



IOWA CRIMINAL JURY INSTRUCTIONS

Updated through June 2022



IOWA CRIMINAL JURY INSTRUCTIONS

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INTRODUCTION

The Board of Governors of The Iowa State Bar Association approved the redrafting of the Criminal Uniform Jury Instructions in plain English. We employed a communication specialist to help us translate "legalese" into plain English.

While the Iowa Supreme Court cannot give prior approval to the instructions, it unanimously approved the principle of the plain English redraft of the Iowa Civil and Criminal Jury Instructions. The Court also adopted a resolution commending the Criminal Instructions for consideration by the Trial Bench and Bar. A copy of the resolution follows this Introduction.

The guidelines for drafting the Iowa Criminal Jury Instructions are the same as those used for the Iowa Civil Jury Instructions. They are set forth in the Introduction to the Iowa Civil Jury Instructions.

The "definitional" instructions for particular crimes have been eliminated. They are not needed because the law is stated in the marshaling instructions. The word "crime" has been substituted for the phrase "public offense". The use of the phrase "prove beyond a reasonable doubt" has been eliminated from most of the instructions because Iowa Criminal Instruction 100.2 tells the jury that whenever the State must prove something, it must be by evidence beyond a reasonable doubt. We have not included lesser-included offenses for any particular crime.

INSTRUCTIONS MUST ALWAYS BE TAILORED TO FIT THE FACTS OF THE CASE.

These instructions are not intended to provide jury instructions which are applicable without change in all cases. Instead, they will provide judges and lawyers with models of clear, concise, accurate, and impartial instructions which are understandable to the average juror. They can be adapted for use in particular cases or used as a guide for tailoring instructions.

The instructions will be referred to as Iowa Criminal Jury Instructions. There will be a cross-reference table of Iowa Code sections to the Instructions. We have also included a model set of Criminal Jury Instructions.

If you have any suggestions concerning these instructions, we would appreciate having them.

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IN THE SUPREME COURT OF IOWA

IN THE MATTER OF THE IOWA)
STATE BAR ASSOCIATION UNIFORM) RESOLUTION
COURT INSTRUCTION COMMITTEE)

The court meeting en banc in administrative session at Des Moines on June 8, 1988, upon a motion duly made and seconded unanimously adopted the following resolution:

On May 6, 1987, we officially noted the public benefits which have been derived from the efforts of the Special Committee on Uniform Court Instructions of The Iowa State Bar Association.

The occasion of that resolution was to commend the committee for promulgating the Plain English Redraft of Iowa Civil Jury Instructions. Experience has justified our high estimate of the Plain English Redraft; the draft has been of great benefit to the bench and bar and, especially, to the public.

We have now been presented with a companion to this effort, the Plain English Redraft of the Iowa Criminal Jury Instructions.

Under Iowa law any jury instructions might be challenged in the usual manner on appeal to this court. That right of review on the part of the future litigants again precludes us from considering the Plain English Redraft Instructions for official approval or disapproval. We nevertheless note this newest contribution of the committee with a deep sense of appreciation and satisfaction.

It is readily apparent that juries will better understand legal principles explained in the instructions under the Plain English Redraft, now in criminal as well as in civil cases. The quality of justice will be improved.

The court commends the Uniform Court Instruction Committee for this new achievement and commends these instructions for consideration by the trial bench and bar.

Dated at Des Moines, Iowa, this 8th day of June, 1988.

Arthur A. McGiverin, Chief Justice

Louis A. Lavorato, Justice

David Harris, Justice

Linda K. Neuman, Justice

Jerry L. Larson, Justice

Bruce Snell, Jr., Justice

Louis W. Schultz, Justice

James H. Andreasen, Justice

James H. Carter, Justice

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CROSS REFERENCE TABLE

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Code Section	Instruction No.
124.101(5)	2300.4
124.101(7)	2300.4
124.101(16)	2300.4
124.401	2300.7
124.401(1)	2300.1
124.401(1)	2300.2
124.401(3)	2300.3
124.406	2300.6
124.410	2300.5
321J.2 (1) (a)	2500.2
321J.2 (1) (a) (b)	2500.1
321J.2 (1) (b)	2500.3
321J.2 (2) (b) (c)	2200.1
321J.2 (7)	2500.4
321J.16	2500.7
453B.12	2310.1
453B.1 (3)	2310.1
453B.1 (9)	2310.2
453B.1 (6)	2310.3
701.4	200.10
701.4	200.11
701.6	200.39
702.7	200.21
702.7	900.2
702.11	700.2
702.12	1300.13
702.13	200.6
702.13	200.7
702.13	800.7
702.13	800.9
702.14	1400.20
702.15	2100.6
702.16	200.20
702.17	900.8
702.18	200.22
702.18	200.35
702.18	400.25
702.18	800.2
702.18	800.7
702.18	800.10
702.18	900.2
702.21	1200.12
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703.4(3)	200.28
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703.5(1)	200.31
704.1	400.1
704.1	400.2
704.1	400.3
704.1	400.7
704.1	400.11
704.1	400.16
704.1	400.17
704.2	400.25
704.3	400.1
704.3	400.2
704.3	400.3
704.4	400.1
704.4	400.7
704.5	400.1
704.5	400.7
704.6	400.2
704.6	400.3
704.6	400.7
704.6	400.11
704.6(2)	400.26
704.6(3) (a)	400.23
704.6(3) (b)	400.24
704.7	400.1
704.7	400.11
704.10	200.35
705.1	200.5
705.1	500.1
705.2	500.4
706.1	600.1
706.1	600.3
706.1	600.4
706.1	600.6
706.4	600.7
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707.5(1)	700.17
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708.2	800.1
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708.2	800.4
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708.2	800.17
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709.15(1) (f) (2)	920.2
709.15(1) (f) (3)	920.3
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710.2	1000.1
710.2	1000.6
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712.1	1200.1
712.1	1200.3
712.1	1200.4
712.2	1200.1
712.3	1200.1
712.3	1200.3
712.4	1200.1
712.4	1200.4
712.5	1200.7
712.6	1200.8
712.7	1200.11
712.8	1200.10
713.1	1300.1
713.1	1300.2
713.1	1300.3
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713.1	1300.5
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713.1	1300.13
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713.3	1300.1
713.3	1300.2
713.3	1300.3
713.3	1300.4
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713.4	1300.7
713.3	1300.8
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713.4	1300.10
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713.6	1300.10
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715A.2 (1) (a)	1500.3
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715A.2 (1) (b)	1500.4
715A.2 (1) (c)	1500.3
715A.2 (1) (c)	1500.4
715A.6	1500.5
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716.5(2)	1600.6
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716.7(2) (b)	1610.2
716.7(2) (c)	1610.3
716.7(2) (d)	1610.4
716.7(3)	1610.6
716.8	1610.1
716.8	1610.2
716.8	1610.3
716.8	1610.4
716A.1	1700.3
716A.1 (10) (b)	1700.3
716A.3	1700.1
716A.4	1700.4
716A.5	1700.4
716A.6	1700.4
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716A.12	1700.4
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716A.14	1700.4
718.1	1800.1
718.2	1800.2
718.5	1800.3
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719.1	1910.2
719.3	1910.3
719.4(1) (2)	1900.1
719.4(3)	1900.2
719.5	1900.3
719.6	1900.4
719.7	1900.5
719.8	1900.6
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720.2	2000.2
720.3	2000.5
720.3	2000.6
721.1	1810.1
721.2	1810.1
722.1	1820.1
722.2	1820.2
724.1	2400.2
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724.4	2400.4
724.4	2400.5
724.4	2400.6
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724.25(1)	2400.7
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724.27	2400.7
725.1	2100.1
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725.2	2100.4
725.2	2100.5
726.2	2600.1
726.6(1) (a)	2610.1
726.6(1) (b)	2610.2
726.6(1) (c)	2610.3
726.6(1) (d)	2610.4
726.6(1) (d)	2610.5
726.6(1) (e)	2610.6
726.6(1) (f)	2610.7
726.6(2)	2610.1
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726.6(2)	2610.3
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728.1(4)	910.4
728.1(6)	910.1
728.1(6)	910.2
728.1(6)	910.3
728.1(8)	910.1
728.1(8)	910.2
728.1(8)	910.3
728.1(9)	910.2
728.1(9)	910.5
728.12(1)	910.1
728.12(2)	910.2
728.12(3)	910.3
808B.1 (2)	2700.12
808B.1 (4)	2700.7
808B.1 (5)	2700.8
808B.1 (7)	2700.9
808B.1 (9)	2700.10
808B.2 (1) (a)	2700.1
808B.2 (1) (b)	2700.2
808B.2 (1) (c)	2700.3
808B.2 (1) (c)	2700.4
808B.2 (1) (d)	2700.3
808B.2 (1) (d)	2700.4
808B.2 (2) (a)	2700.1
808B.2 (2) (a)	2700.2
808B.2 (2) (a)	2700.3
808B.2 (2) (a)	2700.4
808B.2 (2) (b)	2700.1
808B.2 (2) (b)	2700.2
808B.2 (2) (b)	2700.3
808B.2 (2) (b)	2700.4
808B.2 (2) (c)	2700.1
808B.2 (2) (c)	2700.2
808B.2 (2) (c)	2700.3
808B.2 (2) (c)	2700.4
808B.2 (3)	2700.5
902.7	200.23
902.7	200.24
902.7	200.25
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CHAPTER 100

General Instructions

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[100.4](#) Presumption of Innocence.

[100.5](#) Evidence.

[100.6](#) Direct and Circumstantial Evidence.

[100.7](#) Credibility of Witnesses.

[100.8](#) Consideration of Instructions. (Rev. 6/2016)

[100.9](#) Cautionary Instruction.

[100.10](#) Reasonable Doubt.

[100.11](#) Reasonable Doubt - Re Included Offenses.

[100.12](#) Preponderance of Evidence – Defenses.

[100.13](#) Punishment Not For Jury.

[100.14](#) Cautionary Instruction - Joint Trials.

[100.15](#) Cautionary Instruction - Multiple Counts.

[100.16](#) Multi-Theories.

[100.17](#) Cautionary Instructions - Juror's Notes.

[100.18](#) Duties of Jurors - Selection of Foreman/Forewoman.

[100.19](#) Use of Electronic Devices.

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100.1 Statement of Charge. The [Trial Information] [Indictment] charges the defendant, (name of defendant), with the crime of (name of crime).

The [Trial Information] [Indictment] includes charges of the lesser degrees of _____ or crimes of _____.*

Comment

Note: *Omit this paragraph unless lesser included offenses are involved. To determine what offenses are lesser included, see State v. Jeffries, [430 N.W.2d 728](#) (Iowa 1988)

Note: If multiple offenses are charged, Instruction 100.1 should state all of the offenses or degrees charged.

100.2 Plea. (Name of defendant) has entered a plea of not guilty. The plea of not guilty is a complete denial of the charge(s) and places the burden on the State to prove guilt beyond a reasonable doubt. Whenever I instruct you the State must prove something, it must be by evidence beyond a reasonable doubt. If the State does not prove the defendant guilty beyond a reasonable doubt, your verdict must be not guilty.

100.3 Indictment Or Information Not Evidence. The [Trial Information] [Indictment] is the document that formally charges the defendant with a crime and is merely the method by which the defendant is brought into Court for trial. It is not evidence.

100.4 Presumption of Innocence. (Name of defendant) is presumed innocent and not guilty. This presumption of innocence requires you to put aside all suspicion which might arise from the arrest, charge, or the present situation of the defendant. The presumption of innocence remains with the defendant throughout the trial unless the evidence establishes guilt beyond a reasonable doubt.

100.5 Evidence. You shall base your verdict only upon the evidence and these instructions.

Evidence is:

1. Testimony in person or by deposition.
2. Exhibits received by the court. You may examine the exhibits closely, but be careful not to alter or destroy them.
3. Stipulations, which are agreements between the attorneys.

Facts may be proved by direct evidence, circumstantial evidence, or a combination of both.

Sometimes, during a trial, references are made to pre-trial statements and reports, witnesses' depositions, or other miscellaneous items. Only those things formally offered and received by the

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court are available to you during your deliberations. Documents or items read from or referred to, which were not offered and received into evidence, are not available to you.

The following are not evidence:

1. Statements, arguments, questions and comments by the lawyers.
2. Objections and rulings on objections.
3. Any testimony I told you to disregard.
4. Anything you saw or heard about this case outside the courtroom.

100.6 Direct/Circumstantial Evidence. In considering the evidence, make deductions and reach conclusions according to reason and common sense. Facts may be proved by direct evidence, circumstantial evidence, or both. Direct evidence is evidence from a witness who claims actual knowledge of a fact, such as an eyewitness. Circumstantial evidence is evidence about a chain of facts which show a defendant is guilty or not guilty. The law makes no distinction between direct evidence and circumstantial evidence. Give all the evidence the weight and value you think it is entitled to receive.

100.7 Credibility Of Witnesses. Decide the facts from the evidence. Consider the evidence using your observations, common sense and experience. Try to reconcile any conflicts in the evidence; but if you cannot, accept the evidence you find more believable.

In determining the facts, you may have to decide what testimony you believe. You may believe all, part or none of any witness's testimony.

Whether the State has met its burden of proof does not depend upon the number of witnesses it has called or upon the number of exhibits it has offered, but instead upon the nature and quality of the evidence presented.

There are many factors which you may consider in deciding what testimony to believe, for example:

1. Whether the testimony is reasonable and consistent with other evidence you believe.
2. Whether a witness has made inconsistent statements.
3. The witness's appearance, conduct, age, intelligence, memory and knowledge of the facts.
4. The witness's interest in the trial, their motive, candor, bias and prejudice.

Authority

State v Harrington, [284 N.W.2d 244](#) (Iowa 1979)

State v. Ochoa, [244 N.W.2d 773](#) (Iowa 1976)

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100.8 Consideration of Instructions. You must determine whether the defendant is guilty or not guilty from the evidence and the law in these instructions. My duty is to tell you what the law is. Your duty is to accept and apply this law and to decide all fact questions.

You must consider all of the instructions together. No one instruction includes all of the applicable law.

As you consider the evidence, do not be influenced by any personal sympathy, bias, prejudices or emotions. It is common to have hidden or implicit thoughts that help us form our opinions. You are making very important decisions in this case. You must evaluate the evidence carefully. You must avoid decisions based on things such as generalizations, gut feelings, prejudices, fears, sympathies, stereotypes, or inward or outward biases. The law demands that you return a just verdict, based solely on the evidence, your reason and common sense, and these instructions. As jurors, your sole duty is to find the truth and do justice.

Authority

Roushar v. Dixon, [231 Iowa 993](#), [2 N.W.2d 660](#) (1942)

Rev. 6/2019

100.9 Cautionary Instruction. Nothing I have said or done during the trial was intended to give any opinion as to the facts, proof, or what your verdict should be.

100.10 Reasonable Doubt. The burden is on the State to prove [Defendant] guilty beyond a reasonable doubt.

A reasonable doubt is one that fairly and naturally arises from the evidence in the case, or from the lack or failure of evidence produced by the State.

If, after a full and fair consideration of all the evidence, you are firmly convinced of the defendant's guilt, then you have no reasonable doubt and you should find the defendant guilty.

But if, after a full and fair consideration of all the evidence in the case, or from the lack or failure of evidence produced by the State, you are not firmly convinced of the defendant's guilt, then you have a reasonable doubt and you should find the defendant not guilty.

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Authority

State v. Davis, [No. 19-0453, N.W.2d \(Iowa 2022\)](#)
State v. Frei, [831 N.W.2d 70 \(Iowa 2013\)](#)
State v. McFarland, [287 N.W.2d 162 \(Iowa 1980\)](#)
State v. McGranahan, [206 N.W.2d 88 \(Iowa 1973\)](#)

Comment

Note: The prior version of this instruction included the following “hesitate to act” language: “A reasonable doubt is a doubt based upon reason and common sense, and not the mere possibility of innocence. A reasonable doubt is the kind of doubt that would make a reasonable person hesitate to act. Proof beyond a reasonable doubt, therefore, must be proof of such a convincing character that a reasonable person would not hesitate to rely and act upon it. However, proof beyond a reasonable doubt does not mean proof beyond all possible doubt.” In the Davis case, the Supreme Court acknowledged this language was legally sufficient, but “strongly urged” district courts to “solely utilize” the “firmly convinced” definition for reasonable doubt jury instructions in the hope of obviating the need for future appeals on the instruction.

Rev. 6/22

100.11 Reasonable Doubt - Re Included Offenses. If there is a reasonable doubt as to the degree of the crime, the defendant shall only be convicted of the degree for which there is no reasonable doubt.

100.12 Preponderance Of Evidence - Defenses. Concerning the defense explained in Instruction No. _____, preponderance of the evidence is evidence that is more convincing than opposing evidence. Preponderance of the evidence does not depend upon the number of witnesses testifying on one side or the other.

Authority

Mabrier v. A.M. Servicing Corp. of Raytown, [161 N.W.2d 180 \(1968\)](#)

100.13 Punishment Not For Jury. The duty of the jury is to determine if the defendant is guilty or not guilty.

In the event of a guilty verdict, you have nothing to do with punishment.

100.14 Cautionary Instruction - Joint Trials. The defendants have been jointly charged. You may not consider the joint charge or joint trial as any evidence of guilt. You must determine whether each defendant is guilty or not guilty solely upon individual participation in the crime.

If you cannot reach a verdict as to [all] [both] of the defendants, you shall reach a verdict only as to [those] [the] defendant(s) upon whom you can unanimously agree.

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Authority

Iowa R. Crim. P. 2.6(4) - Multiple Defendants

Iowa R. Crim. P.2.22 (4) - Verdict as to Several Defendants

10/04

100.15 Cautionary Instruction - Multiple Counts. The defendant has been charged with _____ counts. This is just a method for bringing each of the charges to trial. If you find the defendant guilty or not guilty on any one of the _____ counts, you are not to conclude the defendant is guilty or not guilty on the other(s). You must determine whether the defendant is guilty or not guilty separately on each count.

Authority

Iowa R. Crim. P. 2.6(1) - Multiple Offenses

10/04

100.16 Multi - Theories. Where two or more alternative theories are presented, or where two or more facts would produce the same result, the law does not require each juror to agree as to which theory or fact leads to his or her verdict. It is the verdict itself which must be unanimous, not the theory or facts upon which it is based.

Authority

State v. Bratthauer, [354 N.W.2d 774](#) (Iowa 1984)

State v. Williams, [285 N.W.2d 248](#) (Iowa 1979)

100.17 Cautionary Instruction - Juror's Notes. During the trial, you have been allowed to take notes. You may take these with you to the jury room to use in your deliberations. Remember, these are notes and not evidence. Generally, they reflect the recollection or impressions of the evidence as viewed by the person taking them, and may be inaccurate or incomplete.

Upon reaching a verdict, leave the notes in the jury room and they will be destroyed.

Authority

Iowa R. Crim. P. 2.19(5) (e) -Notes Taken By Jurors during Trial

100.18 Duties of Jurors - Selection of Foreman/Forewoman. When you begin your deliberations, you should select a foreman or forewoman. He or she shall see that your deliberations are carried on in an orderly manner, that the issues are fully and freely discussed, and that every juror is given an opportunity to express his or her views.

In order to return a verdict, each juror must agree to it. Your verdict must be unanimous.

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It is your duty as jurors to consult with one another and reach an agreement, if you can do so without compromising your individual judgment. Each of you must decide the case for yourself, but do so only after an impartial consideration of the evidence with the other jurors.

During your deliberations, do not hesitate to re-examine your view and change your opinion if convinced it is wrong. But do not change your opinion as to the weight or effect of the evidence just because it is the opinion of the other jurors, or for the mere purpose of returning a verdict.

Remember, you are judges of the facts. Your sole duty is to find the truth and do justice.

