

IN THE SUPREME COURT OF THE STATE OF HAWAII

EM. RIMANDO  
CLERK, APPELLATE COURTS  
STATE OF HAWAII

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FILED

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

ORDER APPROVING PUBLICATION AND DISTRIBUTION  
OF HAWAI'I PATTERN JURY INSTRUCTIONS - CRIMINAL  
(By: Moon, C.J., Levinson, Nakayama, Acoba, and Duffy, JJ.)

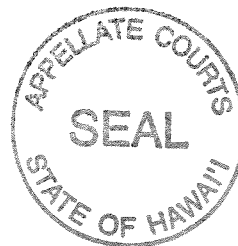
Upon consideration of the Pattern Criminal Jury Instructions Standing Committee's request to publish and distribute (1) the addition of Criminal Jury Instructions 2.10, 7.15, 13.54, 13.54A, 13.55, 13.55A, 13.56, 13.56A, 13.57, and 13.57A to the Hawai'i Pattern Jury Instructions - Criminal and (2) revisions to Criminal Instructions 10.05A, 10.07, 10.09, 10.11, 10.12, 10.13, 10.14, 10.18, 10.19, 10-20, 10-22, and 10.23,

IT IS HEREBY ORDERED, that the attached criminal jury instructions 2.10, 7.15, 10.05A, 10.07, 10.09, 10.11, 10.12, 10.13, 10.14, 10.18, 10.19, 10.20, 10.22, 10.23, 13.54, 13.54A, 13.55, 13.55A, 13.56, 13.56A, 13.57, and 13.57A are approved for publication and distribution.

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

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

DATED: Honolulu, Hawai'i, February 28, 2006.



*Gymon*

*Scott Levinson*

*Huihua Nakayama*

*Thomas E. Dully, Jr.*

2.10 CAUTIONARY INSTRUCTION DURING TRIAL REGARDING TRANSCRIPT  
OF TAPE RECORDED STATEMENT

A tape recording of the Defendant's statement has been received in evidence and is about to be played for you. A typewritten transcript of this tape recorded statement is being furnished to you solely for your convenience in assisting you in following the conversation or in identifying the speakers.

The tape itself, however, is evidence in the case and the typewritten transcript is not evidence. What you hear on the tape is evidence. What you read on the transcript is not. If you perceive any variation between the two, you will be guided solely by the tape and not by the transcript.

If you cannot, for example, determine from the tape recording that 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 those words or that speaker is concerned.

[You will notice that portions of the tape recorded interview and the statement 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.

7.15

**USE OF FORCE BY PERSONS WITH SPECIAL RESPONSIBILITY FOR CARE, DISCIPLINE, OR SAFETY OF OTHERS - MINORS AND INCOMPETENT PERSONS: H.R.S. § 703-309(1) and (3)**

Justifiable use of force a person with special responsibility for care, discipline, or safety of others is a defense to the charge of (specify charge and its included offenses) when all of the following circumstances are present:

- (1) The Defendant was a [parent of a minor] [guardian of a minor] [person similarly responsible to a parent or guardian for the general care and supervision of a minor] [person acting at the request of the parent, guardian, or other responsible person of a minor] [guardian of an incompetent person] [other person similarly responsible to a guardian for the general care and supervision of an incompetent person];
- (2) The Defendant's use of force was employed with due regard to the age and size of the [minor] [incompetent person] and was reasonably related to the purpose of safeguarding or promoting the welfare of the [minor] [incompetent person], including [the prevention or punishment of misconduct of the minor] [the prevention of the incompetent person's misconduct] [the maintenance of reasonable discipline in a hospital or other institution responsible for the incompetent person's care and custody]; and
- (3) The force used was not designed to cause, or known to create a risk of causing, substantial bodily injury, disfigurement, extreme pain or mental distress, or neurological damage.

The burden is on the prosecution to prove beyond a reasonable doubt that the Defendant's use of force was not justified. If you unanimously find that the prosecution proved beyond a reasonable doubt that any one of these three circumstances did not exist, then the Defendant's use of force was not justified.

Where force is used for the purpose of punishing misconduct, "reasonably related" means that the use of force must be both reasonably proportional to the misconduct being punished and

reasonably believed necessary to protect the welfare of the  
[minor] [incompetent person].

