, C.J., Levinson, Nakayama, Acoba, and Duffy, JJ.

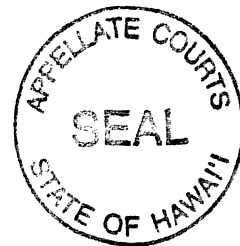
to the validity or correctness of the substance of any instruction.

DATED: Honolulu, Hawai'i, May 25, 2006.

FOR THE COURT:



RONALD T.Y. MOON
Chief Justice



10.21

**THEFT IN THE SECOND DEGREE -- SHOPLIFTING:
HRS § 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, with intent to defraud, he/she conceals or takes possession of the goods or merchandise of any store or retail establishment, the value of which property exceeds \$300.

There are four material elements of the offense of Theft in the Second 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 concealed or took possession of the goods or merchandise of (name of store or retail establishment); and
2. That (name of store or retail establishment) was a store or retail establishment; and
3. That the value of goods or merchandise of (name of store or retail establishment) exceeded \$300; and
4. That the Defendant either (a) intended to use deception to injure (name of store or retail establishment)'s interest, which had value, in which case the required state of mind as to each of the foregoing elements is "intentionally," or (b) knew

that he/she was facilitating an injury to (name of store or retail establishment)'s interest, which had value, in which case the required state of mind as to each of the foregoing elements is "knowingly."

Notes

H.R.S. §§ 708-831(1)(b), 708-830(8), 702-206(1) and (2).

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--"intent to defraud"

10.00--"property"

10.00A(1)--"value"

State v. Shinyama, 101 Hawai'i 389, 69 P. 3d 517 (2003) (setting forth a suggested instruction for the offense of theft in the second degree by shoplifting).

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

For statutory defense, see instruction 10.11A.

For prima facie inference where the goods or merchandise in question had an unaltered price or name tag or other marking, see instruction 10.21A.

For state of mind regarding value of property taken, see *State v. Cabrera*, 90 Hawai'i 359, 978 P.2d 797 (1999).

10.27

**ROBBERY IN THE FIRST DEGREE --
ARMED WITH DANGEROUS INSTRUMENT AND USE OF FORCE:
H.R.S. § 708-840(1)(b)(i)**

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

A person commits the offense of Robbery in the First Degree if, in the course of committing theft, he/she is armed with a dangerous instrument, and he/she uses force against the person of anyone present with intent to overcome that person's physical resistance or physical power of resistance.

There are three material elements of the offense of Robbery 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 was in the course of committing theft; and
2. That [,while doing so,] the Defendant was armed with a dangerous instrument; and
3. That [,while doing so,] the Defendant used force against the person of anyone present with intent to overcome that person's physical resistance or physical power of resistance.

A person commits theft if he/she obtains or exerts unauthorized control over the property of another with intent to deprive the person of the property.

An act shall be deemed "in the course of committing a theft" if it occurs in an attempt to commit theft, in the commission of theft, or in the flight after the attempt or commission.

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

Notes

H.R.S. §§ 708-840(1)(b)(i) and (2), 708-842, 702-206(1).

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 - "control over the property"
- 10.00 - "deprive"
- 10.00 - "obtain"
- 10.00 - "property"
- 10.00 - "property of another"
- 10.00 - "unauthorized control over property"

For statutory defense to theft, see instruction 10.11A.

10.28

**ROBBERY IN THE FIRST DEGREE --
ARMED WITH DANGEROUS INSTRUMENT AND THREATENED USE OF FORCE:
H.R.S. § 708-840(1)(b)(ii)**

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

A person commits the offense of Robbery in the First Degree if, in the course of committing theft, he/she is armed with a dangerous instrument, and he/she threatens the imminent use of force against the person of anyone who is present, with intent to compel acquiescence to the taking of or escaping with the property.

There are three material elements of the offense of Robbery 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 was in the course of committing theft; and
2. That [,while doing so,] the Defendant was armed with a dangerous instrument; and
3. That [,while doing so,] the Defendant threatened the imminent use of force against anyone who is present, with intent to compel acquiescence to the taking of or escaping with the property.

A person commits theft if he/she obtains or exerts unauthorized control over the property of another with intent to deprive the person of the property.

An act shall be deemed "in the course of committing a theft" if it occurs in an attempt to commit theft, in the commission of theft, or in the flight after the attempt or commission.

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

Notes

H.R.S. §§ 708-840(1)(b)(ii), 708-830(1), 708-842, 702-206(1).

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 - "control over the property"
- 10.00 - "deprive"
- 10.00 - "obtain"
- 10.00 - "property"
- 10.00 - "property of another"
- 10.00 - "unauthorized control over property"

For statutory defense to theft, see instruction 10.11A.

FORGERY IN THE FIRST DEGREE:
H.R.S. § 708-851(1)(a)

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

A person commits the offense of Forgery in the First Degree if, with intent to defraud, he/she falsely [makes] [completes] [endorses] [alters] a written instrument, or utters a forged instrument, [which is or purports to be] [which is calculated to become or to represent if completed] part of an issue of [stamps] [securities] [other valuable instruments issued by a government or governmental agency].

There are two material elements of the offense of Forgery 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 falsely [made] [completed] [endorsed] [altered] a written instrument, or uttered a forged instrument, [which is or purported to be] [which is calculated to become or to represent if completed] part of an issue of [stamps] [securities] [other valuable instruments issued by a government or governmental agency]; and

2. That the Defendant did so with the intent to defraud. "Intent to defraud" means that the Defendant either (a) intended to use deception to injure another person's interest, which had

value, in which case the required state of mind is "intentionally," or (b) knew that he/she was facilitating an injury to another person's interest, which had value, in which case the required state of mind is "knowingly."