100.19 Use of Electronic Devices.

You may not communicate about this case before reaching your verdict. This includes via cell phone and electronic media such as text messages, email, electronic messaging applications, and any social media platform including but not limited to Facebook, LinkedIn, YouTube, Twitter, TikTok, Instagram, Snapchat, and any other social media applications you may use.

Do not do any research or make any investigation about this case on your own. Do not visit or view any place discussed in this case, and do not use internet or application-based maps or programs, or any other application, program, or device to search for or view any place discussed in the testimony. Also, do not research any information about this case, the law, or the people involved, including the parties, the witnesses, the lawyers, or the judge. This includes using the Internet to research events or people referenced in the trial.

This case will be tried on evidence presented in the courtroom. If you conduct independent research, you will be relying on matters not presented in court. The parties have a right to have this case decided on the evidence they know about and that has been introduced here in court. If you do some research or investigation or experiment that we do not know about, then your verdict may be influenced by inaccurate, incomplete, or misleading information that has not been tested by the trial process, including the oath to tell the truth and by cross-examination. All of the parties are entitled to a fair trial, rendered by an impartial jury, and you must conduct yourself so as to maintain the integrity of the trial process. If you decide a case based on information not presented in court, you will have denied the parties a fair trial in accordance with the rules of this state and you will have done an injustice. It is very important that you abide by these rules. [Failure to follow these instructions may result in the case having to be retried and could result in you being held in contempt and punished.]

It is important that we have your full and undivided attention during this trial.

Comment

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Technology is constantly evolving. The Committee recommends that the parties in their proposed instructions, and the Court when fashioning the final instructions, update and modify this list to include any current social media applications or platforms.

Update 6/22

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CHAPTER 200

CRIMINAL LAW - SPECIAL ISSUES

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[200.2](#) Specific Intent - Definition and Proof

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[200.48](#) Immediate Possession or Control of a Firearm or Offensive Weapon.

[200.49](#) Incendiary Device Or Material - Definition

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200.1 General Criminal Intent - Definition And Proof. To commit a crime a person must intend to do an act which is against the law. While it is not necessary that a person knows the act is against the law, it is necessary that the person was aware [he] [she] was doing the act and [he] [she] did it voluntarily, not by mistake or accident. You may, but are not required to, conclude a person intends the natural results of [his] [her] acts.

200.2 Specific Intent - Definition And Proof. "Specific intent" means not only being aware of doing an act and doing it voluntarily, but in addition, doing it with a specific purpose in mind.

Because determining the defendant's specific intent requires you to decide what [he] [she] was thinking when an act was done, it is seldom capable of direct proof. Therefore, you should consider the facts and circumstances surrounding the act to determine the defendant's specific intent. You may, but are not required to, conclude a person intends the natural results of [his] [her] acts.

Authority

Sandstrom v. Montana, [99 S.Ct. 2450](#), [61 L. Ed.2d 39](#) (1979)
State v. Rinehart, [283 N.W.2d 319](#) (Iowa 1979)

200.3 Knowledge - Definition. For the defendant to [know] [have knowledge of] something means [he] [she] had a conscious awareness that (element requiring knowledge).

200.4 Corroboration Of Accomplice. An "accomplice" is a person who knowingly and voluntarily cooperates or aids in the commission of a crime.

A person cannot be convicted only by the testimony of an accomplice. The testimony of an accomplice must be corroborated by other evidence tending to connect the defendant with the crime.

If you find (name of witness) is an accomplice, the defendant cannot be convicted only by that testimony. There must be other evidence tending to connect the defendant with the commission of the crime. Such other evidence, if any, is not enough if it just shows a crime was committed. It must be evidence tending to single out the defendant as one of the persons who committed it.

Authority

Iowa Code section 703.1
Iowa R. Crim. P. 2.21(3) - Corroboration of Accomplice or Person Solicited
State v. Berney, [378 N.W.2d 915](#) (Iowa 1985)

Note: A special interrogatory may be required regarding whether a specific witness is an accomplice or whether the accomplice's testimony has been corroborated. See Iowa R. Crim. P. 2.22(2).

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Note: Where the court finds that a specific person is an accomplice as a matter of law, add: “You are instructed that the court has found that (name of witness [es]) [was an] [were] accomplice[s] and you must consider [him/her/them] [an] accomplice[s].” State v. Harris, [589 N.W.2d 239](#), 240 (Iowa 1999).

Rev. 12/12

200.5 Corroboration Of Solicited Person - Crime Actually Committed. A "solicited person" is a person who is commanded or persuaded by another to commit the crime with which the defendant is charged.

A person cannot be convicted only by the testimony of a "solicited person". The testimony of a "solicited person" must be corroborated by other evidence tending to connect the defendant with the crime.

If you find (name) is a "solicited person", the defendant cannot be convicted only by that testimony, and there must be other evidence tending to single out the defendant as one of the persons who committed the crime. Evidence which only shows a crime was committed, but does not connect the defendant with the crime, cannot be considered corroboration.

Authority

Iowa Code section [705.1](#)

Iowa R. Crim. P. 2.21(3) - Corroboration of Accomplice or Person Solicited.

200.6 Participating In A Public Offense - Definition. A person participates in a crime beginning with the first act done toward the commission of the crime and ending when a person has been arrested or has escaped from pursuers. A person participates in a crime regardless if [he] [she] is successful in committing it.

Authority

Iowa Code section [702.13](#)

Comment

Note: That portion of the statute which is not applicable to the facts of the case should be deleted from the instruction.

200.7 Joint Criminal Conduct - Definition. When two or more persons act together and knowingly commit a crime, each is responsible for the other's acts done in furtherance of the commission of the crime or escape from the scene. The defendant's guilt is the same as the other person's(s') unless the act(s) could not reasonably be expected to be done in furtherance of the commission of the crime.

The State must prove all of the following elements:

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1. The defendant acted together with at least one other person.
2. The defendant and the other person or persons knowingly participated in the crime of _____, as defined in Instruction No. ____.
3. While furthering the crime of _____, the other person or persons committed the different crime of _____, as defined in Instruction No. ____.
4. The defendant could have reasonably expected that the different crime of _____ would be committed in furtherance of the crime of _____.

If you find the State has proved all of these elements, the defendant is guilty of the crime of _____.

Authority

Iowa Code section [703.2](#)
State v. Smith, [739 N.W.2d 289](#) (Iowa 2007)

Comment

Note 1: For definition of "Participation in Public Offense", see Iowa Code section 702.13 and Iowa Criminal Jury Instruction 200.6

Note 2: The crime in which the defendant is knowingly participating may or may not be a charged offense. If it is a charged offense, the jury should be instructed to review that marshaling instruction. If it is not a charged offense, the jury should be separately instructed on the elements of that crime, but reminded that the defendant need only be participating in the crime, not that the defendant must successfully complete it.

The State does not need to prove the identity of the principal to have the jury instructed on joint criminal conduct.

Rev. 12/07

200.8 Aiding And Abetting. All persons involved in the commission of a crime, whether they directly commit the crime or knowingly "aid and abet" its commission, shall be treated in the same way.

"Aid and abet" means to knowingly approve and agree to the commission of a crime, either by active participation in it or by knowingly advising or encouraging the act in some way before or when it is committed. Conduct following the crime may be considered only as it may tend to prove the defendant's earlier participation. Mere nearness to, or presence at, the scene of the crime, without more evidence, is not "aiding and abetting". Likewise, mere knowledge of the crime is not enough to prove "aiding and abetting".

The guilt of a person who knowingly aids and abets the commission of a crime must be determined only on the facts which show the part [he] [she] has in it, and does not depend upon the degree of another person's guilt.

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If you find the State has proved the defendant directly committed the crime, or knowingly "aided and abetted" other person(s) in the commission of the crime, then the defendant is guilty of the crime charged.

Authority

Iowa Code section 703.1

See Also: Iowa Criminal Jury Instruction 200.6

See Also: Iowa Criminal Jury Instruction 200.7

State v. Phams, [342 N.W.2d 792](#) (Iowa 1983)

State v. Lott, [255 N.W.2d 105](#) (Iowa 1977)

State v. Vesey, [241 N.W.2d 888](#) (Iowa 1976)

State v. Cunha, [193 N.W.2d 106](#) (Iowa 1972)

Comment

Note: Add the following paragraph if the offense involves specific intent: "The crime charged requires a specific intent. Therefore, before you can find the defendant "aided and abetted" the commission of the crime, the State must prove the defendant either has such specific intent or "aided and abetted" with the knowledge the others who directly committed the crime had such specific intent. If the defendant did not have the specific intent, or knowledge the others had such specific intent, [he] [she] is not guilty."

200.9 Insanity Defense - Consideration. The defendant claims [he] [she] is not guilty by reason of insanity. You must first determine if the State has proved all of the elements of the crime charged beyond a reasonable doubt. If you find the State has proved all of the elements, then you must consider the issue of defendant's sanity.

Authority

State v. McMullin, [421 N.W.2d 517](#) (Iowa 1988)

Comment

Caveat: If the insanity defense is submitted, then the marshaling instruction should be modified accordingly.

200.10 Sanity At The Time Of Commission Of The Offense. The defendant claims [he] [she] is not criminally accountable for [his] [her] conduct by reason of insanity. A person is presumed sane and responsible for [his] [her] acts.

Not every kind or degree of mental disease or mental disorder will excuse a criminal act. "Insane" or "insanity" means such a diseased or deranged condition of the mind as to make a person either incapable of knowing or understanding the nature and quality of [his] [her] act(s), or incapable of distinguishing right and wrong in relation to the act(s).

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A person is "sane" if, at the time [he] [she] committed the criminal act, [he] [she] had sufficient mental capacity to know and understand the nature and quality of the act and had sufficient mental capacity and reason to distinguish right from wrong as to the particular act.

To know and understand the nature and quality of one's acts means a person is mentally aware of the particular act(s) being done and the ordinary and probable consequences of them.

Concerning the mental capacity of the defendant to distinguish between right and wrong, you are not interested in [his] [her] knowledge of moral judgments, as such, or the rightness or wrongness of things in general. Rather, you must determine the defendant's knowledge of wrongness so far as the act(s) charged is/are concerned. This means mental capacity to know the act(s) was/were wrong when [he] [she] committed them.

The defendant must prove by a "preponderance of the evidence" that [he] [she] was insane at the time of the commission of the crime.

Preponderance of the evidence is evidence that is more convincing than opposing evidence. Preponderance of the evidence does not depend upon the number of witnesses testifying on one side or the other.

Insanity need not exist for any specific length of time before or after the commission of the act.

Authority

Iowa Code section [701.4](#)

State v. Becker, [818 N.W.2d 135](#) (Iowa 2012)

State v. James, [393 N.W.2d 465](#) (Iowa 1986)

State v. Hamann, [285 N.W.2d 180](#) (Iowa 1979)

Pope v. U.S., [372 F.2d 710](#) (8th CCA, 1968)

Alexander v. U.S., [380 F.2d 33](#) (8th CCA, 1968)

Comment

Note: Where defendant's theory of insanity involves irresistible impulse, the following might be properly added at the end of paragraph two above: "And where the defendant claims [his] [her] actions were such that [he] [she] was irresistibly forced to do the act, this is known as "irresistible impulse" and may be insanity. However, allowing one's passions to overcome judgment and escape control so that one was not rational at the time of the act is not sufficient to be an "irresistible impulse". The impulse or overpowering of one's will must be the result of a mental disease or disorder so as to make the person incapable of knowing the nature and quality of the act with which [he] [she] is charged or incapable of distinguishing between right and wrong in relation to that act."

Rev. 12/12

200.11 Insanity - Elements - Defendant Not Guilty By Reason Of Insanity. If the State has proved all of the elements of a crime, you should then determine if the defendant has proved [he] [she] was insane.

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In order for the defendant to establish [he] [she] was insane, [he] [she] must prove by a preponderance of the evidence either of the following:

1. At the time the crime was committed, the defendant suffered from such a diseased or deranged condition of the mind as to render [him] [her] incapable of knowing the nature and quality of the acts [he] [she] is accused of; or
2. At the time the crime was committed, the defendant suffered from such a diseased or deranged condition of the mind as to render [him] [her] incapable of distinguishing between right and wrong in relation to the act.

If the defendant has proved either of these elements by a preponderance of the evidence, as explained in Instruction No. ____, then the defendant is not guilty by reason of insanity. If the defendant has failed to prove either of the elements by a preponderance of the evidence, then the defendant is guilty.

Authority

Iowa Code section [701.4](#)
State v. Bekcker, [818 N.W.2d 135](#) (Iowa 2012)
State v. McMullin, [421 N.W.2d 517](#) (Iowa 1988)

Rev. 12/12

200.12 Diminished Responsibility - First Degree Murder. "Diminished responsibility" means a mental condition which does not allow the person to form a premeditated, deliberate, specific intent to kill.

"Diminished responsibility" does not entirely relieve a person of the responsibility for [his] [her] actions and is not the same as an insanity defense.

You should determine from the evidence if the defendant was capable of premeditating, deliberating, and forming a specific intent to kill.

If you have a reasonable doubt the defendant was capable of acting deliberately, with premeditation, and the specific intent to kill, then the defendant cannot be guilty of First Degree Murder. You should then consider the lesser included charges.

Comment

Note: This instruction is to be used only in murder cases. As to diminished responsibility being used as a total defense for all crimes in which intent is an essential element, Iowa Criminal Jury Instruction 200.13 should be used, which was drafted by reason of Iowa R. Crim P. 2.11(11)(b)(1)- Notice of Intent to Rely on Diminished Responsibility, and Iowa R. Crim. P. 2.22(1) - Forms of Verdict.

200.13 Diminished Responsibility - Other Specific Intent Crimes - Total Defense. One of the elements the State must prove is that the defendant acted with specific intent. The lack of mental capacity to form a specific intent is known as "diminished responsibility".

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Evidence of "diminished responsibility" is permitted only as it bears on [his] [her] capacity to form specific intent.

"Diminished responsibility" does not mean the defendant was insane. A person may be sane and still not have the mental capacity to form an intent because of a mental disease or disorder.

The defendant does not have to prove "diminished responsibility"; rather, the burden is on the State to prove the defendant was able to, and did, form the specific intent required.

200.14 Intoxication As A Defense. The defendant claims [he] [she] was under the influence of [intoxicants] [drugs] at the time of the alleged crime. The fact that a person is under the influence of [intoxicants] [drugs] does not excuse nor aggravate [his] [her] guilt.

Even if a person is under the influence of an [intoxicant] [drug], [he] [she] is responsible for [his] [her] act if [he] [she] had sufficient mental capacity to form the specific intent necessary to the crime charged or had the specific intent before [he] [she] fell under the influence of the [intoxicant] [drug] and then committed the act. Intoxication is a defense only when it causes a mental disability which makes the person incapable of forming the specific intent.

Authority

State v. Caldwell, [385 N.W.2d 553](#) (Iowa 1986)

Comment

Note: The following paragraph should be added if first or second degree murder is charged:

"No amount of intoxicants or drugs taken voluntarily can reduce second degree murder to manslaughter."

200.15 Alibi. If you have a reasonable doubt the defendant was present at the time and place of the alleged crime, you should find the defendant not guilty.

200.16 Confessions. The defendant cannot be convicted by a confession alone. There must be other evidence the defendant committed the crime.

In determining the weight and believability of the confession, you should consider:

1. Defendant's mental capacity and intelligence.
2. Defendant's mental and emotional state at the time it was made.
3. Whether it was knowingly and intelligently made.
4. Whether the defendant understood it.
5. Any other evidence relating to the confession.

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Authority

Iowa R. Crim. P. 2.21(4) - Confession of Defendant
State v. Leiss, [258 Iowa 787](#), [140 N.W.2d 172](#) (1966)
State v. Faught, [254 Iowa 1124](#), [120 N.W.2d 426](#) (1963)

Comment

Note: In State v. Holland, [258 Iowa 206](#), [138 N.W.2d 86](#) (1954), the Supreme Court adopted the orthodox rule for determining the admissibility of a confession. The question whether or not the confession was involuntary or in violation of constitutional rights is first and finally determined by the court after a hearing outside the presence of the jury. If found to be admissible in evidence, the weight and credibility to be given to the confession is left to the jury. Evidence of all circumstances surrounding the origin of the confession and the defendant's mental capacity at the time it was given is admissible before the jury as bearing on its weight and credibility.

Caveat: Cases are applicable only as to the voluntariness of confession. Corroboration language of cases is no longer applicable by reason of Iowa R. Crim. P. 2.21(4).

200.17 Entrapment. The defendant claims [he] [she] was "entrapped". You must first determine if the State has proved all of the elements of the crime charged beyond a reasonable doubt. If you find the State has proved all of the elements, then you must consider whether the State has proved by evidence beyond a reasonable doubt the defendant was not entrapped.

"Entrapment" occurs when a law enforcement agent causes the commission of a crime by using persuasion or other means likely to cause a normally law-abiding person to commit the crime. Conduct merely providing an opportunity to commit a crime does not amount to entrapment.

You should consider the conduct of the (law enforcement officer, sheriff, agent, policeman, etc.) and the defendant. This includes dealings leading up to the crime, the interaction between the agent and the defendant, and the defendant's response to conduct of the agent. These shall be considered in deciding what the effect of the agent's conduct would be on a normally law-abiding person.

If the State has proved beyond a reasonable doubt all the elements of the crime charged, and that the defendant was not entrapped, [he] [she] is guilty. If the State has not proved one or more elements of the crime charged, or has not disproved the defense of entrapment, the defendant is not guilty.

Authority

State v. Cooper, [248 N.W.2d 908](#) (Iowa 1976)
State v. Mullen, [216 N.W.2d 375](#) (Iowa 1974)

Comment

Caveat: If the defendant asserts a "take-back" entrapment defense, the instruction will have to be modified in conformity with State v. Overmann, [220 N.W.2d 914](#) (Iowa 1974).

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Note: Where entrapment is alleged, the marshalling instruction should be modified to reflect that if the jury finds the State has proved all of the elements of the crime charged, then the jury shall consider the defense of entrapment.

Note: Where the plaintiff has alleged libel (slander) per se and the court has determined the defense of qualified privilege has been established, then plaintiff must prove "actual malice" as an additional element. In the circumstance, the following additional element should be added: [4. The defendant made the statements with actual malice.] The definition of actual malice then should also be given to the jury as noted in Iowa Civil Jury Instruction 2100.5.

200.18 Attempt. Wherever the word "attempt" is used in these instructions it means to try to do something. It makes no difference whether the person accomplished what was attempted.

200.19 Malice. "Malice" is a state of mind which leads one to intentionally do a wrongful act [to the injury of another] [in disregard of the rights of another] out of actual hatred, or with an evil or unlawful purpose.

Malice may be established by evidence of actual hatred, or by proof of a deliberate or fixed intent to do injury.

Malice may be found from the acts and conduct of the defendant, and the means used in doing the wrongful and injurious act.

200.20 Recklessness. A person is "reckless" or acts "recklessly" when [he] [she] willfully disregards the safety of persons or property. It is more than a lack of reasonable care which may cause unintentional injury. Recklessness is conduct which is consciously done with willful disregard of the consequences. For recklessness to exist, the act must be highly dangerous. In addition, the danger must be so obvious that the actor knows or should reasonably foresee that harm will more likely than not result from the act. Though recklessness is willful, it is not intentional in the sense that harm is intended to result.

Authority

Iowa Code section [702.16](#)

State v. Sutton, [636 N.W.2d 107](#) (Iowa 2001)

State v. Torres, [495 N.W.2d 678](#) (Iowa 1993)

200.21 Dangerous Weapon - Definition. A "dangerous weapon" is any device or instrument designed primarily for use in inflicting death or injury, and when used in its designed manner is capable of inflicting death. It is also any sort of instrument or device actually used in such a way as to indicate the user intended to inflict death or serious injury, and when so used is capable of inflicting death.