#### Notes

H.R.S. § 703-309(1) & (3).

For the following definitions, see instructions:

7.01--"Force"

9.00--"Substantial bodily injury"

*See State v. Crouser*, 81 Hawai`i, 5, 12, 911 P.2d 725, 732  
(1996) (defining "reasonably related" which was applied when the  
use of force was for the purpose of punishing the misconduct).

For Commentary and Supplemental Commentary on H.R.S. § 703-  
310, see HAWJIC 7.01.

10.05A CRIMINAL PROPERTY DAMAGE IN THE FIRST DEGREE --  
DAMAGE EXCEEDS \$20,000:  
H.R.S. § 708-820(1)(b)  
(Applicable to offenses occurring on or after June 17, 1996)

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

A person commits the offense of Criminal Property Damage in the First Degree if he/she intentionally or knowingly damages the property of another, without the other's consent, in an amount exceeding \$20,000.

There are five material elements of the offense of Criminal Property Damage 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 damaged the property of another;  
and
2. That the Defendant did so without the other's consent;  
and
3. That the Defendant did so intentionally or knowingly;  
and
4. That the Defendant was aware or believed the damage to

the property exceeded \$20,000; and

5. That the damage to the property exceeded \$20,000.

#### Notes

H.R.S. §§ 708-820(1)(B), 702-206(1).

For definition of states of mind, see instructions:

6.02--"intentionally"

6.03--"knowingly"

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

10.00--"property"

10.00--"property of another"

For prima facie inference and defense regarding defendant's state of mind as to the value of the property, see instruction 10.00A(2) which embodies the statutory language of H.R.S. §708-801 (valuation of property). However, "H.R.S. §708-801, by its clear terms, applies only when 'the value of property or services is determinative of the class or grade of an offense'... H.R.S. §708-822 does not, on its face, require a determination of the value of property; H.R.S. §708-822 refers to the amount of damage done by the offender not the value of the property damaged." *State v. Pardee*, 86 Hawai'i 165, 168, 948 P.2d 586, 589 (App. 1997) (emphasis added). The Intermediate Court also found that even if H.R.S. §708-801 was applicable to criminal property damage offenses, the value of the damaged items had been sufficiently proved.



10.07 CRIMINAL PROPERTY DAMAGE IN THE SECOND DEGREE:  
H.R.S. § 708-821(1)(b)

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

A person commits the offense of Criminal Property Damage in the Second Degree if he/she intentionally or knowingly damages the property of another, without the other's consent, in an amount exceeding [\$1,500\*] [\$500].

There are five material elements of the offense of Criminal Property Damage 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 damaged the property of another; and

2. That the Defendant did so without the other's consent; and

3. That the Defendant did so intentionally or knowingly; and

4. That the Defendant was aware or believed the damage to the property exceeded [\$1,500\*] [\$500]; and

5. That the damage to the property exceeded [\$1,500\*]  
[\$500].

#### Notes

H.R.S. §§ 708-821(1)(b), 702-206(1).

For definition of states of mind, see instructions:

6.02--"intentionally"

6.03--"knowingly"

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

10.00--"owner"

10.00--"property of another"

For prima facie inference and defense regarding defendant's state of mind as to the value of the property, see instruction 10.00A(2) which embodies the statutory language of H.R.S. §708-801 (valuation of property). However, "H.R.S. §708-801, by its clear terms, applies only when 'the value of property or services is determinative of the class or grade of an offense'... H.R.S. §708-822 does not, on its face, require a determination of the value of property; H.R.S. §708-822 refers to the amount of damage done by the offender not the value of the property damaged." *State v. Pardee*, 86 Hawai`i 165, 168, 948 P.2d 586, 589 (App. 1997) (emphasis added). The Intermediate Court also found that even if H.R.S. §708-801 was applicable to criminal property damage offenses, the value of the damaged items had been sufficiently proved.

\*The \$1,500 amount is applicable to offenses that occurred on or after June 17, 1996.

