

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

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

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2007 MAR 15 09:10:01  
L. J. MENDOZA  
CLERK OF THE SUPREME COURT  
STATE OF HAWAII

FILED

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

Upon consideration of the Pattern Criminal Jury Instructions Standing Committee's request to publish and distribute (1) revisions to Criminal Instructions 9.28, 9.29, 9.30, 9.31, 9.32, 10.24, 10.24A, 11.06 and (2) the addition of Criminal Jury Instructions 10.45, 10.45A, 11.07, 11.08, 13.58, 13.59, 13.60, 13.61, and 13.62 to the Hawai'i Pattern Jury Instructions - Criminal,

IT IS HEREBY ORDERED, that the attached criminal jury instructions 9.28, 9.29, 9.30, 9.31, 9.32, 10.24, 10.24A, 10.45, 10.45A, 11.06, 11.07, 11.08, 13.58, 13.59, 13.60, 13.61, and 13.62 are approved for publication and distribution.

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


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

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

DATED: Honolulu, Hawai'i, March 15, 2007.

FOR THE COURT:

  
Chief Justice

**9.28           TERRORISTIC THREATENING IN THE FIRST DEGREE -  
                  MORE THAN ONE OCCASION:  
                  H.R.S. § 707-716(1)(a)**

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

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

There are three material elements of the offense of Terroristic Threatening 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), on more than one occasion, the Defendant threatened, by word or conduct, to [cause bodily injury to another person] [cause serious damage to property of another] [commit a felony\*]; and

2. That the Defendant made the threats for the same or a similar purpose; and

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

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

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

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

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

### Notes

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

For definition of states of mind, see instructions:

- 6.02 - "intentionally"
- 6.04 - "recklessly"

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

- 9.00 - "bodily injury"

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

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

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

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

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

**9.29           TERRORISTIC THREATENING IN THE FIRST DEGREE -  
COMMON SCHEME:  
H.R.S. § 707-716(1)(b)**

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

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

There are three material elements of the offense of  
Terroristic Threatening 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 made threats, by word or conduct,  
to [cause bodily injury to] [cause serious damage to property of]  
[commit a felony against\*] different persons; and
2. That the Defendant made the threats in a common scheme

against different persons; and

3. That the Defendant did so [with the intent to terrorize] [in reckless disregard of the risk of terrorizing] those different persons.

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

- (1) the threat on its face and in the circumstances in which it was made must have been so clear, unconditional, immediate, and specific as to the person threatened, that the threat communicated a seriousness of purpose and an imminent likelihood of being carried out; or
- (2) the Defendant possessed the apparent ability to carry out the threat, such that the threat was reasonably likely to cause fear of bodily injury in (name of complainant).

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

## Notes

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

For definition of states of mind, see instructions:

6.02 - "intentionally"

6.04 - "recklessly"

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

9.00 - "bodily injury"

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

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

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

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

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



**9.30           TERRORISTIC THREATENING IN THE FIRST DEGREE -  
                  PUBLIC SERVANT:  
                  H.R.S. § 707-716(1)(c)**

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

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

There are six material elements of the offense of Terroristic Threatening 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 threatened, by word or conduct, to [cause bodily injury to another person] [cause serious damage to property of another] [commit a felony\*]; and
2. That the Defendant did so [with the intent to

terrorize] [in reckless disregard of the risk of terrorizing]  
that person; and

3. That the person threatened was, at the time, a public servant;

4. That, at that time, the Defendant knew or recklessly disregarded a substantial and unjustifiable risk, that the person was a public servant;

5. That the threat arose out of the performance of the public servant's official duties; and

6. That, at that time, the Defendant knew or recklessly disregarded a substantial and unjustifiable risk, that the threatening arose out of the performance of the public servant's official duties.

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

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

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

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

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

#### Notes

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

For definition of states of mind, see instructions:

6.02 - "intentionally"

6.03 - "knowingly"

6.04 - "recklessly"

For definition of "educational worker," see H.R.S. 707-711.