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Iowa Code section [702.7](#)

Comment

Note: Where enumerated dangerous weapons are alleged and supported by the evidence, a substituted instruction would state: "You are instructed that (weapon) is, by law, a dangerous weapon."

Rev. 9/03

200.22 Serious Injury. An element of the crime charged is that the victim suffered a "serious injury". A serious injury is a [disabling mental illness] [condition which cripples, incapacitates, weakens or destroys a person's normal mental functions] [bodily injury which creates a substantial risk of death or which causes serious permanent disfigurement or extended loss or impairment of the function of any bodily part or organ][an injury to a child that requires surgical repair and necessitates the administration of general anesthesia]. "Serious injury" includes but is not limited to skull fractures, rib fractures, and metaphyseal fractures of the long bones of children under the age of four years.

Authority

Iowa Code section [702.18](#)

Comment

Use the last sentence in cases involving the charge of Child Endangerment filed under Iowa Code Section 726.6. In other cases, use the last sentence only if germane to the charges.

200.23 Displaying A Firearm - Armed With A Firearm. If you find the defendant guilty, you must decide if [he] [she] was armed with a firearm.

To be armed means the defendant had a firearm on [his] [her] person at the time of the crime. It is not necessary the firearm was used, displayed or represented as being in [his] [her] possession.

The State must prove beyond a reasonable doubt the defendant was armed with a firearm. You shall answer the question about this issue which is attached to these instructions. Your answer, as with your verdict, must be unanimous.

Authority

Iowa Code section [902.7](#)

200.24 Displaying A Firearm - Displayed Firearm. If you find the defendant guilty, you must decide if [he] [she] displayed a firearm in a threatening manner.

To display a firearm in a threatening manner means to show or make the existence of a firearm apparent in a manner which intimidates the victim at the time of the crime.

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The State must prove beyond a reasonable doubt the defendant displayed a firearm in a threatening manner. You shall answer the question about this issue which is attached to these instructions. Your answer, as with your verdict, must be unanimous.

Authority

Iowa Code section [902.7](#)

200.25 Displaying A Firearm - Representation Of Firearm. If you find the defendant guilty, you must decide if [he] [she] represented that [he] [she] had a firearm.

To represent [he] [she] had a firearm means to state, or act as if, a firearm was in [his] [her] possession at the time of the crime. It is not necessary there actually was a firearm, or that it was shown. However, there must have been an act or statement by [him] [her] which would cause the victim to reasonably believe the defendant had a firearm.

The State must prove beyond a reasonable doubt the defendant represented [he] [she] had a firearm. You shall answer the question about this issue which is attached to these instructions. Your answer, as with your verdict, must be unanimous.

Authority

Iowa Code section [902.7](#)

200.26 Responsibility Of Employers And Others - Directed Employee To Commit Offense. An employer, officer, director, or employee who supervises the work of other employees, is guilty of the same crime as that committed by an employee acting under their control, supervision or direction, if the person directed the employee to commit a crime.

The State must prove all of the following elements:

1. The defendant was an [employer] [agent] [officer] [director] [employee] of (employer's name).
2. As an [employer] [agent] [officer] [director] [employee], the defendant was a supervisor of, directed or controlled the work of (employee committing the offense).
3. The defendant directed (employee committing offense) to commit (crime).
4. (Employee committing offense) committed the crime of (crime) while acting under the direction of [his] [her] [employer] [agent] [officer] [director] [employee].

If the State has proved all of the elements, the defendant is guilty. If the State has failed to prove any one of the elements, the defendant is not guilty.

Authority

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Iowa Code section [703.4\(1\)](#)

200.27 Responsibility Of Employers And Others - Knowingly Permits Employee To Commit Offense. An employer who supervises or directs the work of other employees is guilty of the same crime committed by an employee acting under [his] [her] control, supervision or direction, if [he] [she] knowingly permits an employee to commit a crime, under circumstances in which the employer expects to benefit from the illegal activity of the employee.

The State must prove all of the following elements:

1. The defendant was an employer of (employee committing offense).
2. As an employer, the defendant was a supervisor of, directed or controlled the work of (employee committing offense).
3. (Employee committing offense) committed the crime of (crime).
4. The defendant knowingly permitted (employee committing offense) to commit the crime, and as a result, expected to benefit from the actions of (employee committing offense).
5. (Employee committing offense) did so while under the control, supervision of (employer's name), and as part of [his] [her] employment.

If the State has proved all of the elements, the defendant is guilty. If the State has failed to prove any one of the elements, the defendant is not guilty.

Authority

Iowa Code section [703.4\(2\)](#)

200.28 Responsibility Of Employers. An employer who supervises or directs the work of other employees is guilty of a crime committed by an employee acting under [his] [her] control, supervision or direction if [he] [she] assigns the employee some duty or duties which the person knows cannot be, or is not likely to be, accomplished unless the employee commits a crime, provided the crime committed by the employee is one which the employer can reasonably anticipate will follow from the assignment.

The State must prove all of the following elements:

1. The defendant was an employer.
2. As an employer, the defendant was a supervisor of, directed or controlled the work of (employee committing offense).
3. (Employee committing offense) committed the crime of (crime).

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4. The defendant assigned (employee committing offense) to perform an act which [he] [she] knew could not be or was not likely to be accomplished without (employee committing offense) committing the crime of (crime).

5. The crime committed by (employee committing offense) was one which the defendant should have reasonably foreseen or anticipated by (employee committing offense) performing the duty to which [he] [she] was assigned.

6. (Employee committing offense) did so while under the control, supervision and as part of [his] [her] employment.

If the State has proved all of the elements, the defendant is guilty. If the State has failed to prove any one of the elements, the defendant is not guilty.

Authority

Iowa Code section [703.4\(3\)](#)

200.29 Liability Of Corporations, Partnerships And Voluntary Associations. Where a crime is committed by an [agent] [officer] [director] [employee] of a [corporation] [partnership] [voluntary association], while acting within the scope of [his] [her] authority and in behalf of the [corporation] [partnership] [voluntary association], the corporation shall be guilty of the crime charged, if the crime is authorized, requested or tolerated by the board of directors or by a high managerial agent.

The State must prove all of the following elements:

1. The act(s) constituting the crime of (crime) was committed by (name).
2. [He] [She] was an agent, officer, director or employee of the defendant.
3. The crime was committed while (name) was acting within the scope of [his] [her] authority.
4. (Name) acts were authorized, requested or tolerated by the board of directors or a high managerial agent.

If the State has proved all of the elements, the defendant is guilty. If the State has failed to prove any one of the elements, the defendant is not guilty.

Comment

Note: As to element number 1, an instruction will have to be prepared setting forth the offense alleged to have been committed and its elements.

Note: Attention is directed to Iowa Code section [703.5\(1\)](#) where the offense is an omission. In such instances where this occurs, this instruction would have to only set forth the statute, its elements and that it was committed by the defendant. Elements 2-4 would not be applicable. Also, Iowa Criminal Jury Instruction 200.31 will have to be given.

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200.30 High Managerial Agent - Definition. The term "high managerial agent" means [an officer of the corporation] [partner] [agent] in a position of authority with respect to the formulation of policy, or the supervision in a managerial capacity of subordinate employees.

200.31 Liability Of Corporations, Partnerships And Voluntary Associations - Omissions. The defendant is accused of violating (name of statute) which provides: (set forth words of statute). This crime requires an omission; that is, neglect or failure either to discharge a specific duty or perform an act imposed by law on the defendant.

Though the defendant is a [corporation] [partnership] [voluntary association], it would be guilty of the crime in the same manner as an individual who had committed the crime.

Comment

Note: This instruction would be used where the offense charged is under Iowa Code section [703.5\(1\)](#).

200.32 Liability Of Corporations, Partnerships And Voluntary Associations - Agent And Scope Of Authority - Definition. The term "agent" or "agency" refers to a relationship existing between two persons when one person, known as the "principal", gives to another, known as the "agent", authority to act for the principal, and the agent accepts the authority and proceeds to act as directed, subject to the control and direction of the principal.

The term "scope of authority" means the express or implied authorization given to the agent by the principal.

200.33 Continuous Transactions - Cautionary Instructions. Evidence has been received about other alleged transactions involving the defendant. The defendant is not on trial for those transactions.

However, the law permits such evidence when the other transactions and the crime charged form an inseparable part of the whole act. If they are so closely associated with each other that they form a continuous transaction, the other transactions may reasonably help to establish the crime charged.

Authority

State v. Hood, [346 N.W.2d 481](#) (Iowa 1984)

State v. Fryer, [243 N.W.2d 1](#) (Iowa 1976)

200.34 Similar Crimes. Evidence has been received concerning other wrongful acts alleged to have been committed by the defendant. The defendant is not on trial for those acts.

This evidence must be shown by clear proof to show [motive] [intent] [absence of mistake or accident] [common scheme] [identity of person charged] and for no other purpose.

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If you find other wrongful acts occurred then and only then may such other wrongful acts be considered for the purpose of establishing [motive] [intent] [absence of mistake or accident] [common scheme] [identity of person charged].

You may consider whether the acts were recent or remote and whether the acts were similar or dissimilar to the crimes charged in this case and all other relevant factors in deciding how much weight and effect to give them.

Authority

State v. Reynolds, [765 N.W.2d 283](#) (Iowa 2009)
State v. Barrett, [401 N.W.2d 184](#) (Iowa 1987)
State v. Kern, [392 N.W.2d 134](#) (Iowa 1986)
State v. Williams, [360 N.W.2d 782](#) (Iowa 1985)
State v. Washington, [356 N.W.2d 192](#) (Iowa 1984) - Knowledge
State v. Heidebrink, [334 N.W.2d 344](#) (Iowa 1983) - Chosen Scheme
State v. Bauer, [324 N.W.2d 320](#) (Iowa 1982)
State v. Walsh, [318 N.W.2d 184](#) (Iowa 1982)

Rev. 9/10

200.35 Compulsion. The defendant claims that at the time and place in question, [he] [she] was acting under compulsion.

When a person is compelled to act by another's threat of serious injury, and reasonably believes the injury is about to take place and can be avoided only by doing the act, then no crime has been committed. This defense does not apply if a person intentionally or recklessly causes physical injury to another. (Omit last sentence if not supported by evidence.)

Authority

Iowa Code section 704.10
Iowa Code section 702.18
State v. LeCompte, [327 N.W.2d 221](#) (Iowa 1982)
State v. Proctor, [585 N.W. 2d 841](#) (Iowa 1998)

Comment

Note: The defense of compulsion differs from the defense of necessity. See Iowa Criminal Jury Instruction 400.18.

Note: If the defense of compulsion is raised and supported by the evidence, it should be included in the marshaling instruction.

200.36 Impeachment - Public Offense. [The witness (name of witness) has admitted [he] [she]] [You have heard evidence claiming that the witness (name of witness)] was convicted of a crime.

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You may use that evidence only to help you decide whether to believe the witness and how much weight to give their testimony.

Authority

Iowa R. Evid. 5.609 - Impeachment by Evidence of Conviction of Crime

200.37 Expert Witness. You have heard testimony from persons described as experts. Persons who have become experts in a field because of their education and experience may give their opinion on matters in that field and the reasons for their opinion.

Consider expert testimony just like any other testimony. You may accept it or reject it. You may give it as much weight as you think it deserves, considering the witness's education and experience, the reasons given for the opinion, and all the other evidence in the case.

Authority

Crouch v. National Livestock Remedy Co., [210 Iowa 849](#), [231 N.W. 323](#) (1930)

200.38 Character And Reputation Evidence. Evidence has been received concerning the defendant's [character] [reputation] for (trait used should be inserted here). This evidence should be considered with all other evidence in determining whether the defendant is guilty or not.

If you find the defendant's [character] [reputation] as to (trait) is good, you may consider this evidence in determining whether a person of such [character] [reputation] for (trait) would be likely to commit the crime charged.

If the evidence of such good [character] [reputation] as to (trait) is good enough, together with all of the other evidence, to raise a reasonable doubt as to the defendant's guilt, [he] [she] must be acquitted, even though without such proof of good [character] [reputation] the jury would convict.

However, the defendant's previous good [character] [reputation] as to (trait) is not a defense if you find by evidence beyond a reasonable doubt that the defendant committed the crime charged.

Authority

Iowa R. Evid. 5.803(21) - Reputation as to Character (and Committee Comment)
State v. Hobbs, [172 N.W.2d 268](#) (Iowa 1969)

10/04

200.39 Ignorance Or Mistake Of Fact - Defense. The defendant claims that at the time of the [act] [omission] in question, [he] [she] was [ignorant of (element of crime to which ignorance is directed)] [acting under a mistake of fact as to (element of crime to which mistake of fact is directed)]. When an [act is committed] [omission is made] because of [ignorance] [mistake of fact], the [ignorance] [mistake of fact] must be because of a good faith reasonable belief by the defendant, acting as a reasonably careful person under similar circumstances.

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The defendant must inquire or determine what is true when to do so would be reasonable under the circumstances.

The State has the burden of proving the defendant was not acting under [ignorance] [mistake of fact] as it applies to the question of (element).

Authority

Iowa Code section [701.6](#)
State v. Freeman, [267 N.W.2d 69](#) (Iowa 1978)

Comment

Caveat: When the issue is raised, the marshaling instruction must be tailored to include this issue.

200.40 Defendant's Failure To Testify. In this case, the defendant has decided not to testify. The defendant is not required to testify, and no inference of guilt shall be drawn from that fact. The burden of proof remains upon the State to prove the guilt of the defendant.

Authority

Carter v. Kentucky, [450 U.S. 288](#), [67 L. Ed.2d 241](#); [101 S.Ct. 1112](#) (1981)

Comment

Caveat: See State v. Kimball, [176 N.W.2d 864](#), 869 (Iowa 1970). ("We now hold that such instruction should not be given in any future trial unless it is requested by defendant, and that it will be considered error if it is given, absent such request, in any trial started after the date this opinion is filed.")

200.41 Bodily Injury. The term 'bodily injury' means physical pain, illness or any impairment of physical condition.

Authority

State v. McKee, [312 N.W.2d 907](#) (Iowa 1981)

200.42 Contradictory Statements - Non-Party - Witness Not Under Oath. You have heard evidence claiming [name of witness] made statements before this trial while not under oath which were inconsistent with what the witness said in this trial.

Because the witness did not make the earlier statements under oath, you may use them only to help you decide if you believe the witness.

Decide if the earlier statements were made and whether they were inconsistent with testimony given at trial. You may disregard all or any part of the testimony if you find the statements were

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made and they were inconsistent with the testimony given at trial, but you are not required to do so.

Do not disregard the testimony if other evidence you believe supports it, or if you believe it for any other reason.

Authority

A prior inconsistent statement of a witness made while not under oath may be considered for impeachment purposes only. Iowa R. Evid. 5.613; State v. Barry, [549 N.W.2d 316](#), 318 (Iowa App. 1996).

Comment

This instruction should be given when a non-party witness has made a prior inconsistent statement while not under oath. If the non-party witness made a prior inconsistent statement under oath, then Iowa Criminal Jury Instruction 200.43 should be given. If the non-party witness has made prior inconsistent statements both under oath and not under oath, then both Instruction 200.42 and Instruction 200.43 should be given to clarify and distinguish the two forms of statements for the jury.

200.43 Contradictory Statements - Non-Party - Witness Under Oath. You have heard evidence claiming [name of witness] made statements before this trial while under oath which were inconsistent with what [name of witness] said in this trial. If you find these statements were made and were inconsistent, then you may consider them as part of the evidence, just as if they had been made at this trial.

You may also use these statements to help you decide if you believe [name of non-party witness]. You may disregard all or any part of the testimony if you find the statements were made and were inconsistent with the testimony given at trial, but you are not required to do so. Do not disregard the trial testimony if other evidence you believe supports it or you believe it for any other reason.

Authority

A prior inconsistent statement of a witness given under oath is substantive evidence which may be considered for any purpose. State v. Thompson, [397 N.W.2d 679](#), 683 n.2 (Iowa 1986); Iowa R. Evid. 5.801(d)(1)(A).

Comment

This Instruction should be given when a non-party witness has made a prior inconsistent statement while under oath. If the non-party witness made a prior inconsistent statement while not under oath, then Instruction 200.42 should be given. If the non-party witness has made prior inconsistent statements both under oath and not under oath, then both Instruction 200.43 and Instruction 200.42 should be given to clarify and distinguish the two forms of statements for the jury.

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200.44 Statements By The Defendant. Evidence has been offered to show that the defendant made statements at an earlier time and place.

If you find any of the statements were made, then you may consider them as part of the evidence.

*You may also use these statements to help you decide if you believe the defendant. You may disregard all or any part of the defendant's testimony if you find the statements were made and were inconsistent with the defendant's testimony given at trial, but you are not required to do so. Do not disregard the defendant's testimony if other evidence you believe supports it or you believe it for any other reason.

Comment

Caveat: The instruction should be given if the evidence includes one or more statements by the defendant that qualify as admissions under Iowa R. Evid. 5.801(d)(2) -- Admission by a Party Opponent.

*The last paragraph should be used only if the defendant testifies.

Rev. 6/2018

200.45 Eyewitness Identification. The reliability of eyewitness identification has been raised as an issue. Identification testimony is an expression of belief or impression by the witness. Its value depends on the opportunity the witness had to see the person at the time of the crime and to make a reliable identification later.

In evaluating the identification testimony of a witness, you should consider the following:

1. If the witness had an adequate opportunity to see the person at the time of the crime. You may consider such matters as the length of time the witness had to observe the person, the conditions at that time in terms of visibility and distance, and whether the witness had known or seen the person in the past.
2. If an identification was made after the crime, you shall consider whether it was the result of the witness's own recollection. You may consider the way in which the defendant was presented to the witness for identification, and the length of time that passed between the crime and the witness's next opportunity to see the defendant.
3. An identification made by picking the defendant out of a group of similar individuals is generally more reliable than one which results from the presentation of the defendant alone to the witness.
4. Any occasion in which the witness failed to identify the defendant or made an inconsistent identification.

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U.S. v. Telfaire, [469 F.2d 552](#) (D.C. Cir. 1972)

Comment

Note: This instruction is provided for use when appropriate under State v. Tobin, [338 N.W.2d 879](#) (Iowa 1983)

200.46 Destruction Of Evidence - Permissible Inference. If you find that (description of the material physical evidence) existed and the State knowingly and intentionally destroyed (description of the material physical evidence), you may, but are not required to, conclude that the information contained in the (description of the material physical evidence) would be unfavorable to the State and favorable to the defendant.

Authority

State v. Ueding, [400 N.W.2d 550](#) (Iowa 1987)
State v. Maniccia, [355 N.W.2d 256](#) (Iowa App. 1984)
State v. Brown, [337 N.W.2d 507](#) (Iowa 1983)
Brady v. Maryland, [373 U.S. 83](#), [83 S.Ct. 1194](#), [10 L. Ed.2d 215](#) (1963)

6/88

200.47 Possession. The law recognizes several kinds of possession. A person may have actual possession or constructive possession. A person may have sole or joint possession.

A person who has direct physical control over a thing on [his] [her] person is in actual possession of it.

A person who, although not in actual possession, has both the power and the intention at a given time to exercise dominion or control over a thing, either directly or through another person or persons, is in constructive possession of it. A person's mere presence at a place where a thing is found or proximity to the thing is not enough to support a conclusion that the person possessed the thing.

If one person alone has actual or constructive possession of a thing, possession is sole. If two or more persons share actual or constructive possession of a thing, possession is joint.

Whenever the word "possession" has been used in these instructions, it includes actual as well as constructive possession and sole as well as joint possession.