"Complete written instrument" means a written instrument which purports to be genuine and fully drawn with respect to every essential feature thereof.

"Falsely alter", in relation to a written instrument, means to change, without the authority of the ostensible maker or drawer, a written instrument, whether complete or incomplete, by means of erasure, obliteration, deletion, insertion of new matter, transposition of matter, or in any other manner, so that the instrument so altered falsely appears or purports to be in all respects an authentic creation of its ostensible maker or authorized by that person.

"Falsely complete", in relation to a written instrument, means to transform, by adding, inserting, or changing matter, an incomplete written instrument into a complete one, without the authority of the ostensible maker or drawer, so that the complete written instrument falsely appears or purports to be in all respects an authentic creation of its ostensible maker or authorized by him.

"Falsely endorse", in relation to a written instrument, means to endorse, without the authority of the ostensible maker or drawer, any part of a written instrument, whether complete or incomplete, so that the written instrument so endorsed falsely

appears or purports to be authorized by the ostensible maker or drawer.

"Falsely make", in relation to a written instrument, means to make or draw a complete written instrument, or an incomplete written instrument, which purports to be an authentic creation of its ostensible maker, but which is not either because the ostensible maker is fictitious or because, if real, the person did not authorize the making or drawing thereof.

"Forged instrument" means a written instrument which has been falsely made, completed, or altered.

"Incomplete written instrument" means a written instrument which contains some matter by way of content or authentication but which requires additional matter in order to render it a complete written instrument.

"Utter", in relation to a forged instrument, means to offer, whether accepted or not, a forged instrument with representation by acts or words, oral or in writing, that the instrument is genuine.

"Written instrument" means:

- (a) Any paper, document, or other instrument containing written or printed matter or its equivalent; or
- (b) Any token, coin, stamp, seal, badge, trademark, or other evidence or symbol of value, right, privilege, or identification.

Notes

H.R.S. §§ 708-851(1)(a), 702-206(1) and (2).

See *State v. Shinyama*, 101 Hawai'i 389, 69 P.3d 517 (2003). (setting forth a suggested instruction for the offense of theft in the second degree by shoplifting, which contains the element of "intent to defraud").

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 - "government"
- 10.00 - "intent to defraud"

**FORGERY IN THE FIRST DEGREE:
H.R.S. § 708-851(1)(b)**

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

A person commits the offense of Forgery in the First Degree if, with intent to defraud, he/she falsely [makes] [completes] [endorses] [alters] a written instrument, or utters a forged instrument, [which is or purports to be] [which is calculated to become or to represent if completed] part of an issue of [stock] [bonds] [other instruments representing interests in or claims against a corporate or other organization or its property].

There are two material elements of the offense of Forgery 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 falsely [made] [completed] [endorsed] [altered] a written instrument, or uttered a forged instrument, [which is or purported to be] [which is calculated to become or to represent if completed] part of an issue of [stock] [bonds] [other instruments representing interests in or claims against a corporate or other organization or its property]; and

2. That the Defendant did so with the intent to defraud. "Intent to defraud" means that the Defendant either (a) intended to use deception to injure another person's interest, which had value, in which case the required state of mind is "intentionally," or (b) knew that he/she was facilitating an

injury to another person's interest, which had value, in which case the required state of mind is "knowingly."

"Falsely alter", in relation to a written instrument, means to change, without the authority of the ostensible maker or drawer, a written instrument, whether complete or incomplete, by means of erasure, obliteration, deletion, insertion of new matter, transposition of matter, or in any other manner, so that the instrument so altered falsely appears or purports to be in all respects an authentic creation of its ostensible maker or authorized by that person.

"Falsely complete", in relation to a written instrument, means to transform, by adding, inserting, or changing matter, an incomplete written instrument into a complete one, without the authority of the ostensible maker or drawer, so that the complete written instrument falsely appears or purports to be in all respects an authentic creation of its ostensible maker or authorized by him.

"Falsely endorse", in relation to a written instrument, means to endorse, without the authority of the ostensible maker or drawer, any part of a written instrument, whether complete or incomplete, so that the written instrument so endorsed falsely appears or purports to be authorized by the ostensible maker or drawer.

"Falsely make", in relation to a written instrument, means to make or draw a complete written instrument, or an incomplete written instrument, which purports to be an authentic creation of its ostensible maker, but which is not either because the

ostensible maker is fictitious or because, if real, the person did not authorize the making or drawing thereof.

"Forged instrument" means a written instrument which has been falsely made, completed, or altered.

"Incomplete written instrument" means a written instrument which contains some matter by way of content or authentication but which requires additional matter in order to render it a complete written instrument.

"Utter", in relation to a forged instrument, means to offer, whether accepted or not, a forged instrument with representation by acts or words, oral or in writing, that the instrument is genuine.

"Written instrument" means:

- (a) Any paper, document, or other instrument containing written or printed matter or its equivalent; or
- (b) Any token, coin, stamp, seal, badge, trademark, or other evidence or symbol of value, right, privilege, or identification.

Notes

H.R.S. §§ 708-851(1)(b), 708-850, 702-206(1) and (2).

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 - "intent to defraud"

See *State v. Shinyama*, 101 Hawai'i 389, 69 P.3d 517 (2003) (setting forth a suggested instruction for the offense of theft in the second degree by shoplifting, which contains the element of "intent to defraud").

FORGERY IN THE SECOND DEGREE:
H.R.S. § 708-852

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

A person commits the offense of Forgery in the Second Degree if, with intent to defraud, he/she falsely [makes] [completes] [endorses] [alters] a written instrument, or utters a forged instrument, which is or purports to be, or which is calculated to become or to represent if completed, a [deed] [will] [codicil] [contract] [assignment] [commercial instrument] [other instrument] which does or may evidence, create, transfer, terminate, or otherwise affect a legal right, interest, obligation, or status.