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

9.00 - "bodily injury"

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

12.00 - "public servant"

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

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

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

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

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

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

**9.31           TERRORISTIC THREATENING IN THE FIRST DEGREE -  
                  DANGEROUS INSTRUMENT:  
                  H.R.S. § 707-716(1)(d)**

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

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

There are three material elements of the offense of  
Terroristic Threatening 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 threatened, by word or conduct,  
to [cause bodily injury to another person] [cause serious damage  
to property of another] [commit a felony\*]; and

2. That the Defendant did so with the use of a dangerous  
instrument; and

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

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

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

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

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

#### **Notes**

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

For definition of states of mind, see instructions:

6.02 - "intentionally"

6.04 - "recklessly"

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

- 9.00 - "bodily injury"
- 9.00 - "dangerous instrument"

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

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

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

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

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

**9.32           TERRORISTIC THREATENING IN THE SECOND DEGREE:  
                  H.R.S. § 707-717**

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

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

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

These two elements are:

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

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



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

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

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

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

#### **Notes**

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

For definition of states of mind, see instructions:

6.02 - "intentionally"

6.04 - "recklessly"

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

9.00 - "bodily injury"

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

\*The court should identify whether applicable or included

offenses are felonies, and instruct as to the elements of these felonies (and any applicable defenses that vitiate intent), if the felony offenses are not otherwise charged.

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

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

**10.24 UNAUTHORIZED CONTROL OF PROPELLED VEHICLE --  
OPERATING:  
H.R.S. § 708-836**

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

A person commits the offense of Unauthorized Control of  
Propelled Vehicle if he/she intentionally or knowingly\* exerts  
unauthorized control over another's propelled vehicle by  
operating the vehicle without the owner's consent.

There are three material elements of the offense of  
Unauthorized Control of Propelled Vehicle, 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 exerted unauthorized control over  
another's propelled vehicle; and

2. That the Defendant did so by operating the vehicle  
without the owner's consent; and

3. That the Defendant did so intentionally or knowingly\*.

"Owner" means the [registered owner of the propelled vehicle  
or the unrecorded owner of the vehicle pending transfer of

ownership][legal owner, provided there is no registered owner of the propelled vehicle or unrecorded owner of the vehicle pending transfer of ownership].

"Propelled vehicle" means an automobile, airplane, motorcycle, motorboat, or other motor-propelled vehicle.

#### **Notes**

HRS §§ 708-836, 702-206(1).

For definition of states of mind, see instructions:

6.02 - "intentionally"

6.03 - "knowingly"

For statutory affirmative defense to this offense, see instruction 10.24A.

\*The term "knowingly" is to be included within the general statement and elements of the offense when the incident occurred on or after 04/12/99.

*See State v. Palisbo*, 93 Hawai`i 344, 3 P.3d 510 (2000) (setting forth the following: (1) knowledge that vehicle is stolen is not an element of the offense of unauthorized control of a propelled vehicle; (2) mistake of fact defense was not available to defendant in prosecution for unauthorized control of a propelled vehicle, where there was no evidence that defendant mistakenly believed that he had permission of stolen automobile's owner to drive automobile and; (3) that a "good faith belief" defense was not available to defendant in prosecution for unauthorized control of a propelled vehicle, where there was no evidence that defendant believed in good faith that codefendant who allegedly procured stolen automobile was authorized to use automobile by its owner).

**10.24A           AFFIRMATIVE DEFENSE:   UNAUTHORIZED CONTROL  
                  OF PROPELLED VEHICLE -- OPERATING:  
                  H.R.S. § 708-836(3)**

It is an affirmative defense to a charge of Unauthorized Control of Propelled Vehicle that the Defendant:

(a) Received authorization to use the vehicle from an agent of the owner where the agent had actual or apparent authority to authorize such use; or

(b) Is a lien holder or legal owner of the propelled vehicle, or an authorized agent of the lien holder or legal owner, engaged in the lawful repossession of the propelled vehicle.

**Notes**

H.R.S. § 708-836(3).

For definition of "affirmative defense," see instruction 7.06.