Authority

State v. Reeves, [209 N.W.2d 18](#) (Iowa 1973)
State v. Atkinson, [620 N.W.2d 1](#) (Iowa 2000)
State v. Webb, [648 N.W.2d 72](#) (Iowa 2002)
State v. Cashen, [666 N.W.2d 566](#) (Iowa 2003)
State v. Bash, [670 N.W.2d 135](#) (Iowa 2003)

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Comment

This instruction may not be appropriate for use in theft cases. See Iowa Criminal Jury Instruction No. 1400.2 and State V. Donaldson, [663 N.W.2d 882](#) (Iowa 2003).

Rev. 7/05

200.48 Immediate Possession or Control of a Firearm or Offensive Weapon. To have immediate possession of a [firearm][offensive weapon] means to have actual possession of the [firearm][offensive weapon] on or around one's person. To have immediate control of a [firearm][offensive weapon] means to have the [firearm][offensive weapon] in close proximity so that the person can reach for it or claim dominion or control over it. In order to prove that the defendant had immediate possession or control of a [firearm][offensive weapon], the State must prove that the defendant had knowledge of its existence and its general location.

Authority

Iowa Code section 124.401(e)
State v. McDowell, [622 N.W.2d 305](#) (Iowa 2001)
State v. Atkinson, [620 N.W.2d 1](#) (Iowa 2000)
State v. Engel, [590 N.W.2d 549](#) (Iowa 1998)
State v. Eickelberg, [574 N.W.2d 1](#) (Iowa 1997)

Comment

For a further definition of “possession or control” see Iowa Criminal Jury Instruction No. 1400.2

200.49 Incendiary Device Or Material - Definition. An "incendiary device" or "incendiary material" is something causing or designed to cause destruction of property by fire.

Authority

Iowa Code section [702.21](#)

6/02

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CHAPTER 300

ACCESSORY AFTER THE FACT

[300.1](#) Accessory After The Fact - Elements

[300.2](#) Accessory After The Fact - Felony, Misdemeanor Defined

[300.3](#) Accessory After The Fact - Knowledge

[300.4](#) Accessory After The Fact - Intent To Prevent Apprehension

[300.5](#) Accessory After The Fact - Definition - Harbor, Aid, Conceal

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300.1 Accessory After The Fact - Elements. Any person who knows that a crime has been committed by a certain person (who is not their husband or wife)* and afterwards harbors, aids or conceals the person with the intent to prevent their arrest, is an Accessory After The Fact.

The State must prove all of the following elements:

1. The crime of (crime) was committed.
2. The defendant knew the crime had been committed and (name) had committed it.
3. The defendant harbored, aided or concealed (name).
4. This was done with the intent to prevent arrest.
5. The defendant was not the [husband] [wife] of (name).*

If the State has proved all of the elements, the defendant is guilty. If the State has failed to prove any one of the elements, the defendant is not guilty.

Authority

Iowa Code section [703.3](#)

Comment

Note: *This should be included only when the husband-wife relationship is raised.

300.2 Accessory After The Fact - Felony, Misdemeanor Defined. Concerning element number 1 of Instruction No._____, the State must prove that the crime of (crime) was committed.

(Set forth the elements of the offense.)

300.3 Accessory After The Fact - Knowledge. The term "knew" as used in element number 3 of Instruction No._____, refers to a state of mind which is seldom capable of direct or positive proof. It means more than suspicion, speculation or conjecture. It must be shown that the defendant was aware of, informed, perceived or had information of the commission of the crime and (name) had committed it.

300.4 Accessory After The Fact - Intent To Prevent Apprehension. Mere harboring, aiding or concealing a person who committed a crime will not support a finding of guilt, unless the State proves the defendant had specific intent to prevent arrest.

(Insert Iowa Criminal Jury Instruction 200.2 here).

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300.5 Accessory After The Fact - Definition - Harbor, Aid, Conceal. To "harbor, aid or conceal" means to shelter, hide or provide a place of refuge or safety; or to lend assistance or help.

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CHAPTER 400

[400.1](#) Justification - Definition - Reasonable Force - Burden Of Proof

[400.2](#) No Duty to Retreat.

[400.3](#) Justification – Defense Not Available.

[400.4](#) Provocation – Defense Not Available.

[400.5](#) Deadly Force - General Statement.

[400.6](#) Deadly Force - Presumptions.

[400.7](#) Deadly Force - Duties.

[400.8](#) Victim’s Previous Bad Acts Or Character

[400.9](#) Justification - Elements - [Citizen’s] Arrest of Another for Felony.

[400.10](#) Justification - Elements - [Citizen’s] Arrest of Another Committing a Public Offense.

[400.11](#) Use of Deadly Force in Making Arrest.

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400.1 Justification - Definition - Reasonable Force - Burden of Proof. The defendant claims [he][she] was justified in using reasonable force to prevent [injury to a person, including the defendant] [the loss of defendant's property, another's property or public property] [the commission of a forcible felony].

The defendant was justified in using reasonable force if [he][she] reasonably believed that such force was necessary to [defend (himself/herself) or another from any actual or imminent use of unlawful force] [prevent or terminate criminal interference with (his/her) possession or other right in property] [to aid another in the lawful defense of the other person's rights in property or in any public property][prevent or terminate the commission of (name forcible felony)] that (he/she) reasonably believed was being or would be imminently perpetrated by (name of victim)].*

Reasonable force is only the amount of force a reasonable person would find necessary to use under the circumstances to prevent [death] [injury] [loss of property] [completion of (name of forcible felony)]. If in the defendant's mind the [danger] [danger of loss of property] [need to use force to prevent (name of forcible felony)] was actual, real, imminent, or unavoidable, even if the defendant was wrong in estimating it or the force necessary to repel it, the force was justified if the defendant had a reasonable basis for [his][her] belief and responded reasonably to that belief.* It is not necessary that there was actual danger, but the defendant must have acted in an honest and sincere belief that the danger actually existed. Apparent danger with the defendant's knowledge that no real danger existed is no excuse for using force.

Reasonable force can include deadly force if it is reasonable to believe that such force is necessary to resist a like force or threat, prevent or terminate the commission of (name of forcible felony), or avoid injury or risk to one's life or safety or the life or safety of another.** The State must prove beyond a reasonable doubt that the defendant's use of force was not justified.

Authority

Iowa Code sections 704.1(1), 704.1(2) 704.3, 704.4, 704.5, 704.7
State v. Fordyce, [940 N.W.2d 419](#), 425 (Iowa 2020)

Comment

Note: Use that language which is supported by the evidence.

Note: *If forcible felony alternative is used, include the marshaling instruction for the applicable felony, reference back to this instruction, and also include:

It is not necessary that (name of victim) was charged with, or convicted of, (name of forcible felony). It is only necessary that the defendant reasonably believed that (name of victim) was committing it or was imminently going to commit it.

Note: **Use this paragraph only if deadly force was used. Iowa Criminal Jury Instructions 400.5 (Deadly Force), 400.6 (Deadly Force – Presumptions), and 400.7 (Deadly Force – Duties) must then be used.

Note: For cases that occurred prior to July 1, 2017 only, add the following language:

Reasonable force, [including deadly force,] may be used even if an alternative course of action is available if the alternative entails a risk to life or safety, or the life or safety of a

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third party, or requires one to abandon or retreat from one's dwelling or place of business or employment.

Note: For the defense of property alternative, the additional language that "Defendant may not use a spring gun or trap which is left unattended and unsupervised and which is placed for the purpose of preventing or terminating criminal interference with the possession or other right to property." should be given if the evidence warrants inclusion.

Updated 6/2020

400.2 No Duty to Retreat. A person who is not engaged in illegal activity has no duty to retreat from any place where the person is lawfully present before using force as described in these instructions.

Authority

Iowa Code section [704.1\(3\)](#)

State v. Baltazar, [935 N.W.2d 862](#) (Iowa 2019)

Comment

Note: Cases that occurred prior to July 1, 2017, should not use this instruction.

Updated 6/2020

400.3 Justification – Defense Not Available. If any of the following is true, the defendant's use of force was not justified:

1. The defendant did not have a reasonable belief that it was necessary to use force to prevent an injury or loss.
2. The defendant used unreasonable force under the circumstances.
3. The defendant was participating in [name of forcible felony]* [a riot] [a duel].
4. The defendant was [not lawfully present] [engaged in illegal activity]** in the place where [he] [she] used force, [he] [she] made no effort to retreat, and retreat was a reasonable alternative to using force.

If the State has proved any of these beyond a reasonable doubt, the defendant's use of force was not justified.

Authority

Iowa Code sections 704.1, 704.3, 704.6, 704.7

State v. Fordyce, [940 N.W.2d 419](#) (Iowa 2020)

State v. Baltazar, [935 N.W.2d 862](#) (Iowa 2019)

Comment

Note: Only use those elements that are supported by the evidence.

Note: *If the forcible-felony option is included, include the marshaling instruction for the applicable felony and reference back to this instruction.

Note: **If the engaged-in-illegal-activity option is included, include the marshaling instruction for the applicable crime and reference back to this instruction. The Iowa Supreme Court has left open the question of whether the duty to retreat involves only illegal activities germane to the use of force. State v. Baltazar, [935 N.W.2d 862](#), 871 (Iowa 2019).

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Updated 6/2020

400.4 Provocation – Defense Not Available. If any of the following is true, the defendant’s use of force was not justified:

1. The defendant initially provoked the use of force against [himself][herself], intending to use it as an excuse to injure (name of victim).
2. The defendant initially provoked the use of force against [himself][herself] by [his][her] unlawful acts unless:
 - a. (Name of victim) used force grossly disproportionate to the defendant’s provocation, and it was so great the defendant reasonably believed [he][she] was in imminent danger of death or serious injury, or
 - b. The defendant withdrew from physical contact with (name of victim) and clearly indicated to (name of victim) that [he][she] desired to terminate the conflict but (name of victim) continued or resumed the use of force.

If the State has proved any of these beyond a reasonable doubt, the defendant’s use of force was not justified.

Authority

Iowa Code section 704.6

State v. Fordyce, [940 N.W.2d 419](#) (Iowa 2020)

State v. Wilson, ___ N.W.2d ___, No. 18-0564, 2020 WL 1814466 (Iowa Apr. 10, 2020)

Comment

Note: Use only if the evidence supports that the defendant provoked the victim.

Updated 6/2020

400.5 Deadly Force - General Statement. The term "deadly force" means any of the following:

1. Force used to purposefully cause a serious injury, as defined in Instruction ___,*;
2. Force that the defendant knew or should have reasonably known would create a strong probability that serious injury, as defined in Instruction ___,* would result;
3. Discharging a firearm in the direction of someone, knowing they are present, even with no intent to cause a serious injury, as defined in Instruction ___,* or
4. Discharging a firearm at a vehicle in which someone is known to be.

“Deadly force” does not include a threat to cause serious injury or death, by the production, display, or brandishing of a deadly weapon, as long as the actions of the person are limited to creating an expectation that the person may use deadly force to defend oneself, another, or as otherwise authorized by law.

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Authority

Iowa Code sections [704.2](#), 702.18

Comment

Note: * Include and refer to Iowa Criminal Jury Instruction 200.22 (Serious Injury). Use only those types of injury supported by the evidence.

Note: Iowa Criminal Jury Instructions 400.6 (Deadly Force – Presumptions) and 400.7 (Deadly Force – Duties) must be used with this instruction.

When the defendant is a peace officer, corrections officer, or corrections official acting in the line of duty, refer to Iowa Code section 704.2 and modify paragraphs 3 and 4:

3. The discharge of a firearm, other than a firearm loaded with less lethal munitions and discharged by a peace officer, corrections officer, or corrections official in the line of duty, in the direction of some person with the knowledge of the person's presence there, even though no intent to inflict serious physical injury can be shown. "Less lethal munitions" means projectiles which are designed to stun, temporarily incapacitate, or cause temporary discomfort to a person without penetrating the person's body.
4. The discharge of a firearm, other than a firearm loaded with less lethal munitions and discharged by a peace officer, corrections officer, or corrections official in the line of duty, at a vehicle in which a person is known to be.

Updated 6/2020

400.6 Deadly Force - Presumptions. If you find that the defendant knew, or had reason to believe, any of the following at the time [he] [she] used deadly force, you must presume the defendant reasonably believed that deadly force was necessary to avoid injury or risk to [his] [her] [another's] life or safety:

1. (Name of victim) was unlawfully entering defendant's [dwelling] [place of business or employment] [occupied vehicle] by force or stealth, or
2. (Name of victim) had unlawfully entered defendant's [dwelling] [place of business or employment] [occupied vehicle] by force or stealth and remained there using force, or
3. (Name of victim) was unlawfully removing or attempting to unlawfully remove (name of person removed) with force and against the will of (name of person removed) from [his][her] [dwelling] [place of business or employment] [occupied vehicle].

Yet if you find any of the following was also true at the time the defendant used deadly force, you need not presume that the defendant reasonably believed deadly force was necessary to avoid injury or risk to [his][her] [another's] life or safety:

1. The defendant was [engaged in a criminal offense] [was attempting to escape from the scene of a criminal offense that the defendant committed] [using a dwelling, place of business or employment, or occupied vehicle to further a criminal offense].

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2. (Name of victim) was attempting to remove a child, grandchild, or someone in (name of victim)'s lawful custody or guardianship.
3. (Name of victim) was a peace officer on duty who entered or was attempting to enter a [dwelling] [place of business or employment] [occupied vehicle] in the lawful performance of [his][her] official duties.
4. (Name of victim) did not have a protective order or no-contact order in effect against [him][her] and [he][she] [was a resident of, or had the right to be in, the defendant's dwelling] [had the right to be in the defendant's place of business or employment] [had a right to be in the defendant's occupied vehicle].

Comment

Use only that language that is supported by the evidence.

Note: Iowa Criminal Jury Instructions 400.5 (Deadly Force) and 400.7 (Deadly Force – Duties) must be used with this instruction.

Note: Cases that occurred prior to July 1, 2017, should not use this instruction.

Authority

Iowa Code section 704.2A

Updated 6/2020

400.7 Deadly Force - Duties.

After using deadly force, the defendant had the following duties:

1. To not intentionally destroy, alter, conceal, or disguise physical evidence relating to the defendant's use of deadly force;
2. To not intentionally intimidate a witness into refusing to cooperate with an investigation of the defendant's use of deadly force; and
3. To not intentionally induce another person to alter testimony about the defendant's use of deadly force.

You may consider whether the defendant complied with these duties when deciding whether deadly force was justified.

Authority

Iowa Code section 704.2B

State v. Gibbs, ___ N.W.2d ___, No. 18-1298, 2020 WL 1897287 (Iowa Apr. 17, 2020).

Comment

Note: Iowa Criminal Jury Instructions 400.5 (Deadly Force) and 400.6 (Deadly Force – Presumptions) must be used with this instruction.

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Note: Do not instruct that the defendant has a statutory duty to notify law enforcement after using deadly force as provided in Iowa Code section 704.2B. Doing so violates a defendant's Fifth Amendment right against self-incrimination. *State v. Gibbs*, ___ N.W.2d ___, No. 18-1298, 2020 WL 1897287 (Iowa Apr. 17, 2020).

Note: Cases that occurred prior to July 1, 2017, should not use this instruction.

Updated 6/2020

400.8 Victim's Previous Bad Acts Or Character. Evidence has been received concerning (name of victim)'s [(acts of violence)(threats)(bad treatment) against defendant] [character for being (traits, e.g., quarrelsome, vicious)] in an effort to show that (name of victim) was a dangerous and violent person.

This evidence bears on whether (name of victim) was the aggressor at the time the defendant (e.g., fired the shots) and also whether the defendant acted under circumstances which would have caused a reasonable person to be afraid of being injured or killed by (name of victim). A deliberate and unprovoked use of force was not justified merely if (name of victim) was a dangerous and violent person. If the defendant used force in revenge or only to punish (name of victim), the defendant's act was not justified.

Authority

State v. Pletka, [310 N.W.2d 525](#) (Iowa 1981)

State v. Rupp, [282 N.W.2d 125](#) (Iowa 1979)

State v. Jacoby, [260 N.W.2d 828](#) (Iowa 1977)

Comment

Use only those portions supported by evidence.

Updated 6/2020

400.9 Justification - Elements - [Citizen's] Arrest of Another for Felony. A person is justified in using reasonable force if [he][she] reasonably believes the force is necessary to make an arrest or to prevent serious injury to another.

If the State has proved any of the following elements, the defendant was not justified:

1. A felony had not been [committed] [attempted] in the defendant's presence by the person to be arrested.
2. The defendant did not have reasonable grounds to believe the person to be arrested committed the felony.
3. The defendant did not reasonably believe the force used was necessary to [make the arrest] [prevent serious injury to another].

Authority

Iowa Code sections [704.12](#), [804.8](#), [804.9](#), [804.10](#), [804.13](#)

State v. Lawler, [571 N.W.2d 486](#) (Iowa 1997)

Comment

Note: A citizen's arrest is a defense to charges of false imprisonment and assault. *State v. Lawler*, [571 N.W.2d 486](#) (Iowa 1997)

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Note: Iowa Criminal Jury Instruction 400.1 (Definition - Reasonable Force - Burden Of Proof) should be used. If deadly force is used, Iowa Criminal Jury Instruction 400.11 (Use of Deadly Force in Making Arrest) should be given.

Note: Use of reasonable force is also authorized when arresting another at a peace officer's request (Iowa Code section [804.10](#), [804.17](#)), when assisting a private person in making an arrest (Iowa Code section [804.13](#)), and when preventing the escape of an arrested person from custody (Iowa Code section [804.13](#)). This instruction may be modified accordingly.

Updated 6/2020

400.10 Justification - Elements - [Citizen's] Arrest of Another Committing a Public Offense. The defendant was justified in using reasonable force if [he][she] reasonably believed the force was necessary to make an arrest of another who has committed or attempted a public offense in the person's presence.

The defendant was not required to act with perfect judgment. However, [he] [she] was required to act as a reasonable person would have under the circumstances which existed at that time. If in the defendant's mind the need to use force was actual, real, imminent or unavoidable, even if the defendant was wrong in estimating the force necessary to effect an arrest, the force was justified if the defendant had a reasonable basis for [his][her] belief and responded reasonably to that belief.

If the State has proved any of the following elements, the defendant was not justified:

1. A public offense had not been committed or attempted in the defendant's presence.
2. The defendant did not reasonably believe the force used was necessary to [make the arrest][prevent serious injury to another].

Authority

Iowa Code section [704.12](#), [804.8](#), [804.9](#), [804.10](#)
State v. Lawler, [571 N.W.2d 486](#) (Iowa 1997)

Comment

Note: A citizen's arrest is a defense to charges of false imprisonment and assault. State v. Lawler, [571 N.W.2d 486](#) (Iowa 1997).

Note: If deadly force is used, Iowa Criminal Jury Instruction 400.11 (Use of Deadly Force in Making Arrest) should be given.

400.11 Use of Deadly Force in Making Arrest. Deadly force is only justified in making an arrest when a person cannot be captured in any other way and either (1) the person has used or threatened to use deadly force in committing a felony or (2) the person making the arrest reasonably believes the person would use deadly force against another unless immediately apprehended.

Authority

Iowa Code section [804.8](#)

Comment

Note: Iowa Criminal Jury Instructions 400.5 (Deadly Force), 400.6 (Deadly Force – Presumptions), and 400.7 (Deadly Force - Duties) should also be given.

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CHAPTER 500

SOLICITATION

[500.1](#) Solicitation - Elements

[500.2](#) Solicitation - Definition

[500.3](#) Solicitation - Corroboration Of Intent To Commit Offense

[500.4](#) Solicitation - Defense Of Renunciation - Complete and Voluntary

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500.1 Solicitation - Elements. The State must prove all of the following elements of solicitation:

1. On or about the _____ day of _____, 19____, the defendant solicited another to commit (name of crime).
2. The defendant intended that the (name of crime) would be committed.
3. The defendant's intent is corroborated by clear and convincing evidence.
4. The defendant did not renounce the solicitation as explained in Instruction No. _____ (use only when this defense is raised and supported by the evidence).