There are two material elements of the offense of Forgery 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 falsely [made] [completed] [endorsed] [altered] a written instrument, or uttered a forged instrument, which is or purported to be, or which is calculated to become or to represent if completed, a [deed] [will] [codicil] [contract] [assignment] [commercial instrument] [other

instrument] which does or may evidence, create, transfer, terminate, or otherwise affect a legal right, interest, obligation, or status; and

2. That the Defendant did so with the intent to defraud. "Intent to defraud" means that the Defendant either (a) intended to use deception to injure another person's interest, which had value, in which case the required state of mind is "intentionally," or (b) knew that he/she was facilitating an injury to another person's interest, which had value, in which case the required state of mind is "knowingly."

"Complete written instrument" means a written instrument which purports to be genuine and fully drawn with respect to every essential feature thereof.

"Falsely alter", in relation to a written instrument, means to change, without the authority of the ostensible maker or drawer, a written instrument, whether complete or incomplete, by means of erasure, obliteration, deletion, insertion of new matter, transposition of matter, or in any other manner, so that the instrument so altered falsely appears or purports to be in all respects an authentic creation of its ostensible maker or authorized by that person.

"Falsely complete", in relation to a written instrument, means to transform, by adding, inserting, or changing matter, an incomplete written instrument into a complete one, without the authority of the ostensible maker or drawer, so that the complete

written instrument falsely appears or purports to be in all respects an authentic creation of its ostensible maker or authorized by him.

"Falsely endorse", in relation to a written instrument, means to endorse, without the authority of the ostensible maker or drawer, any part of a written instrument, whether complete or incomplete, so that the written instrument so endorsed falsely appears or purports to be authorized by the ostensible maker or drawer.

"Falsely make", in relation to a written instrument, means to make or draw a complete written instrument, or an incomplete written instrument, which purports to be an authentic creation of its ostensible maker, but which is not either because the ostensible maker is fictitious or because, if real, the person did not authorize the making or drawing thereof.

"Forged instrument" means a written instrument which has been falsely made, completed, or altered.

"Incomplete written instrument" means a written instrument which contains some matter by way of content or authentication but which requires additional matter in order to render it a complete written instrument.

"Utter", in relation to a forged instrument, means to offer, whether accepted or not, a forged instrument with representation

by acts or words, oral or in writing, that the instrument is genuine.

"Written instrument" means:

- (a) Any paper, document, or other instrument containing written or printed matter or its equivalent; or
- (b) Any token, coin, stamp, seal, badge, trademark, or other evidence or symbol of value, right, privilege, or identification.

Notes

H.R.S. §§ 708-852, 708-850, 702-206(1) and (2).

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 - "intent to defraud"

See *State v. Shinyama*, 101 Hawai'i 389, 69 P.3d 517 (2003) (setting forth a suggested instruction for the offense of theft in the second degree by shoplifting, which contains the element of "intent to defraud").

**FORGERY IN THE THIRD DEGREE:
H.R.S. § 708-853**

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

A person commits the offense of Forgery in the Third Degree if, with intent to defraud, he/she falsely [makes] [completes] [endorses] [alters] a written instrument, or utters a forged instrument.

There are two material elements of the offense of Forgery in the Third 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 falsely [made] [completed] [endorsed] [altered] a written instrument, or uttered a forged instrument; and

2. That the Defendant did so with the intent to defraud. "Intent to defraud" means that the Defendant either (a) intended to use deception to injure another person's interest, which had value, in which case the required state of mind is "intentionally," or (b) knew that he/she was facilitating an injury to another person's interest, which had value, in which case the required state of mind is "knowingly."

"Complete written instrument" means a written instrument which purports to be genuine and fully drawn with respect to every essential feature thereof.

"Falsely alter", in relation to a written instrument, means to change, without the authority of the ostensible maker or drawer, a written instrument, whether complete or incomplete, by means of erasure, obliteration, deletion, insertion of new matter, transposition of matter, or in any other manner, so that the instrument so altered falsely appears or purports to be in all respects an authentic creation of its ostensible maker or authorized by that person.

"Falsely complete", in relation to a written instrument, means to transform, by adding, inserting, or changing matter, an incomplete written instrument into a complete one, without the authority of the ostensible maker or drawer, so that the complete written instrument falsely appears or purports to be in all respects an authentic creation of its ostensible maker or authorized by him.

"Falsely endorse", in relation to a written instrument, means to endorse, without the authority of the ostensible maker or drawer, any part of a written instrument, whether complete or incomplete, so that the written instrument so endorsed falsely appears or purports to be authorized by the ostensible maker or drawer.

"Falsely make", in relation to a written instrument, means to make or draw a complete written instrument, or an incomplete written instrument, which purports to be an authentic creation of its ostensible maker, but which is not either because the

ostensible maker is fictitious or because, if real, the person did not authorize the making or drawing thereof.

"Forged instrument" means a written instrument which has been falsely made, completed, or altered.

"Incomplete written instrument" means a written instrument which contains some matter by way of content or authentication but which requires additional matter in order to render it a complete written instrument.

"Utter", in relation to a forged instrument, means to offer, whether accepted or not, a forged instrument with representation by acts or words, oral or in writing,* that the instrument is genuine.

"Written instrument" means:

- (a) Any paper, document, or other instrument containing written or printed matter or its equivalent; or
- (b) Any token, coin, stamp, seal, badge, trademark, or other evidence or symbol of value, right, privilege, or identification.