10.09 CRIMINAL PROPERTY DAMAGE IN THE THIRD DEGREE:  
HRS § 708-822(1)(b)

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

A person commits the offense of Criminal Property Damage in  
the Third Degree if he/she intentionally damages the property of  
another, without the other's consent, in an amount exceeding  
[\$500\*] [\$100].

There are five material elements of the offense of Criminal  
Property Damage in the Third 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 damaged the property of another;  
and
2. That the Defendant did so without the other's consent;  
and
3. That the Defendant did so intentionally; and
4. That the Defendant was aware or believed the damage to  
the property exceeded [\$500\*] [\$100]; and
5. That the damage to the property exceeded [\$500\*]  
[\$100].

## Notes

H.R.S. §§ 708-822(1)(b), 702-206(1).

For definition of states of mind, see instruction:  
6.02 - "intentionally"

For definition of terms defined by HRS Chapter 708, see instructions:

10.00 - "property"

10.00 - "property of another"

For prima facie inference and defense regarding Defendant's state of mind as to the value of the property, see instruction 10.00A(2) which embodies the statutory language of HRS § 708-801 (valuation of property). However, "HRS § 708-801, by its clear terms, applies only when 'the value of property or services is determinative of the class or grade of an offense.' . . . HRS § 708-822 does not, on its face, require a determination of the value of property; HRS § 708-822 refers to the amount of damage done by the offender not the value of the property damaged." *State v. Pardee*, 86 Hawai'i 165, 168, 948 P.2d 586, 589 (App. 1997) (emphasis added). The Intermediate Court also found that even if HRS § 708-801 was applicable to criminal property damage offenses, the value of the damaged items had been sufficiently proved.

\*The \$500 amount is applicable to offenses that occurred on or after June 17, 1996.

10.11 THEFT IN THE FIRST DEGREE -- UNAUTHORIZED CONTROL:  
HRS § 708-830.5(1)(a)

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

A person commits the offense of Theft in the First Degree if he/she obtains or exerts control over the property of another, the value of which exceeds \$20,000, with intent to deprive the person of that property.

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

These four elements are:

1. That, on or about (date) in the [City and] County of (name of county), the Defendant obtained or exerted unauthorized control over the property of another; and
2. That the Defendant did so with intent to deprive the person of that property; and
3. That the Defendant was aware or believed the value of the property exceeded \$20,000; and
4. That the value of the property exceeded \$20,000.

## Notes

H.R.S. §§ 708-830.5(1)(a), 708-830(1); 702-206(1).

For definition of states of mind, see instruction:  
6.02 - "intentionally"

For definition of terms defined by HRS 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"
- 10.00A(1) - "value"

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

For statutory defense, see instruction 10.11A.

10.12 THEFT IN THE FIRST DEGREE -- DECEPTION:  
HRS § 708-830.5(1)(a)

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

A person commits the offense of Theft in the First Degree if he/she obtains or exerts control over the property of another, the value of which exceeds \$20,000, by deception with intent to deprive the person of that property.

There are five material elements of the offense of Theft 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 obtained or exerted control over the property of another; and
2. That the Defendant did so by deception; and
3. That the Defendant did so with intent to deprive the person of the property; and
4. That the Defendant was aware or believed the value of the property exceeded \$20,000; and
5. That the value of the property exceeded \$20,000.

## Notes

H.R.S. §§ 708-830.5(1)(a), 708-830(2), 702-206(1).

For definition of states of mind, see instruction:  
6.02 - "intentionally"

For definition of terms defined by HRS Chapter 708, see instructions:

- 10.00 - "control over the property"
- 10.00 - "deception"
- 10.00 - "deprive"
- 10.00 - "obtain"
- 10.00 - "property"
- 10.00 - "property of another"
- 10.00 - "unauthorized control over property"
- 10.00A(1) - "value"

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

For statutory defense, see instruction 10.11A.



10.13 THEFT IN THE FIRST DEGREE -- RECEIVING STOLEN  
PROPERTY: HRS § 708-830.5(1)(a)

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

A person commits the offense of Theft in the First  
Degree if he/she intentionally receives, retains, or  
disposes of the property of another, the value of which  
exceeds \$20,000, knowing that it has been stolen, with  
intent to deprive the owner of that property.