If the State has proved all of the elements, the defendant is guilty of solicitation. If the State has failed to prove any one of the elements, the defendant is not guilty.

Authority

Iowa Code section [705.1](#)

500.2 Solicitation - Definition. Concerning element number 1 of Instruction No. _____, the term "solicited" means to have commanded, begged, or to have otherwise attempted to convince someone to do something.

500.3 Solicitation - Corroboration Of Intent To Commit Offense. Concerning elements numbered 2 and 3 of Instruction No. _____, the "intent" must be corroborated by clear and convincing evidence.

Corroboration is not proved by just the fact of the solicitation itself. Other evidence must tend to show, strengthen, confirm or point out that the defendant, when [he] [she] solicited (name of solicited person), if [he] [she] did so, intended that the (name of crime) would be committed.

500.4 Solicitation - Defense Of Renunciation - Complete and Voluntary. Concerning element number 4 of Instruction No. _____, a renunciation occurred if the defendant persuaded (name of solicited person) not to commit the (name of crime) or prevented its commission.

The "renunciation" must be done under circumstances clearly indicating the defendant did not want or intend that the (name of crime) would be committed.

However, if the "renunciation" is motivated, in whole or part, by the defendant's belief that the existing circumstances increased the possibility of detection or apprehension, or the commission of the (name of crime) would be more difficult, then the renunciation is not complete and voluntary. This is also true if the "renunciation" was done only to postpone the (name of crime) or substitute another crime or victim.

Authority

Iowa Code section [705.2](#)

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CHAPTER 600

CONSPIRACY

[600.1](#) Conspiracy - Elements

[600.2](#) Conspiracy - Agreement

[600.3](#) Conspiracy - Mere Association

[600.4](#) Conspiracy - Overt Act

[600.5](#) Membership In Conspiracy

[600.6](#) Conspiracy - Conduct Or Statements Of Others

[600.7](#) Conspiracy - Separate Offense

[600.8](#) Conspiracy - Single Defendant On Trial

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600.1 Conspiracy - Elements. The State must prove all the following elements of Conspiracy:

1. On or about the ____ day of _____, 19____, the defendant agreed with (name(s) of co-conspirators)
 - a. that one or more of them would commit the (offense), or solicit another to commit the (offense); or
 - b. attempt to commit the (offense).
2. The defendant entered into the agreement with the intent to promote or facilitate (name of felony or aggravated misdemeanor).
3. The defendant, or (name(s) of alleged co-conspirator(s)) committed an overt act.
4. (Name(s) of alleged co-conspirator(s)) [was] [were] not [a] law enforcement agent(s) investigating the (offense) or assisting law enforcement agents in the investigation when the conspiracy began.

If the State has proved all of these elements, the defendant is guilty of Conspiracy. If the State has failed to prove any one of the elements, the defendant is not guilty.

Authority

Iowa Code section [706.1](#)

600.2 Conspiracy - Agreement. The State must prove the defendant and (name(s) of alleged co-conspirator(s)) came to a mutual understanding (offense) would be attempted or committed. The agreement can be oral or written, informal or formal, and need not be detailed. It may be proven by direct or circumstantial evidence of a person's words, actions or gestures.

Authority

Countryman v. Mt. Pleasant Bank & Trust Co., [357 N.W.2d 599](#) (Iowa 1984); Appeal after remand, [387 N.W.2d 771](#)

State v. Boyer, [342 N.W.2d 497](#) (Iowa 1984)

State v. Blyth, [226 N.W.2d 250](#) (Iowa 1975)

600.3 Conspiracy - Mere Association. Merely because two or more persons associate with each other, or meet to discuss common interests or goals does not, by itself, establish an agreement or make one a member of a conspiracy.

Authority

Iowa Code section [706.1](#)

State v. Boyer, [342 N.W.2d 497](#) (Iowa 1984)

State v. Phams, [342 N.W.2d 792](#) (Iowa 1983)

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600.4 Conspiracy - Overt Act. An "overt act" is any act indicating a person's intent to accomplish (offense). The overt act itself does not have to be a criminal act.

An overt act alone does not prove a conspiracy. A person who commits an overt act cannot be found guilty of Conspiracy unless that person also agreed and intended the (offense) would be committed.

Authority

Iowa Code section [706.1](#)
State v. Blackman, [346 N.W.2d 12](#) (Iowa 1984)
State v. Paden, [202 N.W. 105](#) (Iowa 1925)

600.5 Membership In Conspiracy. The State does not have to prove the defendant knew all the details of the conspiracy nor all the other persons who had agreed to commit (offense). However, the State must prove the defendant knowingly participated in the agreement at some time. If a person performs an act that promotes or facilitates the purpose of the conspiracy without knowledge of the conspiracy, [he] [she] is not a conspirator.

Authority

Nassif v. United States, [370 F.2d 147](#) (8th Cir. 1967)

600.6 Conspiracy - Conduct Or Statements Of Others. Whether a person is a conspirator depends upon [his] [her] own conduct or statements. If, however, you find the defendant agreed the (offense) would be committed, then the conduct or statements of the others who agreed to commit (offense) may be considered as evidence against [him] [her], providing the conduct or those statements promoted or facilitated the purpose of the conspiracy and occurred before the conspiracy ended. It is not necessary the conduct or statement of the others occurred in the defendant's presence.

Authority

Iowa Code section [706.1](#)
State v. Beckett, [383 N.W.2d 66](#) (Iowa App. 1985)
State v. Wedelstedt, [263 N.W.2d 894](#) (Iowa 1978) reh'g denied [265 N.W.2d 626](#), cert. denied 439 U.W. 954, 58 L.Ed.2d 345, 99 S.Ct. 352
State v. Kidd, [239 N.W.2d 860](#) (Iowa 1976)
State v. Keul, [5 N.W.2d 849](#), 852 (Iowa 1942)

600.7 Conspiracy - Separate Offense. Conspiracy is a crime separate from the (offense). The (offense) does not have to be committed. Even if you find (offense) was committed, you cannot find the defendant guilty of Conspiracy unless the State proves the defendant conspired to commit (offense), and an overt act was performed.

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Authority

Iowa Code section [706.4](#)

State v. Johnson, [222 N.W.2d 483](#) (Iowa 1974)

600.8 Conspiracy - Single Defendant On Trial. A conspiracy requires an agreement between at least two persons. A person may be found guilty of Conspiracy even though the person(s) with whom [he] [she] agreed [has not] [have not] been charged or tried.

Authority

State v. Podor, [135 N.W. 421](#) (Iowa 1912)

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CHAPTER 700

MURDER

[700.1](#) Murder In The First Degree - Premeditation, Willfulness, Deliberation - Elements

[700.2](#) Murder In The First Degree - Participating In A Forcible Felony - Elements

[700.3](#) Murder In The First Degree - Escape From Lawful Custody - Elements

[700.4](#) Murder In The First Degree - Killing Of Peace Officer - Elements

[700.5](#) Murder In The First Degree - Definition Of Elements

[700.6](#) Murder In The First Degree - Time For Deliberation and Premeditation

[700.7](#) Murder - Definition Of Malice Aforethought

[700.8](#) Murder In The First Degree - Dangerous Weapon Inference

[700.9](#) Murder - Forcible Felony Inference

[700.10](#) Murder - Dangerous Weapon - Malice Inference

[700.11](#) Murder - Cause Of Death

[700.12](#) Murder - Unintended Victim

[700.13](#) Murder In The Second Degree - Elements

[700.14](#) Murder In The Second Degree - No Specific Intent Requirement

[700.15](#) Voluntary Manslaughter - Elements

[700.16](#) Voluntary Manslaughter - Provocation - Definition

[700.17](#) Involuntary Manslaughter - Public Offense - Elements

[700.18](#) Involuntary Manslaughter - Conduct Likely To Cause Death - Elements

[700.19](#) Attempt To Commit Murder - Elements

[700.20](#) Murder In The First Degree - Child Endangerment/Assault - Elements

[710.1](#) Homicide By Vehicle (Intoxication) - Elements

[710.2](#) Homicide By Vehicle (recklessness) - Elements

[710.3](#) Homicide By Vehicle (Drag Racing or Eluding) - Elements

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[710.4](#) Serious Injury by Vehicle - Elements

[710.5](#) Drag Racing - Definition

[710.6](#) Eluding - Definition

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700.1 Murder In The First Degree - Premeditation, Willfulness, Deliberation - Elements.

The State must prove all of the following elements of Murder In The First Degree:

1. On or about the _____ day of _____, 19____, the defendant [shot] [struck] [appropriate word or phrase] (victim).
2. (Victim) died as a result of being [shot] [struck] appropriate word or phrase].
3. The defendant acted with malice aforethought.
4. The defendant acted willfully, deliberately, premeditatedly and with a specific intent to kill (victim).

If the State has proved all of the elements, the defendant is guilty of Murder In The First Degree. If the State has failed to prove any one of the elements, the defendant is not guilty of Murder In The First Degree (and you will then consider the charge of _____ explained in Instruction No. _____).

Authority

Iowa Code section [707.2\(1\)](#)
State v. Gordon, [354 N.W.2d 783](#) (Iowa 1984)

700.2 Murder In The First Degree - Participating In A Forcible Felony - Elements. The State must prove all of the following elements of Murder In The First Degree.

1. On or about the _____ day of _____, 20__, the defendant [shot] [struck] [appropriate word or phrase] (victim).
2. (Victim) died as a result of being [shot] [struck] appropriate word or phrase].
3. The defendant acted with malice aforethought.
4. The defendant was participating in the offense of (forcible felony).

If the State has proved all of the elements, the defendant is guilty of Murder In The First Degree. If the State has failed to prove any one of the elements, the defendant is not guilty of Murder In The First Degree (and you will then consider the charge of _____ explained in Instruction No. _____).

Authority

Iowa Code section [707.2\(2\)](#)
State v. Tribble, [790 N.W.2d 121](#), 124 (Iowa 2010)
State v. Millbrook, [788 N.W.2d 647](#), 652-53 (Iowa 2010)
Goosman v. State, [764 N.W.2d 539](#), 541 (Iowa 2009)
State v. Heemstra, [569 N.W.2d 482](#), 485 (Iowa 2006)

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Comment

Note: Use Iowa Criminal Jury Instruction 200.6 (Participating In A Public Offense - Definition). Appropriate instructions on the forcible felony must be given.

Rev. 3/12

700.3 Murder In The First Degree - Escape From Lawful Custody - Elements. The State must prove all of the following elements of Murder In The First Degree:

1. On or about the ____ day of _____, 19__, the defendant [shot] [struck] [appropriate word or phrase] (victim).
2. (Victim) died as a result of being [shot] [struck] appropriate word or phrase].
3. The defendant acted with malice aforethought.
4. The defendant did so while [escaping] [attempting to escape] from lawful custody.

If the State has proved all of the elements, the defendant is guilty of Murder In The First Degree. If the State has failed to prove any one of the elements, the defendant is not guilty of Murder In The First Degree (and you will then consider the charge of _____ explained in Instruction No. _____).

Authority

Iowa Code section [707.2\(3\)](#)

700.4 Murder In The First Degree - Killing Of A Peace Officer - Elements. The State must prove all of the following elements of Murder In The First Degree:

1. On or about the ____ day of _____, 19__, the defendant intentionally* [shot] [struck] [appropriate word or phrase] (victim).
2. (Victim) died as a result of being [shot] [struck] appropriate word or phrase].
3. The defendant acted with malice aforethought.
4. The defendant intentionally* killed (victim).
5. The defendant acted while imprisoned in a [correctional institution] [city jail] [county jail].
6. (Victim) was a [peace officer] [correctional officer] [public employee] [hostage].

If the State has proved all of the elements, the defendant is guilty of Murder In The First Degree. If the State has failed to prove any one of the elements, the defendant is not guilty of Murder In The First Degree (and you will then consider the charge of _____ explained in Instruction No. _____).

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Authority

Iowa Code section [707.2\(4\)](#)

Comment

Note: *The committee takes no position on the issue of whether Murder in the First Degree - Killing of Peace Officer is a specific intent crime.

700.5 Murder In The First Degree - Definitions Of Elements.

"Willful" means intentional or by fixed design or purpose and not accidental.

"To deliberate" is to weigh in one's mind, to consider, to contemplate, or to reflect.

"Premeditate" is to think or ponder upon a matter before acting.

Authority

State v. Gramenz, [126 N.W.2d 285](#) (Iowa 1964)

State v. Hofer, [28 N.W.2d 475](#) (Iowa 1947)

700.6 Murder In The First Degree - Time For Deliberation And Premeditation.

Deliberation and premeditation need not exist for any particular length of time before the act.

Authority

State v. LeGear, [346 N.W.2d 21](#) (Iowa 1984)

State v. Poyner, [306 N.W.2d 716](#) (Iowa 1981)

700.7 Murder - Definition Of Malice Aforethought. "Malice" is a state of mind which leads one to intentionally do a wrongful act [to the injury of another] [in disregard of the rights of another] out of actual hatred, or with an evil or unlawful purpose. It may be established by evidence of actual hatred, or by proof of a deliberate or fixed intent to do injury. It may be found from the acts and conduct of the defendant, and the means used in doing the wrongful and injurious act. Malice requires only such deliberation that would make a person appreciate and understand the nature of the act and its consequences, as distinguished from an act done in the heat of passion.

"Malice aforethought" is a fixed purpose or design to do some physical harm to another which exists before the act is committed. It does not have to exist for any particular length of time.

Authority

State v. Lee, [494 N.W.2d 706](#) (Iowa 1993)

State v. Nunn, [356 N.W.2d 601](#), 603 (Iowa App. 1984)

State v. Love, [302 N.W.2d 115](#) (Iowa 1981)

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700.8 Murder In The First Degree - Dangerous Weapon Inference. If a person has the opportunity to deliberate and uses a dangerous weapon against another resulting in death, you may, but are not required to, infer that the weapon was used with malice, premeditation and specific intent to kill.

Authority

Waterbury v. State, [387 N.W.2d 309](#) (Iowa 1986)
State v. Blair, [347 N.W.2d 416](#) (Iowa 1984)

700.9 Murder - Forcible Felony Inference. Malice may be inferred from the commission of (felony) which results in death.

Authority

Schrier v. State, [347 N.W.2d 657](#) (Iowa 1984)
State v. Oliver, [341 N.W.2d 744](#) (Iowa 1983)

700.10 Murder - Dangerous Weapon - Malice Inference. Malice aforethought may be inferred from the defendant's use of a dangerous weapon.

Authority

State v. Smith, [242 N.W.2d 320](#) (Iowa 1976)
State v. McCollom, [151 N.W.2d 519](#) (Iowa 1967)

700.11 Murder - Cause of Death. Concerning element number _____ of Instruction No. _____, the [wound inflicted] [wrongful act] by the defendant resulted in death of (victim), if it caused or directly contributed to (victim)'s death.

Authority

State v. McClain, [256 Iowa 175](#), [125 N.W.2d 764](#) (1964)

Comment

Note: Add the following paragraph when appropriate:

"However, if you find that, in the treatment of the wounds, another was negligent to the extent that such negligence was the sole cause of death, then the act(s) of the defendant did not result in the death of (victim)."

700.12 Murder - Unintended Victim. If you find the [dispute] [fight] [appropriate word or phrase] involved (third person), then the defendant's intent and state of mind are to be determined by [his] [her] conduct toward (third person). Defendant's guilt is to be determined upon the same basis as if (third person) had been killed instead of (victim).

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Authority

State v. Alford, [151 N.W.2d 573](#) (Iowa 1967)

700.13 Murder In The Second Degree - Elements. The State must prove all of the following elements of Murder In The Second Degree:

1. On or about ____ day of _____, 19____, the defendant [shot] [struck] [appropriate word or phrase] (victim).
2. (Victim) died as a result of being [shot] [struck] [appropriate word or phrase].
3. The defendant acted with malice aforethought.

If the State has proved all of the elements, the defendant is guilty of Murder In The Second Degree. If the State has failed to prove any one of the elements, the defendant is not guilty of Murder In The Second Degree (and you will then consider the charge of _____, explained in Instruction No. _____).

Authority

Iowa Code section 707.3
State v. Smith, [242 N.W.2d 320](#), 326 (Iowa 1976)

700.14 Murder In The Second Degree - No Specific Intent Requirement. Murder In The Second Degree does not require a specific intent to kill another person.

Authority

State v. Caldwell, [385 N.W.2d 553](#) (Iowa 1986)

700.15 Voluntary Manslaughter - Elements. The State must prove all of the following elements of Voluntary Manslaughter:

1. On or about ____ day of _____, 19____, the defendant intentionally* [shot] [struck] [appropriate word or phrase] (victim).
2. (Victim) died as a result of being [shot] [struck] [appropriate word or phrase].
3. The [shooting] [striking] [appropriate word or phrase] was done solely by reason of sudden, violent and irresistible passion resulting from serious provocation.

If the State has proved all of the elements, the defendant is guilty of Voluntary Manslaughter. If the State has failed to prove any one of the elements, the defendant is not guilty of Voluntary Manslaughter (and you will then consider the charge of _____ explained in Instruction No. _____).

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Authority

Iowa Code section 707.4
State v. Drosos, [253 Iowa 1152](#), [114 N.W.2d 526](#) (Iowa 1962)

Comment

Note: *The committee takes no position on the issue of whether Voluntary Manslaughter is a specific intent crime. See State v. Hellwege, [294 N.W.2d 689](#) (Iowa 1980).

Note: The committee takes no position whether element number 3 should be submitted in all cases. See State v. Williams, [525 N.W.2d 847](#) (Iowa 1994); State v. Taylor, [452 N.W.2d 605](#) (Iowa 1990).

700.16 Voluntary Manslaughter - Provocation - Definition. Concerning element number _____ of Instruction No. _____, a "serious provocation" is conduct that would cause a reasonable person to have a sudden, violent and irresistible passion.

Passion is not sudden, violent, and irresistible if there is an interval of time during which a reasonable person would, under the circumstances, have time to reflect and bring [his] [her] passion under control and suppress the impulse to kill.

Words alone, however abusive or insulting, cannot be serious provocation.

Authority

State v. Inger, [292 N.W.2d 119](#) (Iowa 1980)
State v. Rutledge, [243 Iowa 179](#), [47 N.W.2d 251](#) (1951), reh'g denied, [243 Iowa 201](#), [50 N.W.2d 801](#) (1952)

700.17 Involuntary Manslaughter - Public Offense - Elements. The State must prove both of the following elements of Involuntary Manslaughter:

1. On or about the _____ day of _____, 19____, the defendant recklessly committed the crime of _____.
2. When the defendant committed the crime, the defendant unintentionally caused the death of (victim).

If the State has proved both the elements, the defendant is guilty of Involuntary Manslaughter. If the State has failed to prove either of the elements, the defendant is not guilty of Involuntary Manslaughter (and you will then consider the charge of _____ explained in Instruction No. _____).

Authority

Iowa Code section 707.5(1)

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State v. Caldwell, [385 N.W.2d 553](#) (Iowa 1986)

State v. Conner, [292 N.W.2d 682](#) (1980)

Comment

Note: Use Iowa Criminal Jury Instruction 200.20 (Recklessness)

See Iowa Criminal Jury Instructions 710.1 - 710.3 for the Crime of Homicide By Vehicle.

700.18 Involuntary Manslaughter - Conduct Likely To Cause Death - Elements. The State must prove all of the following elements of Involuntary Manslaughter:

1. On or about the ____ day of _____, 19 ____, defendant recklessly (describe the act alleged to have caused the death).
2. The defendant did the act in a manner likely to cause [death] [serious injury].
3. By doing the act, the defendant unintentionally caused the death of (victim).