**10.45 UNAUTHORIZED ENTRY INTO MOTOR VEHICLE IN THE  
FIRST DEGREE:  
H.R.S. § 708-836.5  
(Applicable to offenses occurring on or after June 22, 2006)**

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

A person commits the offense of Unauthorized Entry Into  
Motor Vehicle in the First Degree if the person intentionally or  
knowingly enters or remains unlawfully in a motor vehicle,  
without being invited, licensed, or otherwise authorized to enter  
or remain within the vehicle, with the intent to commit a crime  
against a person or against property rights.

There are four material elements of the offense of  
Unauthorized Entry Into Motor Vehicle 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 unlawfully [entered into a motor  
vehicle][remained in a motor vehicle]; and

2. That the Defendant did so without being invited,  
licensed, or otherwise authorized to enter or remain within the

vehicle; and

3. That the Defendant acted intentionally or knowingly as to each of the foregoing elements; and

4. That, when the [Defendant unlawfully entered the motor vehicle,][Defendant's remaining in the motor vehicle became unlawful,] the Defendant, at that time, had the intent to commit therein a crime against a person or against property rights.

**Notes**

H.R.S. §§ 708-836.5, 702-206(1) and (2).

For definition of states of mind, see instructions:

6.02--"intentionally"

6.03--"knowingly"

**10.45A UNAUTHORIZED ENTRY INTO MOTOR VEHICLE IN THE  
SECOND DEGREE:  
H.R.S. § 708-836.6**

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

A person commits the offense of Unauthorized Entry Into  
Motor Vehicle in the Second Degree if the person intentionally or  
knowingly enters into a motor vehicle, without being invited,  
licensed, or otherwise authorized to do so.

There are three material elements of the offense of  
Unauthorized Entry Into Motor Vehicle in the Second Degree, each  
of which the prosecution must prove beyond a reasonable doubt.

These three elements are:

1. That, on or about (date) in the [City and] County of  
(name of county), the Defendant unlawfully entered into a motor  
vehicle; and

2. That the Defendant did so without being invited,  
licensed, or otherwise authorized to enter into the motor  
vehicle; and

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

**Notes**

H.R.S. §§ 708-836.6, 702-206(1) and (2).



For definition of states of mind, see instructions:  
6.02--"intentionally"  
6.03--"knowingly"

11.06

**ABUSE OF FAMILY OR HOUSEHOLD MEMBERS :**  
**H.R.S. § 709-906(1)**

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

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

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

These three elements are:

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

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

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

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

## Notes

HRS §§ 709-906(1), 702-206(1), (2) and (3).

For definition of states of mind, see instructions:

6.02 - "intentionally"

6.03 - "knowingly"

6.04 - "recklessly"

For definition of "reciprocal beneficiaries," see HRS § 572C-3.

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

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

\*\*Effective 7/15/98 - Act 172, Hawai'i Session Laws 1998

**11.07 ABUSE OF FAMILY OR HOUSEHOLD MEMBERS - THIRD OFFENSE  
WITHIN TWO YEARS:  
H.R.S. § 709-906(7)**

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

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

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

These four elements are:

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

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

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

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

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

#### **Notes**

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

For definition of states of mind, see instructions:

6.02--"intentionally"

6.03--"knowingly"

6.04--"recklessly"

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

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

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

\*\* Effective 7/15/98--Act 172, Hawai'i Session Laws 1998

**11.08 ABUSE OF FAMILY OR HOUSEHOLD MEMBERS - IMPEDING BREATHING  
OR CIRCULATION:  
H.R.S. § 709-906(8)**

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

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

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

These four elements are:

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

2. That the Defendant did so by impeding the normal  
breathing or circulation of the blood of (name of complainant) by  
applying pressure on his/her throat or neck; and

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

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

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

#### **Notes**

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

For definition of states of mind, see instructions:

6.02--"intentionally"

6.03--"knowingly"

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

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

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

\*\* Effective 7/15/98--Act 172, Hawai'i Session Laws 1998

**13.58 METHAMPHETAMINE TRAFFICKING IN THE FIRST DEGREE –  
POSSESSION OF ONE OUNCE OR MORE: HRS §712-A(1)(a)**

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

A person commits the offense of Methamphetamine Trafficking  
in the First Degree if he/she knowingly possesses one or more  
preparations, compounds, mixtures, or substances of an aggregate  
weight of one ounce or more containing methamphetamine or any of  
its salts, isomers, and salts of isomers.