Notes

H.R.S. §§ 708-853, 708-850, 702-206(1) and (2).

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 - "intent to defraud"

See *State v. Shinyama*, 101 Hawai`i 389, 69 P.3d 517
(2003) (setting forth a suggested instruction for the offense of
theft in the second degree by shoplifting, which contains the
element of "intent to defraud").

10.36

**FRAUDULENT USE OF A CREDIT CARD --
USES, ATTEMPTS OR CONSPIRES TO USE:
H.R.S. § 708-8100(1)(a)**

[In Count (count number) of the Indictment/Complaint, the] [The] Defendant, (defendant's name), is charged with the offense of Fraudulent Use of a Credit Card.

A person commits the offense of Fraudulent Use of a Credit Card, if with intent to defraud [the issuer] [another person or organization providing money, goods, services, or anything else of value] [any other person], the person [uses] [attempts to use] [conspires to use], for the purpose of obtaining [money] [goods] [services] [anything else of value] that together exceeds \$300 in any six-month period a credit card [obtained or retained in violation of the law prohibiting theft of a credit card] [which the person knows is forged, expired, or revoked].

There are four material elements of the offense of Fraudulent Use of a Credit Card, 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] [attempted to use] [conspired to use] a credit card [obtained or retained in violation of the law prohibiting theft of a credit card] [which the person knows is forged, expired, or revoked]; and

2. That the Defendant did so for the purpose of obtaining [money] [goods] [services] [anything else of value]; and

3. That together the [money] [goods] [services] [anything else of value] exceeded \$300 in any six-month period; and

4. That the Defendant did so with intent to defraud [the issuer] [another person or organization providing money, goods, services, or anything else of value] [any other person]. "Intent to defraud" means that the Defendant either (a) intended to use deception to injure [the issuer's interest][the interest of another person or organization providing money, goods, services, or anything else][any other person's interest], which had value, in which case the requisite state of mind as to each of the foregoing elements is "intentionally," or (b) knew that he/she was facilitating an injury to [the issuer's interest][the interest of another person or organization providing money, goods, services, or anything else][any other person's interest], which had value, in which case the requisite state of mind as to each of the foregoing elements is "knowingly."

Notes

H.R.S. § 708-8100(1)(a), 702-206(1) and (2).

When the court elects the alternative involving violation of the law prohibiting Theft of a Credit Card, the court must instruct the jury on the elements of Theft of a Credit Card. See H.R.S. § 708-8102 and instructions 10.39 - 10.42.

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 - "credit card"

10.00 - "expired credit card"

- 10.00 - "intent to defraud"
- 10.00 - "issuer"
- 10.00 - "revoked credit card"

See *State v. Shinyama*, 101 Hawai'i 389, 69 P.3d 517 (2003) (setting forth a suggested instruction for the offense of theft in the second degree by shoplifting, which contains the element of "intent to defraud").

For elements of conspiracy, see instruction 14.05.

For prima facie inference when the notice of revocation was mailed to Defendant at the address set forth on the credit card or at the last known address by registered or certified mail, return receipt requested, and, if the address was more than 500 miles from the place of mailing by air mail, see instruction 10.36A.

10.37

**FRAUDULENT USE OF A CREDIT CARD --
OBTAINS, ATTEMPTS TO OBTAIN OR CONSPIRES TO OBTAIN :
H.R.S. § 708-8100(1)(b)**

[In Count (count number) of the Indictment/Complaint, the] [The] Defendant, (defendant's name), is charged with the offense of Fraudulent Use of a Credit Card.

A person commits the offense of Fraudulent Use of a Credit Card, if with intent to defraud [the issuer] [another person or organization providing money, goods, services, or anything else of value] [any other person], the person [obtains] [attempts to obtain] [conspires to obtain], [money] [goods] [services] [anything else of value] that together exceeds \$300 in any six-month period [by representing without the consent of the cardholder that the person is the holder of a specified card] [by representing that the person is the holder of a card and such card has not in fact been issued].

There are four material elements of the offense of Fraudulent Use of a Credit Card, 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 [obtained] [attempted to obtain] [conspired to obtain], [money] [goods] [services] [anything else of value]; and

2. That the [money] [goods] [services] [anything else of value] together exceeded \$300 in any six-month period; and

3. That the Defendant did so [by representing without the consent of the cardholder that the person is the holder of a specified card] [by representing that the person is the holder of a card and such card has not in fact been issued]; and

4. That the Defendant did so with intent to defraud [the issuer] [another person or organization providing money, goods, services, or anything else of value] [any other person]. "Intent to defraud" means that the Defendant either (a) intended to use deception to injure [the issuer's interest][the interest of another person or organization providing money, goods, services, or anything else][any other person's interest], which had value, in which case the requisite state of mind as to each of the foregoing elements is "intentionally," or (b) knew that he/she was facilitating an injury to [the issuer's interest][the interest of another person or organization providing money, goods, services, or anything else][any other person's interest], which had value, in which case the requisite state of mind as to each of the foregoing elements is "knowingly."

Notes

H.R.S. § 708-8100(1)(b), 702-206(1) and (2).

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 - "cardholder"
- 10.00 - "credit card"

10.00 - "intent to defraud"
10.00 - "issuer"

See State v. Shinyama, 101 Hawai`i 389, 69 P.3d 517 (2003) (setting forth a suggested instruction for the offense of theft in the second degree by shoplifting, which contains the element of "intent to defraud").

For elements of conspiracy, see instruction 14.05.

10.38 **FRAUDULENT USE OF A CREDIT CARD -- USES,
ATTEMPTS TO USE OR CONSPIRES TO USE A CREDIT CARD NUMBER :**
 H.R.S. § 708-8100(1)(c)

[In Count (count number) of the Indictment/Complaint, the] [The] Defendant, (defendant's name), is charged with the offense of Fraudulent Use of a Credit Card.