If the State has proved all of the elements, the defendant is guilty of Involuntary Manslaughter. If the State has failed to prove any one of the elements, the defendant is not guilty of Involuntary Manslaughter (and you will then consider the charge of _____ explained in Instruction No. _____).

Authority

Iowa Code section [707.5\(2\)](#)

State v. Caldwell, [385 N.W.2d 553](#) (Iowa 1986)

State v. Conner, [292 N.W.2d 682](#) (Iowa 1980)

Comment

Note: Use Iowa Criminal Jury Instruction 200.20 (Recklessness)

700.19 Attempt To Commit Murder - Elements. The State must prove all the following elements of Attempt To Commit Murder:

1. On or about the ____ day of _____, 20 ____, the defendant (set forth acts committed).
2. By [his] [her] acts, the defendant expected to set in motion a force or chain of events which would cause or result in the death of (victim).
3. When the defendant acted, [he] [she] specifically intended to cause the death of (victim).

If the State has proved all of the elements, the defendant is guilty of Attempt To Commit Murder. If the State has failed to prove any one of the elements, the defendant is not guilty of Attempt To Commit Murder (and you will then consider the charge of _____ explained in Instruction No. _____).

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Authority

Iowa Code section [707.11](#)

State v. Barney, [244 N.W.2d 316](#), 318 (Iowa 1976)

Comment

Note: Assault with Intent to Inflict Serious Injury is the next lesser included offense. See State v. Luckett, [387 N.W.2d 298](#), 299 (Iowa 1986); State v. Powers, [278 N.W.2d 26](#), 28 (Iowa 1979).

10/04

700.20 Murder In The First Degree - Child Endangerment/Assault - Elements. The State must prove all of the following elements of Murder in the First Degree:

1. On or about the _____ day of _____, 20__, the defendant [shook] [struck] [appropriate word or phrase] (victim).
2. (Victim) was then under the age of 14.
3. (Victim) died as a result of being [shaken] [struck] [appropriate word or phrase].
4. The defendant acted with malice aforethought.
5. The defendant was committing the offense of [child endangerment] [assault].
6. (Victim)'s death occurred under circumstances showing an extreme indifference to human life.

If the State has proved all of the elements, the defendant is guilty of Murder in the First Degree. If the State has failed to prove any one of the elements, the defendant is not guilty of Murder in the First Degree (and you will then consider the charge of _____ explained in Instruction No. _____).

Authority

Iowa Code section [707.2\(5\)](#)

Comment

Note: Appropriate instructions on Assault or Child Endangerment must be given, as supported by the evidence.

Note: No definition of phrase "extreme indifference to human life" is necessary. State v Thompson, [570 N.W.2d 765](#), 768 (Iowa 1997).

710.1 Homicide By Vehicle (Intoxication) - Elements. The State must prove both of the following elements of Homicide By Vehicle:

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1. On or about the _____ day of _____, 20____, the defendant:
 - a. operated a motor vehicle while under the influence of alcohol or a drug or a combination of such substances; or
 - b. operated a motor vehicle while having an alcohol concentration of .10 or more, or
 - c. operated a motor vehicle while any amount of a controlled substance was present, as measured in the defendant's blood or urine.
2. The defendant's act or acts set out in Element 1 unintentionally caused the death of (victim).

If the State has proved both of the elements, the defendant is guilty of Homicide by Vehicle. If the State has failed to prove either of the elements, the defendant is not guilty of Homicide by Vehicle (and you will then consider the charge of _____ as explained in Instruction No. _____).

Authority

Iowa Code sections 321J.2, [707.6A\(1\)](#)
State v. Marti [290 N.W.2d 570](#) (Iowa 1980)
State v. Bratthauer, [354 N.W.2d 774](#) (Iowa 1984)
State v. Conger, [434 N.W.2d 406](#), (Iowa App. 1988)
State v. Hubka, [480 N.W.2d 867](#) (Iowa 1992)
State v. Wieskamp, [490 N.W.2d 566](#) (Iowa App. 1992)

Comment

Note: Use only the alternatives in Element 1 that are charged and are supported by substantial evidence. For the minimum levels of a controlled substance required for proof of a detectable or measured amount, see 661 I.A.C.7.9 (321J).

710.2 Homicide By Vehicle (Recklessness) - Elements. The State must prove both of the following elements of Homicide by Vehicle:

1. On or about the _____ day of _____, 20____, the defendant drove a motor vehicle in a reckless manner.
2. The defendant's recklessness unintentionally caused the death of (victim).

If the State has proved both of the elements, the defendant is guilty of Homicide by Vehicle. If the State has failed to prove either of the elements, the defendant is not guilty of Homicide by Vehicle (and you will then consider the charge of _____ as explained in Instruction No. _____).

Authority

Iowa Code section [707.6A\(2\)\(a\)](#)

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State v. Hubka, [480 N.W.2d 867](#) (Iowa 1992)
State v. Wieskamp, [490 N.W.2d 566](#) (Iowa App. 1992)
State v. Sutton, [636 N.W.2d 107](#) (Iowa 2001)

Comment

Note: Use Iowa Criminal Jury Instruction 200.20 (Recklessness)

710.3 Homicide By Vehicle (Drag Racing or Eluding) - Elements. The State must prove both of the following elements of Homicide by Vehicle:

1. On or about the ____ day of ____, 20____, the defendant operated a motor vehicle by [drag racing] [eluding or attempting to elude]
2. The defendant's [drag racing] [eluding or attempting to elude] unintentionally caused the death of (victim).

If the State has proved both of the elements, the defendant is guilty of Homicide by Vehicle. If the State has failed to prove either of the elements, the defendant is not guilty of Homicide by Vehicle (and you will then consider the charge of _____ as explained in Instruction No. _____).

Authority

Iowa Code section [707.6A \(3\)](#)
State v. Hubka, [480 N.W.2d 867](#) (Iowa 1992)
State v. Wieskamp, [490 N.W.2d 566](#) (Iowa App. 1992)

Comment

Use Iowa Criminal Jury Instruction 710.5 (Drag Racing) and/or Iowa Criminal Jury Instruction 710.6 (Eluding).

Use only the alternatives in Element 1 that are charged and are supported by substantial evidence. If both drag racing and eluding are supported by substantial evidence, submit separate marshaling instructions and separate verdict forms. See: *State v. Conger*, [434 N.W.2d 406](#) (Iowa App. 1988).

710.4 Serious Injury By Vehicle - Elements. The State must prove both of the following elements of Serious Injury by Vehicle:

1. On or about the ____ day of ____, 20____, the defendant:
 - a. operated a motor vehicle while under the influence of alcohol or a drug or a combination of such substances; or
 - b. operated a motor vehicle while having an alcohol concentration of .10 or more; or

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- c. operated a motor vehicle while any amount of a controlled substance was present, as measured in the defendant's blood or urine.
 - d. drove a motor vehicle in a reckless manner; or
 - e. operated a motor vehicle by drag racing; or
 - f. operated a motor vehicle by eluding a pursuing law enforcement vehicle; or
 - g. operated a motor vehicle by attempting to elude a pursuing law enforcement vehicle.
2. The defendant's act or acts set out in Element 1 unintentionally caused serious injury to (victim).

If the State has proved both of the elements, the defendant is guilty of Serious Injury by Vehicle. If the State has failed to prove either of the elements, the defendant is not guilty of Serious Injury by Vehicle.

Authority

Iowa Code section [707.6A\(4\)](#)
State v. Hubka, [480 N.W.2d 867](#) (Iowa 1992)
State v. Marti, [290 N.W.2d 570](#) (Iowa 1980)
State v. Wieskamp, [490 N.W.2d 566](#) (Iowa App. 1992)
State v. Conger, [434 N.W.2d 406](#), (Iowa App. 1988)

Comment

Note: Use only the alternatives in Element 1 that are charged and are supported by substantial evidence.

Use Iowa Criminal Jury Instruction 200.22, (Serious Injury)

Use Iowa Criminal Jury Instruction 200.20 (Recklessness) if the reckless manner alternative is submitted under Element 1.

Use Iowa Criminal Jury Instruction 710.5 if drag racing is submitted and 710.6 if eluding is submitted.

710.5 Drag Racing - Definition. Concerning element number ____ of Instruction No. ____, "drag racing" is any motor vehicle speed contest or speed exhibition on any street or highway of this State. Motor vehicle speed contest or exhibition of speed are defined as one or more persons competing in speed in excess of the applicable speed limit in vehicles on the public streets or highways.

Authority

Iowa Code section [321.278](#)

710.6 Eluding - Definition. Concerning element number ____ of Instruction No. ____, "eluding" or "attempting to elude" is the driver failing to bring a motor vehicle to a stop or

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otherwise eluding or attempting to elude a marked official law enforcement vehicle driven by a uniformed peace officer after being given a visual and audible signal to stop. The signal given by the peace officer must be by flashing red light and siren.

Authority

Iowa Code section [321.279\(1\)](#)

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CHAPTER 800

ASSAULT

[800.1](#) Assault – Elements. (Rev. 12/2016)

[800.1.1](#) Assault – Firearm/Dangerous Weapon Alternative (New 12/2016)

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[800.2.1](#) Assault Causing Serious Injury- Elements. (Rev. 6/2017)

[800.3](#) Assault With Intent To Inflict Serious Injury – Elements.

[800.4](#) Assault With Intent To Inflict Serious Injury - Elements - Use Of Firearm Or Dangerous Weapon. (Rev. 12/2016)

[800.4.1](#) Assault Using Object to Penetrate Genitalia or Anus – Elements (New 12/2018)

[800.5](#) Assault - Intent And Display Of Firearm - Definition. (Rev. 12/2016)

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[800.10](#) Assault – Exception.

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- [800.16](#) Going Armed With Intent - Definition – Armed.
- [800.17](#) Aggravated Assault – Elements.
- [810.1](#) Harassment In The First Degree – Elements.
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- [810.3](#) Harassment In The Third Degree – Elements.
- [820.1](#) Stalking [In Violation Of A Protective Order] [While In Possession Of A Dangerous Weapon] [Directed At A Person Under 18 Years Of Age] – Elements.
- [820.2](#) Course Of Conduct – Definition.
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- [820.4](#) Immediate Family Member – Definition.
- [830.1](#) Domestic Abuse Assault – Elements.
- [830.2](#) Domestic Abuse Assault Causing Bodily Injury – Elements.
- [830.3](#) Domestic Abuse Assault While Using or Displaying a Dangerous Weapon – Elements.
- [830.4](#) Domestic Abuse Assault With Intent To Inflict Serious Injury – Elements.
- [830.5](#) Definition - Family or Household Members.
- [830.6](#) Domestic Abuse Assault by Strangulation Causing Bodily Injury.
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800.1 Assault – Act Alternative - Elements. The State must prove both of the following elements of the crime of Assault:

1. On or about the ____ day of _____, 20____, the defendant did an act which was intended to [cause pain or injury] [result in physical contact which was insulting or offensive] [place (name of victim) in fear of an immediate physical contact which would have been painful, injurious, insulting or offensive] to (victim).
2. The defendant had the apparent ability to do the act.

If the State has proved both of the elements, the defendant is guilty of Assault. If the State has failed to prove either of the elements, the defendant is not guilty.

Authority

Iowa Code section [708.1\(2\)\(a\)-\(b\)](#)

Iowa Code section [708.2](#)

State v. Heard, [636 N.W.2d 227](#) (Iowa 2001)

State v. Bedard, [668 N.W.2d 598](#) (Iowa 2003)

State v. Fountain, [786 N.W.2d 260](#) (Iowa 2010)

Comment

While assault has been classified by the legislature as a general intent crime, the Supreme Court has repeatedly held that assault under Iowa Code sections 708.1(2)(a) and (b) contains specific intent components and therefore Iowa Criminal Jury Instruction 200.2 (Specific Intent) should be given.

The Committee takes no position on whether specific intent defenses apply to these alternatives of assault. See, *State v. Fountain* (indicating, without deciding, that legislature's labeling of assault statute as a general intent offense could indicate legislature's intent that defenses of diminished responsibility and intoxication do not apply).

Lack of justification is not an element unless the defendant has produced sufficient evidence to raise the defense. In that event the State must prove that the defense does not apply, and the State's duty to negate the defense should be added as an element of the offense. *State v. Delay*, [320 N.W.2d 831](#) (Iowa 1982).

(Rev. 12/2016)

800.1.1 Assault – Firearm/Dangerous Weapon Alternative - Elements. The State must prove both of the following element of the crime of Assault:

On or about the ____ day of _____, 20____, the defendant [intentionally pointed a firearm toward another person] [displayed a dangerous weapon toward another person in a threatening manner].

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If the State has proved this element, the defendant is guilty of Assault. If the State has failed to prove this element, the defendant is not guilty.

Authority

Iowa Code section [708.1\(2\)\(c\)](#)

Iowa Code section [708.2](#)

Comment

While assault has been classified by the legislature as a general intent crime, the Supreme Court has repeatedly held that assault under Iowa Code sections 708.1(2)(a) and (b) contains specific intent components. The Supreme Court has not held that Iowa Code section 708.1(2)(c) has a specific intent component. As such, parties should use Iowa Criminal Jury Instruction 200.1 (General Intent) and Iowa Criminal Jury Instruction 800.5 (Assault – Intent and Display of Firearm – Definition).

Lack of justification is not an element unless the defendant has produced sufficient evidence to raise the defense. In that event the State must prove that the defense does not apply, and the State's duty to negate the defense should be added as an element of the offense. State v. Delay, [320 N.W.2d 831](#) (Iowa 1982).

800.2 Assault Causing Bodily Injury or Mental Illness - Elements. The State must prove all of the following elements of assault causing a [bodily injury] [mental illness]:

1. On or about the _____ day of _____, 20____, the defendant did an act which was intended to [cause pain or injury] [result in physical contact which was insulting or offensive] [place (name of victim) in fear of an immediate physical contact which would have been painful, injurious, insulting or offensive] to [him] [her].
2. The defendant had the apparent ability to do the act.
3. The defendant's act caused a [bodily injury] [mental illness] to (name of victim) as defined in Instruction No. _____.

If the State has proved all of the elements, the defendant is guilty of Assault Causing [Bodily Injury] [Mental Illness]. If the State has proved only elements 1 and 2, the defendant is guilty of Assault. If the State has failed to prove either element 1 or 2, the defendant is not guilty.

Authority

Iowa Code section [708.1](#)

Iowa Code section [708.2](#)

State v. McKettrick, [480 N.W.2d 52](#) (Iowa 1992)

Comment

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Caveat: If the defendant is charged with both Assault with Intent to Inflict Serious Injury and Assault Causing Bodily Injury arising from the same assault, following element should be added:

“4. The defendant did the act without the intent to inflict serious injury.” State v. McKettrick, [480 N.W.2d 52](#) (Iowa 1992).

Note: It may be appropriate to give the jury a separate instruction which indicates the defendant cannot be convicted of both Assault With Intent to Inflict Serious Injury and Assault Causing Bodily Injury if only a single assault is involved. State v. McKettrick, [480 N.W.2d 52](#) (Iowa 1992).

800.2.1 Assault Causing Serious Injury - Elements. The State must prove all of the following elements of Assault Causing a Serious Injury:

1. On or about the _____ day of _____, 20_____, the defendant did an act which was intended to [cause pain or injury] [result in physical contact which was insulting or offensive] [place (name of victim) in fear of an immediate physical contact which would have been painful, injurious, insulting or offensive] to [him] [her].
2. The defendant had the apparent ability to do the act.
3. The defendant’s act caused a serious injury to (name of victim) as defined in Instruction No. _____.

If the State has proved all of the elements, the defendant is guilty of Assault Causing Serious Injury. If the State has failed to prove element No. 3, the defendant is guilty of Assault. If the State has failed to prove either element 1 or 2, the defendant is not guilty.

Authority

Iowa Code section 702.3A, as added by H. F. 501, Acts of the 78th General Assembly, 1999.

Comment

Note: Use Iowa Criminal Jury Instruction 200.22 (Serious Injury).

800.3 Assault With Intent To Inflict Serious Injury - Elements. The State must prove all of the following elements of Assault With Intent To Inflict Serious Injury:

1. On or about the _____ day of _____, 20_____, the defendant did an act which was intended to [cause pain or injury] [result in physical contact which was insulting or offensive] [place (name of victim) in fear of an immediate physical contact which would have been painful, injurious, insulting or offensive] to (victim).
2. The defendant had the apparent ability to do the act.

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3. The act was done with the specific intent to cause a serious injury.

If the State has proved all of the elements, the defendant is guilty of Assault With Intent To Inflict Serious Injury. If the State has proved only elements 1 and 2, then the defendant is guilty of Assault. If the State has failed to prove either element 1 or element 2, the defendant is not guilty.

Authority

Iowa Code section [708.1](#)
Iowa Code section [708.2](#)
Iowa Code section [702.18](#)

Comment

Note: With this crime, Iowa Criminal Jury Instruction 200.22 (Serious Injury) and 200.2 (Specific Intent) should be used.

800.4 Assault With Intent To Inflict Serious Injury – Elements. Use of Firearm Or Dangerous Weapon. The State must prove both of the following elements of Assault With Intent To Inflict Serious Injury:

1. On or about the ____ day of _____, 20____, the defendant [intentionally pointed a firearm toward another person] [displayed a dangerous weapon toward another person in a threatening manner].
2. This was done with the specific intent to cause a serious injury.

If the State has proved both elements, the defendant is guilty of Assault With Intent To Inflict Serious Injury. If the State has proved only element number 1, the defendant is guilty only of assault. If the State has failed to prove both elements, the defendant is not guilty.

Authority

Iowa Code section [708.2](#)
Iowa Code section [708.1](#)
Iowa Code section [702.18](#)

Comment

Note: Iowa Criminal Jury Instruction 200.2 (Specific Intent) will have to be used with this offense. Also, Iowa Criminal Jury Instruction 200.22 (Serious Injury) will have to be modified and used with this offense.

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800.4.1 Assault Using Object to Penetrate Genitalia or Anus – Elements.

The State must prove both of the following elements of Assault Using Object to Penetrate Genitalia or Anus:

1. On or about the _____ day of _____, 20_____, the defendant did an act which was intended to [cause pain or injury] [result in physical contact which was insulting or offensive] [place (name of victim) in fear of an immediate physical contact which would have been painful, injurious, insulting or offensive] to [him] [her].
2. The defendant had the apparent ability to do the act.
3. The defendant used an object to penetrate the genitalia or anus of (victim).

If the State has proved all of the elements, the defendant is guilty of Assault Using Object to Penetrate Genitalia or Anus. If the State has failed to prove element No. 3, the defendant is guilty of Assault. If the State has failed to prove either element 1 or 2, the defendant is not guilty.

Authority

Iowa Code section 708.1

Iowa Code section 708.2(5)

(New 12/2018)

800.5 Assault - Intent And Display Of Firearm - Definition. Concerning element number 1 of Instruction No. _____, the phrase:

- a. “Intentionally pointed a firearm” means to have done it consciously and not accidentally or inadvertently; or
- b. “To display a dangerous weapon in a threatening manner” means to show or make apparent to another person that a dangerous weapon existed so as to intimidate the other person. A firearm is a dangerous weapon.

Authority

Iowa Code section [708.1\(2\)\(c\)](#)

Comment

Note: Use whichever definition is applicable to the charge and is supported by the evidence. Where a dangerous weapon is involved, Iowa Criminal Jury Instruction 200.21 should be used.

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800.6 Apparent Ability - Definition. Concerning element number 2 of Instruction No._____, "apparent ability" means a reasonable person in the defendant's position would expect the act to be completed under the existing facts and circumstances.