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

These six elements are:

1. That, on or about (date) in the [City and] County  
of (name of county), the Defendant received, retained, or  
disposed of the property of another; and

2. That the Defendant did so intentionally; and

3. That the Defendant did so knowing that the  
property had been stolen; and

4. That the Defendant did so with intent to deprive  
the owner of the property; and

5. That the Defendant was aware or believed the value of the property exceeded \$20,000; and

6. That the value of the property exceeded \$20,000.

#### Notes

H.R.S. §§ 708-830.5(1)(a), 708-830(7), 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 HRS Chapter 708, see instructions:

10.00 - "deprive"

10.00 - "property"

10.00 - "property of another"

10.00 - "receives" or "receiving"

10.00 - "stolen"

10.00A(1) - "value"

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

For statutory defense, see instruction 10.11A.

For prima facie inference when Defendant is a dealer in property of the kind received who knowingly paid far below its reasonable value, see instruction 10.13A.

10.14 THEFT IN THE FIRST DEGREE -- SERVICES:  
HRS § 708-830.5(1)(a)

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

A person commits the offense of Theft in the First Degree if he/she intentionally obtains services, known by him/her to be available only for compensation, by [deception] [false token] [other means to avoid payment for the services] and the value of the services exceeds \$20,000.

There are five material elements of the offense of Theft 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 obtained services by [deception] [false token] [other means to avoid payment for the services];

and

2. That the Defendant did so intentionally; and

3. That the Defendant knew, at that time, the services were available only for compensation; and

4. That the Defendant was aware or believed the value of the services exceeded \$20,000; and

5. That the value of the services exceeded \$20,000.

#### Notes

H.R.S. §§ 708-830.5(1)(a), 708-830(4), 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 HRS Chapter 708, see instructions:

10.00 - "deception"

10.00 - "obtain"

10.00 - "services"

10.00A(1) - "value"

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

For statutory defense, see instruction 10.11A.

For prima facie inference when there is evidence that the services Defendant received are ordinarily paid upon rendering and Defendant absconded without payment, see instruction 10.14A.

10.18 THEFT IN THE SECOND DEGREE -- UNAUTHORIZED  
CONTROL: 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 he/she obtains or exerts unauthorized control over the property of another, the value of which exceeds \$300, with intent to deprive the person of the property.

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 obtained or exerted unauthorized control over the property of another; and
2. That the Defendant did so with intent to deprive the person of the property; and
3. That the Defendant was aware or believed the value of the property exceeded \$300; and
4. That the value of the property exceeded \$300.

## Notes

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

For definition of states of mind, see instruction:  
6.02 - "intentionally"

For definition of terms defined by HRS 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"
- 10.00A(1) - "value"

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

For statutory defense, see instruction 10.11A.

10.19 THEFT IN THE SECOND DEGREE -- DECEPTION:  
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 he/she obtains or exerts control over the property of another, the value of which exceeds \$300, by deception with intent to deprive the person of the property.

There are five material elements of the offense of Theft 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 obtained or exerted control over the property of another; and
2. That the Defendant did so by deception; and
3. That the Defendant did so with intent to deprive the person of the property; and
4. That the Defendant was aware or believed the value of the property exceeded \$300; and
5. That the value of the property exceeded \$300.

## Notes

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

For definition of states of mind, see instruction:  
6.02 - "intentionally"

For definition of terms defined by HRS Chapter 708, see instructions:

- 10.00 - "control over the property"
- 10.00 - "deception"
- 10.00 - "deprive"
- 10.00 - "obtain"
- 10.00 - "property"
- 10.00 - "property of another"
- 10.00 - "unauthorized control over property"
- 10.00A(1) - "value"

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

For statutory defense, see instruction 10.11A.



10.20 THEFT IN THE SECOND DEGREE -- RECEIVING STOLEN  
PROPERTY: 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 he/she intentionally receives, retains, or disposes of the property of another, the value of which exceeds \$300, knowing that it has been stolen, with intent to deprive the owner of the property.