A person commits the offense of Fraudulent Use of a Credit Card, if with intent to defraud [the issuer] [another person or organization providing money, goods, services, or anything else of value] [any other person], the person [uses] [attempts to use] [conspires to use] a credit card number without the consent of the cardholder for the purpose of obtaining [money] [goods] [services] [anything else of value] that together exceeds \$300 in any six-month period.

There are five material elements of the offense of Fraudulent Use of a Credit Card, 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] [attempted to use] [conspired to use] a credit card number of a cardholder; and
2. That the Defendant did so for the purpose of obtaining [money] [goods] [services] [anything else of value]; and
3. That the value of the [money] [goods] [services] [anything else of value] together exceeded \$300 in any six-month period; and

4. That the Defendant did so without the cardholder's consent; and

5. That the Defendant did so with intent to defraud [the issuer] [another person or organization providing money, goods, services, or anything else of value] [any other person]. "Intent to defraud" means that the Defendant either (a) intended to use deception to injure [the issuer's interest][the interest of another person or organization providing money, goods, services, or anything else][any other person's interest], which had value, in which case the requisite state of mind as to each of the foregoing elements is "intentionally," or (b) knew that he/she was facilitating an injury to [the issuer's interest][the interest of another person or organization providing money, goods, services, or anything else][any other person's interest], which had value, in which case the requisite state of mind as to each of the foregoing elements is "knowingly."

Notes

H.R.S. § 708-8100(1)(c), 702-206(1) and (2).

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 - "cardholder"
- 10.00 - "credit card"
- 10.00 - "intent to defraud"
- 10.00 - "issuer"

See *State v. Shinyama*, 101 Hawai'i 389, 69 P.3d 517 (2003) (setting forth a suggested instruction for the offense of theft in the second degree by shoplifting, which contains the element of "intent to defraud").

For definition of "consent", see instruction 7.05.

For elements of conspiracy, see instruction 14.05.

16.08

**HABITUALLY OPERATING A VEHICLE
UNDER THE INFLUENCE OF AN INTOXICANT
H.R.S. § 291E-61.5(a)(1)and(2)(A)--Alcohol Impairment**

[In Count (count number) of the Indictment/Complaint, the] [The] Defendant, (defendant's name), is charged with the offense of Habitually Operating a Vehicle under the Influence of an Intoxicant.

A person commits the offense of Habitually Operating a Vehicle under the Influence of an Intoxicant if the person is a habitual operator of a vehicle while under the influence of an intoxicant and the person operates or assumes actual physical control of a vehicle while under the influence of alcohol in an amount sufficient to impair the person's normal mental faculties or ability to care for the person and guard against casualty.

There are four material elements of the offense of Habitually Operating a Vehicle under the Influence of an Intoxicant, 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 was a habitual operator of a vehicle while under the influence of an intoxicant; and
2. That Defendant, at that time, operated or assumed actual physical control of a vehicle; and
3. That Defendant, at that time, was under the influence of alcohol in an amount sufficient to impair Defendant's normal

mental faculties or ability to care for Defendant and guard against casualty; and

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

"Habitual operator of a vehicle while under the influence of an intoxicant" means a person who has been convicted three or more times within ten years of the instant offense, for offenses of operating a vehicle under the influence of an intoxicant.

"Convicted three or more times for offenses of operating a vehicle under the influence" means that, at the time of the behavior for which the person is charged with Habitually Operating a Vehicle under the Influence of an Intoxicant, the person had three or more times within ten years of the instant offense:

(1) A judgment on a verdict or a finding of guilty, or a plea of guilty or nolo contendere, for a violation of [Habitually Operating a Vehicle under the Influence of an Intoxicant] [Driving under the Influence of Intoxicating Liquor] [Habitually Driving under the Influence of Intoxicating Liquor or Drugs] [Driving Under the Influence of Drugs];

(2) A judgment on a verdict or a finding of guilty, or a plea of guilty or nolo contendere, for an offense that is comparable to [Habitually Operating a Vehicle under the Influence of an Intoxicant] [Driving under the Influence of

Intoxicating Liquor] [Habitually Driving under the Influence of Intoxicating Liquor or Drugs] [Driving Under the Influence of Drugs] [Operating a Vehicle Under the Influence of an Intoxicant] [Negligent Homicide in the First Degree];
or

(3) An adjudication of a minor for a law or probation violation that, if committed by an adult, would constitute a violation of [Habitually Operating a Vehicle under the Influence of an Intoxicant] [Driving under the Influence of Intoxicating Liquor] [Habitually Driving under the Influence of Intoxicating Liquor or Drugs] [Driving Under the Influence of Drugs] [Operating a Vehicle Under the Influence of an Intoxicant] [Negligent Homicide in the First Degree]; that, at the time of the instant offense, had not been expunged by pardon, reversed, or set aside. All convictions that have been expunged by pardon, reversed, or set aside prior to the instant offense shall not be deemed prior convictions for the purposes of proving the person's status as a habitual operator of a vehicle while under the influence of an intoxicant.

Notes

H.R.S. §§ 291E-61.5(a)(1) and (2)(A).

For definition of state of mind, see instructions:

6.02--"intentionally"

6.03--"knowingly"

6.04--"recklessly"

For the basis of the applicable state of mind, see HRS § 702-204, *State v. Vliet*, 95 Hawai'i 94, 100-01, 19 P.3d 42, 48-49 (2001) (the state of mind required under HRS § 291-4.4 (repealed) (Habitually driving under the influence of intoxicating liquor or

drugs), absent one specified in the statute itself and applying HRS § 702-204, is intentional, knowing, or reckless).