Authority

State v. Jackson, [305 N.W.2d 420](#), 423 (Iowa 1981)

800.7 Assault While Participating In A Felony Causing Serious Injury - Elements. The State must prove all of the following elements of an Assault While Participating In A Felony Causing Serious Injury:

1. On or about the _____ day of _____, 19____, the defendant committed an assault on (name of victim) as defined in Instruction No. _____.
2. At the time of the assault, the defendant was participating in the crime of _____, as defined in Instruction No. _____.
3. The assault caused a serious injury. (Use only when charged and supported by the evidence).

If the State has proved all of the elements, the defendant is guilty of Assault While Participating In A Felony Causing Serious Injury. If the State has proved only elements 1 and 2, the defendant is guilty of Assault While Participating In A Felony. If the State has proved only element 1 the defendant is guilty of Assault. If the State has failed to prove element 1, the defendant is not guilty.

Authority

Iowa Code section [708.3](#)
Iowa Code section [702.13](#)
Iowa Code section [702.18](#)

Comment

Note: Iowa Criminal Jury Instruction 200.22 (Serious Injury) should be used when appropriate and Iowa Criminal Jury Instruction 200.6 (Participating In A Public Offense).

800.8 Assault - Definition. Concerning element number 1 of Instruction No._____, an Assault is committed when a person does an act which is meant to [cause pain or injury] [result in physical contact which will be insulting or offensive] [place another person in fear of immediate physical contact which will be painful, injurious, insulting or offensive] to another person, when coupled with apparent ability to do the act; or a person intentionally points a firearm toward another, or intentionally displays a dangerous weapon in a threatening manner toward another.

Authority

Iowa Code section [708.1](#)

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Comment

Note: Omit that portion of the statute which is not charged or supported by the evidence.

800.9 Assault While Participating In A Felony - Definition Of Felony And Participating.

Concerning element number 1 of Instruction No. _____, the crime of (offense) is defined as:

(Set forth elements and definition of offense)

(Insert Iowa Criminal Jury Instruction 200.6 - Participating in a Public Offense.)

Authority

State v. Mesch, [574 N.W.2d 10](#), 14 (Iowa 1998) (must designate particular felony claimed and the elements of that felony)

Iowa Code section [708.3](#)

Iowa Code section [702.13](#)

800.10 Assault - Exception. The defendant claims [he] [she] and (victim) were voluntary participants in a [sport] [social activity] [other activity] which was not in itself criminal.

The defendant is not guilty unless the State proves any one or more of the following:

1. The defendant and (victim) were not voluntary participants in the activity which (set forth facts giving rise to the assault).
2. The (act constituting assault) was not a reasonably foreseeable incident of the activity.
3. The act created [an unreasonable risk of serious injury] [a breach of peace].

If you find the State has proved any one of these elements, then you should consider whether the defendant is guilty of the crime of _____ as set forth in Instruction No. _____. If the State has failed to prove one or more of these elements, then the defendant is not guilty.

Authority

Iowa Code section [708.1](#)

6/00

800.11 Willful Injury - Elements. The State must prove all of the following elements of Willful Injury.

1. On or about the ____ day of _____, 20____, the defendant (set forth facts of assault.

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2. The defendant specifically intended to cause a serious injury to [the victim].
3. The defendant's acts caused a (bodily) (serious) injury to [the victim] as defined in Instruction No. ____.

If you find the State has proved all of the elements, the defendant is guilty of Willful Injury. If the State has proved only elements 1 and 3, the defendant is guilty of Assault Causing [Serious] [Bodily] Injury. If the State has proved only elements 1 and 2, the defendant is guilty of Assault With Intent to Inflict Serious Injury. If the State has failed to prove elements 2 and 3, the defendant is guilty of Assault. If the State has failed to prove element 1, the defendant is not guilty.

Authority

Iowa Code section [708.4](#)

Iowa Code section [702.18](#)

State v. Schuler, [774 N.W.2d 294](#) (Iowa 2009)

State v. Mikesell, [479 N.W. 2d 591](#) (Iowa 1991)

State v. Blanks, [479 N.W. 2d 601](#) (Iowa App. 1991)

Comment

Note: Iowa Criminal Jury Instruction 200.22 (Serious Injury) and Iowa Criminal Jury Instruction 200.2 (Specific Intent) should be used.

Note: The Committee takes no position whether Assault Resulting in Bodily Injury is a lesser included offense of Willful Injury under Section [708.4\(1\)](#).

9/11

800.12 Administering Harmful Substances - Elements - Causes To Be Taken By Threat, Deception, Or Without Consent. The State must prove all of the following elements of Administering Harmful Substances:

1. On or about the ____ day of _____, 20____, the defendant gave (substance) to (victim) or caused [him] [her] to take it.
2. This was accomplished [by threat of _____] [by deception explained in Instruction No. ____ without the consent of (victim)].
3. (Substance) was not given for medicinal purposes.
4. (Substance) was (e.g., narcotic) substance as explained in Instruction No. ____.
5. (Substance) was [given] [caused to be taken] in sufficient quantity to bring about (e.g., narcotic) effect.

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If the State has proved each of these elements, the defendant is guilty of Harassment In The Second Degree. If the State has failed to prove one or more of these elements, the defendant is not guilty of Harassment In The Second Degree (and you will then consider the charge of _____ as explained in Instruction No. _____).

Authority

Iowa Code section [708.7\(1\)](#) and (3)

Comment

Note: Omit that portion of the instruction which is not charged and supported by the evidence.

Iowa Criminal Jury Instruction 200.2 (Specific Intent) and Iowa Criminal Jury Instruction 200.41 (Bodily Injury) should be given.

If the defendant is charged as a previous offender, see Chapter 2200 (Habitual Criminal).

800.13 Intimidation With a Dangerous Weapon With Intent - Elements - Use Of Dangerous Weapon. The State must prove all of the following elements of Intimidation With a Dangerous Weapon With Intent:

1. On or about the ____ day of _____, 20____, the defendant [shot/threw/launched/discharged] a (dangerous weapon):
 - a. [at/into/in] [a/an] (e.g., vehicle), [which was occupied by (victim)]; or
 - b. [within an assembly of people].
2. (Dangerous weapon) was a dangerous weapon, as explained in Instruction No. _____.
3. (Victim) actually experienced fear of serious injury and [his/her] fear was reasonable under the existing circumstances.
4. The defendant [shot/threw/launched/discharged] the (dangerous weapon) with the specific intent to injure or cause fear or anger in (victim).

If the State has proved all four of these elements, the defendant is guilty of Intimidation With a Dangerous Weapon With Intent. If the State has proved elements 1, 2, and 3, but not element 4, the defendant is guilty of the included offense of Intimidation With a Dangerous Weapon. If the State has failed to prove any one or more of elements 1, 2, or 3, the defendant is not guilty.

Authority

Iowa Code section [708.6](#)
State v. White, [319 N.W.2d 213](#) (Iowa 1982)

Comment

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Note: Iowa Criminal Jury Instructions 200.2 (Specific Intent), 200.21 (Dangerous Weapon) and 200.22 (Serious Injury) should be used.

Note: This instruction assumes the crime of Intimidation With a Dangerous Weapon charged is the Class C Felony. If the Class D Felony is charged, Instruction No. 800.13.1 (Intimidation With a Dangerous Weapon) should be given. The term “With Intent” in Instruction No. 800.13 is used to differentiate the Class C felony from the Class D felony even though the term “With Intent” does not appear in the title of the statute.

Rev. 9/03

800.13.1 Intimidation With a Dangerous Weapon - Elements - Use Of Dangerous Weapon.

The State must prove all of the following elements of Intimidation With a Dangerous Weapon:

1. On or about the ____ day of _____, 20____, the defendant [shot/threw/launched/discharged] a (dangerous weapon):
 - a. [at/into/in] [a/an] (e.g., vehicle), [which was occupied by (victim)]; or
 - b. [within an assembly of people].
2. (Dangerous weapon) was a dangerous weapon, as explained in Instruction No. ____.
3. (Victim) actually experienced fear of serious injury and [his/her] fear was reasonable under the existing circumstances.

If the State has proved all three of these elements, the defendant is guilty of Intimidation With a Dangerous Weapon. If the State has failed to prove any one or more of these three elements the defendant is not guilty.

Authority

Iowa Code section [708.6](#)
State v. White, [319 N.W.2d 213](#) (Iowa 1982)

Comment

Note: Iowa Criminal Jury Instructions 200.21 (Dangerous Weapon) and 200.22 (Serious Injury) should be used.

Note: This instruction should be given if the class D felony is charged.

Rev. 9/03

800.14 Intimidation With a Dangerous Weapon With Intent - Elements - Threatened Use Of Dangerous Weapon. The State must prove all of the following elements of Intimidation With a Dangerous Weapon With Intent:

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1. On or about the ____ day of _____, 20____, the defendant threatened to [shoot/throw/launch/discharge] a (dangerous weapon):
 - a. [at/into/in] [a/an] (e.g., vehicle), [which was occupied by (victim)]; or
 - b. [within an assembly of people].
2. (Dangerous weapon) was a dangerous weapon, as explained in Instruction No. ____.
3. The defendant made the threat under circumstances raising a reasonable expectation that the threat would be carried out.
4. The defendant threatened to (e.g., shoot) the (dangerous weapon) with the specific intent to injure or cause fear or anger in (victim).

If the State has proved all four of these elements, the defendant is guilty of Intimidation With a Dangerous Weapon With Intent. If the State has proved elements 1, 2, and 3, but not element 4, the defendant is guilty of the included offense of Intimidation With a Dangerous Weapon. If the State has failed to prove any one or more of elements 1, 2, or 3, the defendant is not guilty.

Authority

Iowa Code section [708.6](#)

Note: Iowa Criminal Jury Instructions 200.2 (Specific Intent), 200.21 (Dangerous Weapon) and 200.22 (Serious Injury) should be used.

Note: This instruction assumes the crime of Intimidation With a Dangerous Weapon charged is the Class C felony. If the Class D felony is charged, Instruction No. 800.14.1 (Intimidation With a Dangerous Weapon) should be given. The term “With Intent” in Instruction No. 800.14 is used to differentiate the Class C felony from the Class D felony even though the term “With Intent” does not appear in the title of the statute.

Rev.9/03

800.14.1 Intimidation With a Dangerous Weapon - Elements - Threatened Use Of Dangerous Weapon. The State must prove all of the following elements of Intimidation With a Dangerous Weapon:

1. On or about the ____ day of _____, 20____, the defendant threatened to [shoot/throw/launch/discharge] a (dangerous weapon):
 - a. [at/into/in] [a/an] (e.g., vehicle), [which was occupied by (victim)]; or
 - b. [within an assembly of people].
2. (Dangerous weapon) was a dangerous weapon, as explained in Instruction No. ____.
3. The defendant made the threat under circumstances raising a reasonable expectation that the threat would be carried out.

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If the State has proved all three of these elements, the defendant is guilty of Intimidation With a Dangerous Weapon. If the State has failed to prove any one or more of the elements the defendant is not guilty.

Authority

Iowa Code section [708.6](#)

Note: Iowa Criminal Jury Instructions 200.21 (Dangerous Weapon) and 200.22 (Serious Injury) should be used.

Rev. 9/03

800.14.2 Intimidation - Within An Assembly Of People - Definition. Within an assembly of people means “into or through two or more persons at the same place.”

Authority

State v. Bush, [518 N.W.2d 778](#) (Iowa 1994)

Rev. 9/03

800.15 Going Armed With Intent - Elements. The State must prove all of the following elements of Going Armed With Intent:

1. On or about the ____ day of _____, 20____, the defendant was armed with (object or weapon).
2. (Object or weapon) was a dangerous weapon as defined in Instruction No. ____.
3. The defendant was armed with the specific intent to use (object or weapon) against another person.
4. While armed with the (object or weapon) the defendant moved from one place to another.

If you find the State has proved all of the elements, the defendant is guilty of Going Armed With Intent. If the State has failed to prove any one of the elements, the defendant is not guilty (of Going Armed With Intent).

Authority

Iowa Code section [708.8](#)

State v. Pearson, [804 N.W.2d 260](#), 272 (Iowa 2011)

Comment

Note: The "intent to use" element requires proof of an intent to shoot another person when a firearm is involved. State v. Slayton, [417 N.W.2d 432](#), 434 (Iowa 1987)

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Rev. 06/13

800.16 Going Armed With Intent - Definition - Armed. Concerning element number 1 of Instruction No. ____, the term "armed" means a conscious and deliberate possession of a (dangerous weapon) on or about one's person so it is available for immediate use.

800.17 Aggravated Assault - Elements. The State must prove all of the following elements of Aggravated Assault:

1. On or about the ____ day of _____, 20____, the defendant committed an assault as defined in Instruction No. ____.
2. At the time, the defendant [used] [displayed] a (weapon).
3. (Weapon) was a dangerous weapon as defined in Instruction No. ____.

If you find the State has proved all of the elements, the defendant is guilty of Aggravated Assault. If the State has failed to prove any one of the elements, the defendant is not guilty.

Authority

Iowa Code section [708.2](#)

Comment

Note: This section does not apply if Iowa Code section [708.6](#) or [708.8](#) applies.

810.1 Harassment In The First Degree - Elements. The State must prove all of the following elements of Harassment In The First Degree:

1. On or about the ____ day of _____, 20____, the defendant
 - a. communicated with (name of victim) [by telephone] [by telegraph] [in writing], without a legitimate purpose, in a manner likely to cause [him] [her] annoyance or harm.
 - b. placed a simulated [explosive] [incendiary device] in or near a [building] [vehicle] [airplane] [railroad engine or car] [boat] occupied by another person.
 - c. ordered merchandise or services in the name of (name of victim), or to be delivered to (name of victim), without [his] [her] consent or knowledge.
 - d. [reported] [caused to be reported] to a law enforcement authority false information implicating (name of victim) in some criminal activity, knowing the information was false.
 - e. reported the alleged occurrence of a criminal act to a law enforcement authority, knowing the act did not occur.

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2. The defendant communicated a threat to commit the crime of (forcible felony), as defined in Instruction No. _____.

3. The defendant did so with the specific intent to intimidate, annoy or alarm (name of victim).

If the State has proved each of these elements, the defendant is guilty of Harassment In The First Degree. If the State has failed to prove one or more of these elements, the defendant is not guilty of Harassment In The First Degree (and you will then consider the charge of _____ as explained in Instruction No. _____).

Authority

Iowa Code section [708.7\(1\)](#) and (2)

Comment

Note: Omit that portion of the instruction which is not charged and supported by the evidence. Iowa Criminal Jury Instruction 200.2 (Specific Intent) should be given. If the defendant is charged as a previous offender, see Chapter 2200 (Habitual Criminal).

810.2 Harassment In The Second Degree - Elements. The State must prove all of the following elements of Harassment In The Second Degree:

1. On or about the _____ day of _____, 20____, the defendant

a. communicated with (name of victim) [by telephone] [by telegraph] [in writing], without a legitimate purpose, in a manner likely to cause [him] [her] annoyance or harm.

b. placed a simulated [explosive] [incendiary device] in or near a [building] [vehicle] [airplane] [railroad engine or car] [boat] occupied by another person.

c. ordered merchandise or services in the name of (name of victim), or to be delivered to (name of victim), without [his] [her] consent or knowledge.

d. [reported] [caused to be reported] to a law enforcement authority false information implicating (name of victim) in some criminal activity, knowing the information was false.

e. reported the alleged occurrence of a criminal act to a law enforcement authority, knowing the act did not occur.

2. The defendant communicated a threat to commit bodily injury.

3. The defendant did so with the specific intent to intimidate, annoy or alarm (name of victim).

If the State has proved each of these elements, the defendant is guilty of Harassment In The Second Degree. If the State has failed to prove one or more of these elements, the defendant is not guilty of Harassment In The Second Degree (and you will then consider the charge of _____ as explained in Instruction No. _____).

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Authority

Iowa Code section [708.7](#)(1) and (3)

Comment

Note: Omit that portion of the instruction which is not charged and supported by the evidence. Iowa Criminal Jury Instruction 200.2 (Specific Intent) and Iowa Criminal Jury Instruction 200.41 (Bodily Injury) should be given. If the defendant is charged as a previous offender, see Chapter 2200 (Habitual Criminal).

810.3 Harassment In The Third Degree - Elements. The State must prove all of the following elements of Harassment In The Third Degree.

1. On or about the ____ day of _____, 20____, the defendant
 - a. communicated with (name of victim) [by telephone] [by telegraph] [in writing], without a legitimate purpose, in a manner likely to cause [him] [her] annoyance or harm.
 - b. placed a simulated [explosive] [incendiary device] in or near a [building] [vehicle] [airplane] [railroad engine or car] [boat] occupied by another person.
 - c. ordered merchandise or services in the name of (name of victim), or to be delivered to (name of victim), without [his] [her] consent or knowledge.
 - d. [reported] [caused to be reported] to a law enforcement authority false information implicating (name of victim) in some criminal activity, knowing the information was false.
 - e. reported the alleged occurrence of a criminal act to a law enforcement authority, knowing the act did not occur.
2. The defendant did so with the specific intent to intimidate, annoy or alarm (name of victim).

If the State has proved each of these elements, the defendant is guilty of Harassment In The Third Degree. If the State has failed to prove one or more of these elements, the defendant is not guilty.

Authority

Iowa Code section [708.7](#)(1) and (4)

Comment

Note: Omit that portion of the instruction which is not charged and supported by the evidence. Iowa Criminal Jury Instruction 200.2 (Specific Intent) should be given. If the defendant is charged as a previous offender, see Chapter 2200 (Habitual Criminal).

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6/99

820.1 Stalking - Elements. The State must prove all of the following elements of Stalking:

1. On or about the ____ day of _____, 20__, the defendant purposefully engaged in a course of conduct directed at (name) that would cause a reasonable person to fear bodily injury to, or the death of (name).
2. The defendant knew or should have known that (name) would be placed in reasonable fear of bodily injury or death to (name) or a member of [his] [her] immediate family.
3. The defendant's course of conduct caused (name) to fear bodily injury or death to (name) or a member of [his] [her] immediate family.

If the State has proved all of the elements, the defendant is guilty of Stalking. If the State has failed to prove any one or more of the elements, the defendant is not guilty.

Authority

Iowa Code section [708.11\(2\)](#)

Comment

Note: Use Iowa Criminal Jury Instruction 200.41 (Bodily Injury).

Note: Use Iowa Criminal Jury Instruction 200.3 (Knowledge).

Note: If a defendant is charged as a previous offender under section 708.11(3)(a) or is charged as subject to sentence enhancement under section 708.11(3)(b), see Chapter 2200 (Habitual Criminal).

Caveat: The sentence-enhancing factors listed in Iowa Code section 708.11(3) do not define elements of the offense. State v. Beecher, [616 N.W.2d 532](#), 538 (Iowa 2000). But see Apprendi v. New Jersey, [530 U.S. 466](#), [120 S.Ct. 2348](#), [147 L.Ed.2d 435](#) (2000).

6/01

820.2 Course of Conduct - Definition. Concerning element number 1 of Instruction No. ____, "course of conduct" means repeatedly maintaining a visual or physical proximity to a person without legitimate purpose or repeatedly conveying oral or written threats, threats implied by conduct, or a combination of the two, directed at or toward a person.

Authority

Iowa Code section [708.11\(1\)\(b\)](#)

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820.3 Repeatedly - Definition. The term "repeatedly" used in Instruction No. ____ means on two or more occasions.

Authority

Iowa Code section [708.11\(1\)\(d\)](#)

820.4 Immediate Family Member - Definition. Concerning element number 1 of Instruction No. ____ the term "immediate family member" means a spouse, parent, child, sibling, or any other person who regularly resides in the household of (name of victim), or who within the prior six months regularly resided in (name of victim)'s household.