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

These six elements are:

1. That, on or about (date) in the [City and] County of (name of county), the Defendant received, retained, or disposed of the property of another; and
2. That the Defendant did so intentionally; and
3. That the Defendant did so knowing that the property had been stolen; and
4. That the Defendant did so with intent to deprive the owner of the property; and

5. That the Defendant was aware or believed the value of the property exceeded \$300; and

6. That the value of the property exceeded \$300.

#### Notes

H.R.S. §§ 708-831(1)(b), 708-830(7), 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 - "deprive"

10.00 - "property"

10.00 - "property of another"

10.00 - "receives" or "receiving"

10.00 - "stolen"

10.00A(1) - "value"

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

For statutory defense, see instruction 10.11A.

For prima facie inference when Defendant is a dealer in property of the kind received who knowingly paid far below its reasonable value, see instruction 10.13A.

10.22 THEFT IN THE SECOND DEGREE -- SERVICES:  
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 he/she intentionally obtains services, known by him/her to be available only for compensation, by [deception] [false token] [other means to avoid payment for the services] and the value of the services exceeds \$300.

There are five material elements of the offense of Theft 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 obtained services by [deception] [false token] [other means to avoid payment for the services]; and
2. That the Defendant did so intentionally; and
3. That the Defendant knew, at that time, the services were available only for compensation; and
4. That the Defendant was aware or believed the value of the services exceeded \$300; and

5. That the value of the services exceeded \$300.

#### Notes

H.R.S. §§ 708-831(1)(b), 708-830(4), 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 HRS Chapter 708, see instructions:

10.00 - "deception"

10.00 - "obtain"

10.00 - "services"

10.00A(1) - "value"

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

For statutory defense, see instruction 10.11A.

For prima facie inference when there is evidence that the services Defendant received are ordinarily paid upon rendering and Defendant absconded without payment, see instruction 10.14A.

10.23 THEFT IN THE THIRD DEGREE -- SERVICES:  
HRS § 708-832(1)(a)

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

A person commits the offense of Theft in the Third Degree if he/she intentionally obtains services known by him/her to be available only for compensation, by [deception] [false token] [other means to avoid payment for the services] and the value of the services exceeds \$100.

There are five material elements of the offense of Theft in the Third 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), Defendant obtained services by [deception] [false token] [other means to avoid payment for the services]; and
2. That the Defendant did so intentionally; and
3. That the Defendant knew, at that time, the services were available only for compensation; and
4. That the Defendant was aware or believed the value of the services exceeded \$100; and

5. That the value of the services exceeded \$100.

#### Notes

H.R.S. §§ 708-832(1)(a), 708-830(4), 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 - "deception"

10.00 - "obtain"

10.00 - "services"

10.00A(1) - "value"

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

For statutory defense, see instruction 10.11A.

For prima facie inference when there is evidence that  
the services Defendant received are ordinarily paid upon  
rendering and Defendant absconded without payment, see  
instruction 10.14A.

13.54 UNLAWFUL METHAMPHETAMINE TRAFFICKING OF ONE-EIGHTH  
OUNCE OR MORE--DEATH OR SERIOUS BODILY INJURY:  
H.R.S. § 712-1240.6(2)(a)

If you find that the prosecution has proved beyond a reasonable doubt that the Defendant committed the offense in Count count number of the Indictment/Complaint of Unlawful Methamphetamine Trafficking of one-eighth ounce or more, then you must answer the following question on a special interrogatory that will be provided to you:

Did the prosecution prove beyond a reasonable doubt that death or serious bodily injury to any person other than the Defendant resulted from the [manufacture of] [distribution of] [dispensing of] [possession with intent to manufacture, distribute, or dispense] any methamphetamine substance?

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

Your answer to this question must be unanimous.

**Notes**

H.R.S. § 712-1240.6(2)(a).

The Committee took no position as to whether a state of mind is required to determine this question.

For special interrogatory as to this instruction, see instruction 13.54A.

13.54A UNLAWFUL METHAMPHETAMINE TRAFFICKING OF ONE-EIGHTH  
OUNCE OR MORE--DEATH OR SERIOUS BODILY INJURY  
SPECIAL INTERROGATORY: H.R.S. § 712-1240.6(2)(a)

Did the prosecution prove beyond a reasonable doubt that death or serious bodily injury to any person other than the Defendant resulted from the [manufacture of] [distribution of] [dispensing of] [possession with intent to manufacture, distribute, or dispense] any methamphetamine substance?