For definitions of terms defined by H.R.S. Chapter 291E, see instructions:

16.00--"alcohol"
16.00--"impair"
16.00--"intoxicant"
16.00--"operate"
16.00--"under the influence"
16.00--"vehicle"

16.09

**HABITUALLY OPERATING A VEHICLE
UNDER THE INFLUENCE OF AN INTOXICANT
H.R.S. § 291E-61.5(a)(1) and (2)(B)--Drug**

[In Count (count number) of the Indictment/Complaint, the] [The] Defendant, (defendant's name), is charged with the offense of Habitually Operating a Vehicle under the Influence of an Intoxicant.

A person commits the offense of Habitually Operating a Vehicle under the Influence of an Intoxicant if the person is a habitual operator of a vehicle while under the influence of an intoxicant and the person operates or assumes actual physical control of a vehicle while under the influence of any drug that impairs the person's ability to operate the vehicle in a careful and prudent manner.

There are four material elements of the offense of Habitually Operating a Vehicle under the Influence of an Intoxicant, 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 was a habitual operator of a vehicle while under the influence of an intoxicant; and
2. That Defendant, at that time, operated or assumed actual physical control of a vehicle; and
3. That Defendant, at that time, was under the influence of any drug that impaired Defendant's ability to operate a vehicle in a careful and prudent manner; and

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

"Habitual operator of a vehicle while under the influence of an intoxicant" means a person who has been convicted three or more times within ten years of the instant offense, for offenses of operating a vehicle under the influence of an intoxicant.

"Convicted three or more times for offenses of operating a vehicle under the influence" means that, at the time of the behavior for which the person is charged with Habitually Operating a Vehicle under the Influence of an Intoxicant, the person had three or more times within ten years of the instant offense:

(1) A judgment on a verdict or a finding of guilty, or a plea of guilty or nolo contendere, for a violation of [Habitually Operating a Vehicle under the Influence of an Intoxicant] [Driving under the Influence of Intoxicating Liquor] [Habitually Driving under the Influence of Intoxicating Liquor or Drugs] [Driving Under the Influence of Drugs];

(2) A judgment on a verdict or a finding of guilty, or a plea of guilty or nolo contendere, for an offense that is comparable to [Habitually Operating a Vehicle under the Influence of an Intoxicant] [Driving under the Influence of Intoxicating Liquor] [Habitually Driving under the Influence of Intoxicating Liquor or Drugs] [Driving Under the

Influence of Drugs] [Operating a Vehicle Under the Influence of an Intoxicant] [Negligent Homicide in the First Degree];
or

(3) An adjudication of a minor for a law or probation violation that, if committed by an adult, would constitute a violation of [Habitually Operating a Vehicle under the Influence of an Intoxicant] [Driving under the Influence of Intoxicating Liquor] [Habitually Driving under the Influence of Intoxicating Liquor or Drugs] [Driving Under the Influence of Drugs] [Operating a Vehicle Under the Influence of an Intoxicant] [Negligent Homicide in the First Degree]; that, at the time of the instant offense, had not been expunged by pardon, reversed, or set aside. All convictions that have been expunged by pardon, reversed, or set aside prior to the instant offense shall not be deemed prior convictions for the purposes of proving the person's status as a habitual operator of a vehicle while under the influence of an intoxicant.

Notes

H.R.S. §§ 291E-61.5(a)(1) and (2)(B).

For definition of state of mind, see instructions:

6.02--"intentionally"

6.03--"knowingly"

6.04--"recklessly"

For the basis of the applicable state of mind, see HRS § 702-204, *State v. Vliet*, 95 Hawai'i 94, 100-01, 19 P.3d 42, 48-49 (2001) (the state of mind required under HRS § 291-4.4 (repealed) (Habitually driving under the influence of intoxicating liquor or drugs), absent one specified in the statute itself and applying HRS § 702-204, is intentional, knowing, or reckless).

For definitions of terms defined by H.R.S. Chapter 291E, see instructions:

16.00--"drug"
16.00--"impair"
16.00--"intoxicant"
16.00--"operate"
16.00--"under the influence"
16.00--"vehicle"

16.10

**HABITUALLY OPERATING A VEHICLE
UNDER THE INFLUENCE OF AN INTOXICANT
H.R.S. § 291E-61.5(a)(1)and(2)(C)--.08 Breath Alcohol**

[In Count (count number) of the Indictment/Complaint, the] [The] Defendant, (defendant's name), is charged with the offense of Habitually Operating a Vehicle under the Influence of an Intoxicant.

A person commits the offense of Habitually Operating a Vehicle under the Influence of an Intoxicant if the person is a habitual operator of a vehicle while under the influence of an intoxicant and the person operates or assumes actual physical control of a vehicle with .08 or more grams of alcohol per two hundred ten (210) liters of breath.

There are three material elements of the offense of Habitually Operating a Vehicle under the Influence of an Intoxicant, 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 intentionally, knowingly, or recklessly was a habitual operator of a vehicle while under the influence of an intoxicant; and
2. That Defendant, at that time, operated or assumed actual physical control of a vehicle; and
3. That Defendant, at that time, had .08 or more grams of alcohol per two hundred ten (210) liters of breath.

"Habitual operator of a vehicle while under the influence of an intoxicant" means a person who has been convicted three or more times within ten years of the instant offense, for offenses of operating a vehicle under the influence of an intoxicant.