There are three material elements of the offense of  
Methamphetamine Trafficking 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 possessed one or more  
preparations, compounds, mixtures, or substances of an aggregate  
weight of one ounce or more; and

2. That the one or more preparations, compounds, mixtures,  
or substances contained methamphetamine or any of its salts,  
isomers, and salts of isomers; and

3. That the Defendant acted knowingly as to each of the  
foregoing elements.



## Notes

H.R.S. § 712-A(1)(a)

For definition of state of mind, see instruction:

6.03 - "knowingly"

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

13.00- "ounce"

For definition of "possession," see instruction 6.06.

**13.59 METHAMPHETAMINE TRAFFICKING IN THE FIRST DEGREE –  
DISTRIBUTION OF ONE-EIGHTH OUNCE OR MORE: HRS §712-A(1)(b)**

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

A person commits the offense of Methamphetamine Trafficking  
in the First Degree if he/she knowingly distributes one or more  
preparations, compounds, mixtures, or substances of an aggregate  
weight of one-eighth ounce or more containing methamphetamine or  
any of its salts, isomers, and salts of isomers.

There are three material elements of the offense of  
Methamphetamine Trafficking 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 distributed one or more  
preparations, compounds, mixtures, or substances of an aggregate  
weight of one-eighth ounce or more; and

2. That the one or more preparations, compounds, mixtures,  
or substances contained methamphetamine or any of its salts,  
isomers, and salts of isomers; and

3. That the Defendant acted knowingly as to each of the  
foregoing elements.

## Notes

H.R.S. § 712-A(1) (a)

For definition of state of mind, see instruction:

6.03 - "knowingly"

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

13.00- "ounce"

13.00- "to distribute"

**13.60 METHAMPHETAMINE TRAFFICKING IN THE FIRST DEGREE --  
DISTRIBUTION TO A MINOR: HRS §712-A(1)(c)**

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

A person commits the offense of Methamphetamine Trafficking  
in the First Degree if he/she knowingly distributes  
methamphetamine in any amount to a minor.

There are three material elements of the offense of  
Methamphetamine Trafficking 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 distributed methamphetamine in  
any amount to another person; and

2. That the other person was, at that time, a minor; and

3. That the Defendant acted knowingly as to each of the  
foregoing elements.

**Notes**

H.R.S. § 712-A(1)(a)

For definition of state of mind, see instruction:

6.03 – “knowingly”

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

instructions:

13.00- "minor"

13.00- "to distribute"

13.60 (Proposed 02/20/07)

**13.61 METHAMPHETAMINE TRAFFICKING IN THE FIRST DEGREE –  
MANUFACTURE: HRS §712-A(1)(d)**

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

A person commits the offense of Methamphetamine Trafficking  
in the First Degree if he/she knowingly manufactures  
methamphetamine in any amount.

There are two material elements of the offense of  
Methamphetamine Trafficking 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 manufactured methamphetamine in  
any amount; and
2. That the Defendant did so knowingly.

**Notes**

H.R.S. § 712-A(1)(a)

For definition of state of mind, see instruction:  
6.03 – “knowingly”

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

13.00– “manufacture”

**13.62 METHAMPHETAMINE TRAFFICKING IN THE SECOND DEGREE -  
DISTRIBUTION OF ANY AMOUNT: HRS §712-B**

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

A person commits the offense of Methamphetamine Trafficking  
in the Second Degree if he/she knowingly distributes  
methamphetamine in any amount.

There are two material elements of the offense of  
Methamphetamine Trafficking 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 distributed methamphetamine in  
any amount; and

2. That the Defendant did so knowingly.

**Notes**

H.R.S. § 712-A(1) (a)

For definition of state of mind, see instruction:

6.03 - "knowingly"

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

13.00 - "to distribute"