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

Your answer to this question must be unanimous.

Yes \_\_\_\_\_

No \_\_\_\_\_

**Notes**

H.R.S. § 712-1240.6(2)(a).

The Committee took no position as to whether a state of mind is required to determine this question.



13.55 UNLAWFUL METHAMPHETAMINE TRAFFICKING OF LESS THAN ONE-  
EIGHTH OUNCE--DEATH OR SERIOUS BODILY INJURY:  
H.R.S. § 712-1240.6(3)(a)

If you find that the prosecution has proved beyond a reasonable doubt that the Defendant committed the offense in Count (count number) of the Indictment/Complaint of Unlawful Methamphetamine Trafficking, then you must answer the following question on a special interrogatory that will be provided to you:

Did the prosecution prove beyond a reasonable doubt that death or serious bodily injury to any person other than the Defendant resulted from the [manufacture], [distribution], [dispensing] of any methamphetamine substance?

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

Your answer to this question must be unanimous.

**Notes**

H.R.S. § 712-1240.6(3)(a).

The Committee took no position as to whether a state of mind is required to determine this question.

For special interrogatory as to this instruction, see instruction 13.55A.

13.55A UNLAWFUL METHAMPHETAMINE TRAFFICKING OF LESS THAN ONE-  
EIGHTH OUNCE--DEATH OR SERIOUS BODILY INJURY  
SPECIAL INTERROGATORY: H.R.S. § 712-1240.6(3)(a)

Did the prosecution prove beyond a reasonable doubt that death or serious bodily injury to any person other than the Defendant resulted from the [manufacture] [distribution] [dispensing] of any methamphetamine substance?

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

Your answer to this question must be unanimous.

Yes \_\_\_\_\_

No \_\_\_\_\_

**Notes**

H.R.S. § 712-1240.6(3)(a).

The Committee took no position as to whether a state of mind is required to determine this question.

13.56 UNLAWFUL MANUFACTURING OF A CONTROLLED SUBSTANCE  
WITH A CHILD PRESENT--UNDER AGE 16 AND PRESENT:  
H.R.S. § Section 712-1240.5(1)

If you find that the prosecution proved the Offense of (name of the manufacturing charge) [in Count \_\_\_\_\_] beyond a reasonable doubt, then you must answer the following three questions on a special interrogatory which will be provided to you:

1. Did the Prosecution prove beyond a reasonable doubt that at any time during the commission of the offense a child under the age of sixteen was present in the structure where the offense occurred?
2. Did the Prosecution prove beyond a reasonable doubt that the Defendant knew at any time during the commission of the offense that the child was present in the structure where the offense occurred?
3. Did the Prosecution prove beyond a reasonable doubt that the Defendant knew at any time during the commission of the offense that the child who was in the structure where the offense occurred was under the age of sixteen?

You must answer each of these questions separately.  
Your answer to each question must be unanimous.

"Structure" means any house, apartment building, shop, warehouse, building, vessel, cargo container; motor vehicle, tent, recreational vehicle, trailer; or other enclosed space capable of holding a child and equipment for the manufacture of a controlled substance (designate the controlled substance alleged in the manufacturing charge).

## Notes

H.R.S. § 712-1249.5(1).

For definitions of states of mind, see instruction:  
6.03--"knowingly"

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

13.56A UNLAWFUL MANUFACTURING OF A CONTROLLED SUBSTANCE  
WITH A CHILD PRESENT-SPECIAL INTERROGATORY--UNDER  
AGE 16 AND PRESENT: H.R.S. § 712-1240.5(1)

1. Did the Prosecution prove beyond a reasonable doubt that at any time during the commission of the offense a child under the age of sixteen was present in the structure where the offense occurred?

Yes \_\_\_\_\_ No \_\_\_\_\_

2. Did the Prosecution prove beyond a reasonable doubt that the Defendant knew at any time during the commission of the offense that the child was present in the structure where the offense occurred?

Yes \_\_\_\_\_ No \_\_\_\_\_

3. Did the Prosecution prove beyond a reasonable doubt that the Defendant knew at any time during the commission of the offense that the child who was in the structure where the offense occurred was under the age of sixteen?