"Convicted three or more times for offenses of operating a vehicle under the influence" means that, at the time of the behavior for which the person is charged with Habitually Operating a Vehicle under the Influence of an Intoxicant, the person had three or more times within ten years of the instant offense:

(1) A judgment on a verdict or a finding of guilty, or a plea of guilty or nolo contendere, for a violation of [Habitually Operating a Vehicle under the Influence of an Intoxicant] [Driving under the Influence of Intoxicating Liquor] [Habitually Driving under the Influence of Intoxicating Liquor or Drugs] [Driving Under the Influence of Drugs];

(2) A judgment on a verdict or a finding of guilty, or a plea of guilty or nolo contendere, for an offense that is comparable to [Habitually Operating a Vehicle under the Influence of an Intoxicant] [Driving under the Influence of Intoxicating Liquor] [Habitually Driving under the Influence of Intoxicating Liquor or Drugs] [Driving Under the Influence of Drugs] [Operating a Vehicle Under the Influence

of an Intoxicant] [Negligent Homicide in the First Degree];
or

(3) An adjudication of a minor for a law or probation violation that, if committed by an adult, would constitute a violation of [Habitually Operating a Vehicle under the Influence of an Intoxicant] [Driving under the Influence of Intoxicating Liquor] [Habitually Driving under the Influence of Intoxicating Liquor or Drugs] [Driving Under the Influence of Drugs] [Operating a Vehicle Under the Influence of an Intoxicant] [Negligent Homicide in the First Degree]; that, at the time of the instant offense, had not been expunged by pardon, reversed, or set aside. All convictions that have been expunged by pardon, reversed, or set aside prior to the instant offense shall not be deemed prior convictions for the purposes of proving the person's status as a habitual operator of a vehicle while under the influence of an intoxicant.

Notes

H.R.S. §§ 291E-61.5(a)(1) and (2)(C).

For definition of state of mind, see instructions:

6.02--"intentionally"

6.03--"knowingly"

6.04--"recklessly"

For the basis of the applicable state of mind, see HRS § 702-204, *State v. Vliet*, 95 Hawai'i 94, 100-01, 19 P.3d 42, 48-49 (2001) (a case where the Intoxilyzer reading was under .08, and the .08 for the time of the offense was extrapolated, the state of mind required under HRS § 291-4.4 (repealed) (Habitually driving under the influence of intoxicating liquor or drugs), absent one specified in the statute itself and applying HRS § 702-204, is intentional, knowing, or reckless); however, also see *State v. Young*, 8 Haw. App. 145, 795 P.2d 285 (1990) (DUI of .08

16.10

**HABITUALLY OPERATING A VEHICLE
UNDER THE INFLUENCE OF AN INTOXICANT
H.R.S. § 291E-61.5(a)(1)and(2)(C)--.08 Breath Alcohol**

[In Count (count number) of the Indictment/Complaint, the] [The] Defendant, (defendant's name), is charged with the offense of Habitually Operating a Vehicle under the Influence of an Intoxicant.

A person commits the offense of Habitually Operating a Vehicle under the Influence of an Intoxicant if the person is a habitual operator of a vehicle while under the influence of an intoxicant and the person operates or assumes actual physical control of a vehicle with .08 or more grams of alcohol per two hundred ten (210) liters of breath.

There are three material elements of the offense of Habitually Operating a Vehicle under the Influence of an Intoxicant, 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 intentionally, knowingly, or recklessly was a habitual operator of a vehicle while under the influence of an intoxicant; and
2. That Defendant, at that time, operated or assumed actual physical control of a vehicle; and
3. That Defendant, at that time, had .08 or more grams of alcohol per two hundred ten (210) liters of breath.

"Habitual operator of a vehicle while under the influence of an intoxicant" means a person who has been convicted three or more times within ten years of the instant offense, for offenses of operating a vehicle under the influence of an intoxicant.

"Convicted three or more times for offenses of operating a vehicle under the influence" means that, at the time of the behavior for which the person is charged with Habitually Operating a Vehicle under the Influence of an Intoxicant, the person had three or more times within ten years of the instant offense:

(1) A judgment on a verdict or a finding of guilty, or a plea of guilty or nolo contendere, for a violation of [Habitually Operating a Vehicle under the Influence of an Intoxicant] [Driving under the Influence of Intoxicating Liquor] [Habitually Driving under the Influence of Intoxicating Liquor or Drugs] [Driving Under the Influence of Drugs];

(2) A judgment on a verdict or a finding of guilty, or a plea of guilty or nolo contendere, for an offense that is comparable to [Habitually Operating a Vehicle under the Influence of an Intoxicant] [Driving under the Influence of Intoxicating Liquor] [Habitually Driving under the Influence of Intoxicating Liquor or Drugs] [Driving Under the Influence of Drugs] [Operating a Vehicle Under the Influence

of an Intoxicant] [Negligent Homicide in the First Degree];
or

(3) An adjudication of a minor for a law or probation violation that, if committed by an adult, would constitute a violation of [Habitually Operating a Vehicle under the Influence of an Intoxicant] [Driving under the Influence of Intoxicating Liquor] [Habitually Driving under the Influence of Intoxicating Liquor or Drugs] [Driving Under the Influence of Drugs] [Operating a Vehicle Under the Influence of an Intoxicant] [Negligent Homicide in the First Degree]; that, at the time of the instant offense, had not been expunged by pardon, reversed, or set aside. All convictions that have been expunged by pardon, reversed, or set aside prior to the instant offense shall not be deemed prior convictions for the purposes of proving the person's status as a habitual operator of a vehicle while under the influence of an intoxicant.

Notes

H.R.S. §§ 291E-61.5(a)(1) and (2)(C).

For definition of state of mind, see instructions:

6.02--"intentionally"

6.03--"knowingly"

6.04--"recklessly"

For the basis of the applicable state of mind, see HRS § 702-204, *State v. Vliet*, 95 Hawai'i 94, 100-01, 19 P.3d 42, 48-49 (2001) (a case where the Intoxilyzer reading was under .08, and the .08 for the time of the offense was extrapolated, the state of mind required under HRS § 291-4.4 (repealed) (Habitually driving under the influence of intoxicating liquor or drugs), absent one specified in the statute itself and applying HRS § 702-204, is intentional, knowing, or reckless); however, also see *State v. Young*, 8 Haw. App. 145, 795 P.2d 285 (1990) (DUI of .08

or more is an absolute liability offense). The Committee applied absolute liability to the elements of the underlying OUI offense, and an intentional, knowing, or reckless state of mind to the remaining element.

Effective June 29, 1995, the statutory threshold for commission of the offense of Driving under the Influence of Intoxicating Liquor was reduced from .10 BAC level to .08 BAC level.

For definitions of terms defined by H.R.S. Chapter 291E, see instructions:

16.00--"alcohol"
16.00--"intoxicant"
16.00--"operate"
16.00--"under the influence"
16.00--"vehicle"

For "margin of error," see Instruction 16.06

For "inference from .08 level," see Instruction 16.07

16.11

**HABITUALLY OPERATING A VEHICLE
UNDER THE INFLUENCE OF AN INTOXICANT**

H.R.S. § 291E-61.5(a)(1)and(2)(D)--.08 Blood Alcohol

[In Count (count number) of the Indictment/Complaint, the] [The] Defendant, (defendant's name), is charged with the offense of Habitually Operating a Vehicle under the Influence of an Intoxicant.

A person commits the offense of Habitually Operating a Vehicle under the Influence of an Intoxicant if the person is a habitual operator of a vehicle while under the influence of an intoxicant and the person operates or assumes actual physical control of a vehicle with .08 or more grams of alcohol per one hundred (100) milliliters or cubic centimeters of blood.

There are three material elements of the offense of Habitually Operating a Vehicle under the Influence of an Intoxicant, 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 intentionally, knowingly, or recklessly was a habitual operator of a vehicle while under the influence of an intoxicant; and

2. That Defendant, at that time, operated or assumed actual physical control of a vehicle; and

3. That Defendant, at that time, had .08 or more grams of alcohol per one hundred (100) milliliters or cubic centimeters of blood.

"Habitual operator of a vehicle while under the influence of an intoxicant" means a person who has been convicted three or more times within ten years of the instant offense, for offenses of operating a vehicle under the influence of an intoxicant.

"Convicted three or more times for offenses of operating a vehicle under the influence" means that, at the time of the behavior for which the person*is charged with Habitually Operating a Vehicle under the Influence of an Intoxicant, the person had three or more times within ten years of the instant offense:

(1) A judgment on a verdict or a finding of guilty, or a plea of guilty or nolo contendere, for a violation of [Habitually Operating a Vehicle under the Influence of an Intoxicant] [Driving under the Influence of Intoxicating Liquor] [Habitually Driving under the Influence of Intoxicating Liquor or Drugs] [Driving Under the Influence of Drugs];

(2) A judgment on a verdict or a finding of guilty, or a plea of guilty or nolo contendere, for an offense that is comparable to [Habitually Operating a Vehicle under the Influence of an Intoxicant] [Driving under the Influence of Intoxicating Liquor] [Habitually Driving under the Influence

of Intoxicating Liquor or Drugs] [Driving Under the Influence of Drugs] [Operating a Vehicle Under the Influence of an Intoxicant] [Negligent Homicide in the First Degree];
or

(3) An adjudication of a minor for a law or probation violation that, if committed by an adult, would constitute a violation of [Habitually Operating a Vehicle under the Influence of an Intoxicant] [Driving under the Influence of Intoxicating Liquor] [Habitually Driving under the Influence of Intoxicating Liquor or Drugs] [Driving Under the Influence of Drugs] [Operating a Vehicle Under the Influence of an Intoxicant] [Negligent Homicide in the First Degree]; that, at the time of the instant offense, had not been expunged by pardon, reversed, or set aside. All convictions that have been expunged by pardon, reversed, or set aside prior to the instant offense shall not be deemed prior convictions for the purposes of proving the person's status as a habitual operator of a vehicle while under the influence of an intoxicant.

Notes

H.R.S. §§ 291E-61.5(a)(1) and (2)(D).

For definition of state of mind, see instructions:

6.02--"intentionally"
6.03--"knowingly"
6.04--"recklessly"

For the basis of the applicable state of mind, see HRS § 702-204, *State v. Vliet*, 95 Hawai'i 94, 100-01, 19 P.3d 42, 48-49 (2001) (a case where the Intoxilyzer reading was under .08, and the .08 for the time of the offense was extrapolated, the state of mind required under HRS § 291-4.4 (repealed) (Habitually

driving under the influence of intoxicating liquor or drugs), absent one specified in the statute itself and applying HRS § 702-204, is intentional, knowing, or reckless); however, also see *State v. Young*, 8 Haw. App. 145, 795 P.2d 285 (1990) (DUI of .08 or more is an absolute liability offense). The Committee applied absolute liability to the elements of the underlying OUI offense, and an intentional, knowing, or reckless state of mind to the remaining element.

Effective June 29, 1995, the statutory threshold for commission of the offense of Driving under the Influence of Intoxicating Liquor was reduced from .10 BAC level to .08 BAC level.

For definitions of terms defined by H.R.S. Chapter 291E, see instructions:

16.00--"alcohol"
16.00--"intoxicant"
16.00--"operate"
16.00--"under the influence"
16.00--"vehicle"

For "margin of error," see Instruction 16.06

For "inference from .08 level," see Instruction 16.07