Yes \_\_\_\_\_ No \_\_\_\_\_

You must answer each of these questions separately.  
Your answer to each question must be unanimous.

"Structure" means any house, apartment building, shop, warehouse, building, vessel, cargo container; motor vehicle, tent, recreational vehicle, trailer; or other enclosed space capable of holding a child and equipment for the manufacture of a controlled substance (designate the controlled substance alleged in the manufacturing charge).

## Notes

H.R.S. § 712-1249.5(1).

For definitions of states of mind, see instruction:  
6.03--"knowingly"

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

13.57 UNLAWFUL MANUFACTURING OF A CONTROLLED SUBSTANCE  
WITH A CHILD PRESENT--UNDER AGE 18 AND CAUSES  
SUBSTANTIAL OR SERIOUS BODILY INJURY:  
H.R.S. § 712-1240.5(2)

If you find that the prosecution proved the Offense of (name of the manufacturing charge) [in Count \_\_\_\_\_] beyond a reasonable doubt, then you must answer the following four questions on a special interrogatory which will be provided to you:

1. Did the Prosecution prove beyond a reasonable doubt that any time during the commission of the offense a child under the age of eighteen was present in the structure where the offense occurred?
2. Did the Prosecution prove beyond a reasonable doubt that the Defendant knew at any time during the commission of the offense that the child was present in the structure where the offense occurred?
3. Did the Prosecution prove beyond a reasonable doubt that the Defendant knew at any time during the commission of the offense that the child who was in the structure was under the age of eighteen?
4. Did the Prosecution prove beyond a reasonable doubt that the Defendant knowingly caused serious or substantial bodily injury to that child as a result of committing the offense of manufacturing a controlled substance?

You must answer each of these questions separately.  
Your answer to each question must be unanimous.

"Structure" means any house, apartment building, shop, warehouse, building, vessel, cargo container; motor vehicle, tent, recreational vehicle, trailer; or other enclosed space capable of holding a child and equipment for the manufacture of a controlled substance (designate the controlled substance alleged in the manufacturing charge).

#### Notes

H.R.S. § 712-1249.5(2).

For definitions of states of mind, see instruction:  
6.03--"knowingly"

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

9.00--"serious bodily injury"

9.00--"substantial bodily injury"

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

13.00--"manufacture"



13.57A UNLAWFUL MANUFACTURING OF A CONTROLLED SUBSTANCE  
WITH A CHILD PRESENT-SPECIAL INTERROGATORY--UNDER  
AGE 18 AND CAUSES SUBSTANTIAL OR SERIOUS BODILY  
INJURY: H.R.S. § 712-1240.5(2)

1. Did the Prosecution prove beyond a reasonable doubt that any time during the commission of the offense a child under the age of eighteen was present in the structure where the offense occurred?

Yes \_\_\_\_\_ No \_\_\_\_\_

2. Did the Prosecution prove beyond a reasonable doubt that the Defendant knew at any time during the commission of the offense that the child was present in the structure where the offense occurred?

Yes \_\_\_\_\_ No \_\_\_\_\_

3. Did the Prosecution prove beyond a reasonable doubt that the Defendant knew at any time during the commission of the offense that the child who was in the structure was under the age of eighteen?

Yes \_\_\_\_\_ No \_\_\_\_\_

4. Did the Prosecution prove beyond a reasonable doubt that the Defendant knowingly caused serious or substantial bodily injury to that child as a result of committing the offense of manufacturing a controlled substance?

Yes \_\_\_\_\_ No \_\_\_\_\_

You must answer each of the questions separately. Your answer to each of these questions must be unanimous.

"Structure" means any house, apartment building, shop, warehouse, building, vessel, cargo container; motor vehicle, tent, recreational vehicle, trailer; or other enclosed space capable of holding a child and equipment for the manufacture of a controlled substance (designate the controlled substance alleged in the manufacturing charge).

#### Notes

H.R.S. § 712-1249.5(2).

For definitions of states of mind, see instruction:  
6.03--"knowingly"

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

9.00--"serious bodily injury"

9.00--"substantial bodily injury"

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

13.00--"manufacture"