Authority

Iowa Code section [708.11\(1\)\(c\)](#)

"If your verdict is guilty, do you find that a [firearm][offensive weapon] was in such close proximity to the defendant as to enable [him][her] to claim immediate dominion over the firearm?

Yes _____
No _____."

Authority

Iowa Code section 124.401 (1) (d), (e).
State v. Eickelberg, [574 N.W. 2d 1](#) (Iowa 1997)
Apprendi v. New Jersey, ___ U.S. ___, [120 S. Ct. 2348](#), [147 L.Ed. 2d 435](#) (2000)

"If your verdict is guilty, do you find that the defendant's acts occurred [in or on, or within one thousand feet of the real property comprising a public or private elementary or secondary school] [in or on a public park, public swimming pool, public recreation center][on a marked school bus]?

Yes _____
No _____."

Authority

Iowa Code section [124.401A](#)
State v. Ortiz, ___ N.W. 2d (Iowa, Oct. 2000)
Apprendi v. New Jersey, ___ U.S. ___, [120 S. Ct. 2348](#), [147 L.Ed. 2d 435](#) (2000)

"If your verdict is guilty, do you find that the defendant manufactured methamphetamine, its salts, isomers, or salts of its isomers when [a minor was physically present during the activity] [the activity was conducted in the residence of a minor] [the activity was conducted in a building where minors can reasonably be expected to be present] [the activity was conducted in a room offered to the public for overnight accommodation] [the activity was conducted in any multiple-unit residential building] ?

Yes _____

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No _____.”

Authority

Iowa Code section [124.401C](#)

Apprendi v. New Jersey, _____ U.S. , [120 S. Ct. 2348](#), [147 L. Ed. 2d 435](#) (2000)

Comment

Note: Use Iowa Criminal Jury Instruction 2300.4 (Manufacture).

12/00

830.1 Domestic Abuse Assault - Elements. The State must prove all of the following elements of the crime of Domestic Abuse Assault:

1. On or about the ____ day of _____, 20____ , the defendant did an act which was meant to [cause pain or injury] [result in physical contact which was insulting or offensive] [place (name of victim) in fear of immediate physical contact which would have been painful, injurious, insulting or offensive] to (victim).

2. The defendant had the apparent ability to do the act.

3. The act occurred between [family or household members who resided together at the time of the incident] [separated spouses or persons divorced from each other and not residing together at the time of the incident] [persons who are the parents of the same minor child] [persons who have been family or household members residing together within the past year but not residing together at the time of the incident].

If the State has proved all of these numbered elements, the defendant is guilty of Domestic Abuse Assault. If the State has proved only elements 1 and 2, the defendant is guilty of Assault. If the State has failed to prove either elements 1 or 2, the defendant is not guilty.

Authority

Iowa Code sections [708.2A\(1\) and \(2\)](#)

830.2 Domestic Abuse Assault Causing Bodily Injury - Elements. The State must prove all of the following elements of the crime of Domestic Abuse Assault Causing Bodily Injury:

1. On or about the ____ day of _____, 20____ , the defendant either did an act which was meant to [cause pain or injury] [result in physical contact which was insulting or offensive] [place (name of victim) in fear of immediate physical contact which would have been painful, injurious, insulting or offensive] to (victim).

2. The defendant had the apparent ability to do the act.

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3. The defendant's act caused a [bodily injury] [mental illness] to (name of victim) as defined in Instruction No. _____.

4. The act occurred between [family or household members who resided together at the time of the incident] [separated spouses or persons divorced from each other and not residing together at the time of the incident] [persons who are the parents of the same minor child] [persons who have been family or household members residing together within the past year but not residing together at the time of the incident].

If the State has proved all of these numbered elements, the defendant is guilty of Domestic Abuse Assault Causing Bodily Injury. If the State has proved only elements 1, 2 and 3, then the defendant is guilty of Assault Causing Bodily Injury. If the State has proved only elements 1, 2 and 4, the defendant is guilty of Domestic Abuse Assault. If the State has proved only elements 1 and 2, the defendant is guilty of Assault. If the State has failed to prove either element 1 or 2, the defendant is not guilty.

Authority

Iowa Code sections [708.2A\(1\) and \(2\)](#)

830.3 Domestic Abuse Assault While Using Or Displaying A Dangerous Weapon - Elements. The State must prove all of the following elements of the crime of Domestic Abuse Assault While Using Or Displaying A Dangerous Weapon:

1. On or about the _____ day of _____, 20____, the defendant either did an act which was meant to [cause pain or injury] [result in physical contact which was insulting or offensive] [place (name of victim) in fear of immediate physical contact which would have been painful, injurious, insulting or offensive] to (victim), or [intentionally pointed a firearm toward (victim)] [displayed in a threatening manner a dangerous weapon toward (victim)].

2. The defendant had the apparent ability to do the act.

3. At that time the defendant used or displayed a dangerous weapon.

4. The act occurred between [family or household members who resided together at the time of the incident] [separated spouses or persons divorced from each other and not residing together at the time of the incident] [persons who are the parents of the same minor child] [persons who have been family or household members residing together within the past year but not residing together at the time of the incident].

If the State has proved all of these numbered elements, the defendant is guilty of Domestic Abuse Assault While Using Or Displaying A Dangerous Weapon. If the State has proved only elements 1, 2 and 3, then the defendant is guilty of Assault While Using Or Displaying A Dangerous Weapon. If the State has proved only elements 1, 2 and 4, the defendant is guilty of Domestic Abuse Assault. If the State has proved only elements 1 and 2, the defendant is guilty of Assault. If the State has failed to prove either element 1 or 2, the defendant is not guilty.

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Iowa Code sections [708.2A\(1\) and \(2\)](#)

830.4 Domestic Abuse Assault With Intent To Inflict Serious Injury - Elements. The State must prove all of the following elements of the crime of Domestic Abuse Assault With Intent To Inflict Serious Injury:

1. On or about the _____ day of _____, 20____, the defendant did an act which was meant to [cause pain or injury] [result in physical contact which was insulting or offensive] [place (name of victim) in fear of immediate physical contact which would have been painful, injurious, insulting or offensive] to (victim).
2. The defendant had the apparent ability to do the act.
3. At that time the defendant intended to cause a serious injury to (victim).
4. The act occurred between [family or household members who resided together at the time of the incident] [separated spouses or persons divorced from each other and not residing together at the time of the incident] [persons who are the parents of the same minor child] [persons who have been family or household members residing together within the past year but not residing together at the time of the incident].

If the State has proved all of these numbered elements, the defendant is guilty of Domestic Abuse Assault With Intent To Inflict Serious Injury. If the State has proved only elements 1, 2 and 3, then the defendant is guilty of Assault With Intent To Inflict Serious Injury. If the State has proved only elements 1, 2 and 4, the defendant is guilty of Domestic Abuse Assault. If the State has proved only elements 1 and 2, the defendant is guilty of Assault. If the State has failed to prove either element 1 or 2, the defendant is not guilty.

Authority

Iowa Code sections [708.2A\(1\) and \(2\)](#)

830.5 Definition - Family Or Household Members. The law defines "family or household members" as persons cohabiting with each other.

"Cohabiting" does not require a sexual relationship, but does require more than dwelling or living together in the same place. To determine if the defendant and (victim) were cohabiting at the time of the alleged offense, you may consider whether they had sexual relations while sharing the same living quarters; they shared income or expenses; they jointly used or owned property together; they held themselves out as husband and wife; the continuity and length of their relationship, and any other facts shown by the evidence bearing on their relationship with each other.

Authority

Iowa Code section [236.2\(4\)](#)
State v. Kellogg, [542 N.W.2d 514](#), 518 (Iowa 1996)

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830.6 Domestic Abuse Assault by Strangulation Causing Bodily Injury. The State must prove all of the following elements of the crime of Domestic Abuse Assault by Strangulation Causing a Bodily Injury:

1. On or about the ____ day of _____ 20____, the defendant did an act which was meant to [cause pain or injury][result in physical contact which was insulting or offensive] [place (name of victim) in fear of immediate contact which would have been painful, injurious, insulting or offensive] to (victim).
2. The defendant had the apparent ability to do the act.
3. The Defendant knowingly impeded the normal breathing of, or circulation of blood of (name of victim) by applying pressure to the throat or neck or by obstructing the nose or mouth of (name of victim).
4. The Defendant's act caused a bodily injury to (name of victim) as defined in Instruction No. ____.
5. The act occurred between [family or household members who resided together at the time of the incident] [separated spouses or persons divorced from each other and not residing together at the time of the incident] [persons who are the parents of the same minor child] [persons who have been family members residing together within the past year but not residing together at the time of the incident].

If the State has proved all of these numbered elements, the Defendant is guilty of Domestic Abuse Assault by Strangulation Causing a Bodily Injury. If the State has failed to prove any one of the elements, the defendant is not guilty of Domestic Abuse Assault by Strangulation Causing a Bodily Injury and you will then consider the charge of Domestic Abuse Assault by Strangulation explained in Instruction No. ____.

Authority

Iowa Code section [708.2A\(5\)](#)

830.7 Domestic Abuse Assault by Strangulation. The State must prove all of the following elements of the crime of Domestic Abuse Assault by Strangulation:

1. On or about the ____ day of _____ 20____, the defendant did an act which was meant to [cause pain or injury][result in physical contact which was insulting or offensive] [place (name of victim) in fear of immediate contact which would have been painful, injurious, insulting or offensive] to (victim).
2. The defendant had the apparent ability to do the act.
3. The Defendant knowingly impeded the normal breathing of, or circulation of blood of (name of victim) by applying pressure to the throat or neck or by obstructing the nose or mouth of (name of victim).
4. The act occurred between [family or household members who resided together at the time of the incident] [separated spouses or persons divorced from each other and not residing together at the time of the incident] [persons who are the parents of the same minor child] [persons who have been family members residing together within the past year but not residing together at the time of the incident].

If the State has proved all of these numbered elements, the Defendant is guilty of Domestic Abuse Assault by Strangulation. If the State has failed to prove any one of the elements, the defendant is not guilty of Domestic Abuse Assault by Strangulation and you will then consider the charge of Domestic Abuse Assault Causing Injury explained in Instruction No. ____.

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Iowa Code section [708.2A\(2\)\(d\)](#)

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CHAPTER 900

SEXUAL ABUSE

[900.1](#) Sexual Abuse In The First Degree - Elements

[900.2](#) Sexual Abuse In The Second Degree - Elements

[900.3](#) Sexual Abuse In The Third degree - Elements

[900.3.1](#) Sexual Abuse In The Third Degree

[900.3.2](#) Sexual Abuse In The Third Degree - Victim Under the Influence

[900.3.3](#) Sexual Abuse In The Third Degree - Victim Incapacitated - Elements

[900.4](#) Lascivious Acts - Elements

[900.5](#) Indecent Exposure - Elements

[900.6](#) Assault With Intent To Commit Sexual Abuse - Serious Injury - Elements

[900.7](#) Indecent Contact With A Child - Elements

[900.8](#) Definition Of Sex Act

[900.9](#) Knowledge Of Victim's Age

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[900.13](#) Lascivious Conduct With A Minor

Sexual Exploitation Of Minors

[910.1](#) Sexual Exploitation Of Minors - Elements (Class C Felony)

[910.2](#) Sexual Exploitation Of Minors - Elements (Class D Felony)

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Sexual Exploitation By Counselor Or Therapist Or School Employee

[920.1](#) Pattern, Practice, Or Scheme Of Sexual Exploitation - Elements (Felony)

[920.2](#) Sexual Exploitation - Elements (Aggravated Misdemeanor)

[920.3](#) Sexual Exploitation - Elements (Serious Misdemeanor)

[920.4](#) Counselor Or Therapist - Definition

[920.5](#) Mental Health Service - Definition

[920.6](#) Emotionally Dependent - Definition

[920.7](#) Former Patient Or Client - Definition

[920.8](#) Patient Or Client – Definition

[920.9](#) Pattern, Practice, Or Scheme Of Sexual Exploitation By School Employee – Elements

[920.10](#) Sexual Exploitation by a School Employee Elements (Aggravated Misdemeanor)

[920.11](#) School Employee – Definition

[920.12](#) Student – Definition

Note: For Instruction on Civil Commitment of Sexually Violent Predator, see Chapter 3700 of the Iowa Civil Jury Instruction 12/01

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900.1 Sexual Abuse In The First Degree - Elements. The State must prove all of the following elements of Sexual Abuse In The First Degree:

1. On or about the _____ day of _____, 20____, the defendant performed a sex act with (victim).
2. The defendant performed the sex act:
 - a. by force or against the will of (victim); or
 - b. with (victim)'s consent or acquiescence gained by threats of violence toward any person;
or
 - c. while (victim) was under the influence of a sleep-inducing drug; or
 - d. while (victim) was unconscious; or
 - e. while (victim) was suffering from a mental defect or incapacity which prevented (victim) from giving consent; or
 - f. while (victim) was under the age of 14 years.
3. During the commission of sexual abuse, the defendant caused (victim) a serious injury.

If the State has proved all of the elements, the defendant is guilty of Sexual Abuse In The First Degree. If the State has failed to prove any one of the elements, the defendant is not guilty of Sexual Abuse In The First Degree (and you will then consider the charge of _____ as explained in Instruction No. _____).

Authority

Iowa Code section [709.1](#)

Iowa Code section [709.2](#)

Comment

If there is an issue as to whether the injury occurred “during the commission of sexual abuse,” see State v. Carter, [602 N.W.2d 818](#), 822 (Iowa 1999) (the serious injury need not occur simultaneously with the commission of the sexual abuse, but may precede or follow the sexual abuse if the injury and the sexual abuse “occur as part of an unbroken chain of events or as part of one continuous series of acts connected with one another.”)

900.2 Sexual Abuse In The Second Degree - Elements. The State must prove all of the following elements of Sexual Abuse In The Second Degree:

1. On or about the _____ day of _____, 20____, the defendant performed a sex act with (victim).

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2. The defendant performed the sex act:
 - a. By force or against the will of (victim); or
 - b. With (victim)'s consent or acquiescence gained by threats of violence toward any person;
or
 - c. While (victim) was under the influence of a sleep-inducing drug; or
 - d. While (victim) was unconscious; or
 - e. While (victim) was suffering from a mental defect or incapacity which prevented (victim) from giving consent; or
 - f. While (victim) was under the age of 14 years.*
3. During the commission of sexual abuse, the defendant:
 - a. Displayed a dangerous weapon in a threatening manner; or
 - b. Used or threatened to use force creating a substantial risk of death or serious injury to any person; or
 - c. Was aided or abetted by one or more persons.

If the State has proved all of the elements, the defendant is guilty of Sexual Abuse In The Second Degree. If the State has failed to prove any one of the elements, the defendant is not guilty of Sexual Abuse In The Second Degree [and you will then consider the charge of _____ as explained in Instruction No. ____].

Authority

Iowa Code section [709.3](#)

Comment

Note: *A defendant's sex act with a person under the age of 12 years is also Sexual Abuse In The Second Degree. When such a charge is made, you should delete element no. 3 and substitute the age 12 for age 14 in element no. 2 f.

Concerning element no. 3, the terms "dangerous weapon" and "serious injury" are defined by Iowa Code sections [702.7](#) and [702.18](#) respectively. Use Iowa Criminal Jury Instructions 200.21 and 200.22

Note: If "substantial risk of death or serious injury" is an issue, an instruction defining "substantial risk" as "a real hazard or danger" may be used. See State v. Phams, [342 N.W.2d 792](#), 796 (Iowa 1983); State v. Taylor [538 N.W.2d 314](#), 316 (Iowa App. 1995).

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900.3 Sexual Abuse In The Third Degree - Elements. The State must prove all of the following elements of Sexual Abuse In The Third Degree:

1. On or about the _____ day of _____, 20____, the defendant performed a sex act with (victim).
2. The defendant performed the sex act:
 - a. By force or against the will of (victim); or
 - b. While (victim) was suffering from a mental defect or incapacity which prevented (victim) from giving consent; or
 - c. While (victim) was under the age of 14 years; or
 - d. While (victim) was 14 or 15 years old and [a member of the same household as the defendant] [while the defendant was in a position of authority over (victim) and used that authority to coerce (victim) to submit to the sex act] [the defendant was 4 or more years older] [(victim) was the defendant's (describe relationship by marriage or blood to the fourth degree)].
3. The defendant and (victim) were not then living together as husband and wife.

If the State has proved all of the elements, the defendant is guilty of Sexual Abuse In The Third Degree. If the State has failed to prove any one of the elements, the defendant is not guilty of Sexual Abuse In The Third Degree (and you will then consider the charge of _____ as explained in Instruction No. _____).

Authority

Iowa Code section [709.4](#), as amended by H.F. 661, Acts of the 78th General Assembly, 1999
State v. Lampman, [345 N.W.2d 142](#) (Iowa 1984)

Comment

Note: See State v. Allen, [304 N.W.2d 203](#) (Iowa 1981), for method of determining the degree of one person's relationship to another.

900.3.1 Sexual Abuse In The Third Degree. The State must prove both of the following elements of Sexual Abuse In The Third Degree:

1. On or about the _____ day of _____, 19____, the defendant performed a sex act with (victim).
2. The defendant performed the sex act by force or against the will of (victim).

If the State has proved both of the elements, the defendant is guilty of Sexual Abuse In The Third Degree. If the State has failed to prove either one of the elements, the defendant is not guilty of

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Sexual Abuse In The Third Degree (and you will then consider the charge of _____ as explained in Instruction No. _____).

Authority

Iowa Code section [709.4\(1\)](#)

900.3.2 Sexual Abuse In The Third Degree - Victim Under the Influence - Elements. The State must prove all of the following elements of Sexual Abuse In The Third Degree:

1. On or about the _____ day of _____, _____, the defendant performed a sex act with (victim).
2. The sex act was performed while (victim) was under the influence of [name of controlled substance], a controlled substance.
3. The controlled substance prevented (victim) from consenting the act.
4. The defendant knew or reasonably should have known that (victim) was under the influence of the controlled substance.

If the State has proved all of elements, the defendant is guilty of Sexual Abuse in the Third Degree. If the State has failed to prove all of the elements, the defendant is not guilty of Sexual Abuse in the Third Degree.

Authority

Iowa Code section [709.4\(3\)](#), as amended by H.F. 661, Acts of the 78th General Assembly, 1999.

Comment

Note: Use Iowa Criminal Jury Instruction 200.3 (Knowledge).

Note: Where the chemical name of the controlled substance is not generally know or recognized, circumstantial evidence may be use to prove the defendant's knowledge that the material was some kind of a controlled substance. See State v. Parrish, [502 N.W.2d 1](#) (Iowa 1993). NOTE: Users are cautioned to determine under the charge filed whether it is appropriate to use Instruction 900.3.2 or 900.3.3. Instruction 900.3.2 (under the influence) contains a knowledge element, whereas Instruction 900.3.3 (victim incapacitation) does not contain a knowledge requirement.

Updated 6/2018

900.3.3 Sexual Abuse In Third Degree - Victim Incapacitated - Elements. The State must prove all of the following elements of Sexual Abuse In The Third Degree:

1. On or about the _____ day of _____, _____, the defendant performed a sex act with (victim).

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2. The sex act was performed while (victim) was (mentally incapacitated) (physically incapacitated) (physically helpless).

If the State has proved all of the elements, the defendant is guilty of Sexual Abuse in the Third Degree. If the State has failed to prove all of the elements, the defendant is not guilty of Sexual Abuse in the Third Degree.

Authority

Iowa Code section [709.4\(d\)](#), as added by H.F. 661, Acts of the 78th General Assembly, 1999.

Comment

Note: Use Iowa Criminal Jury Instruction 900.8 regarding definition of sex act and 900.12 regarding definition of incapacitation. NOTE: Users are cautioned to determine under the charge filed whether it is appropriate to use Instruction 900.3.2 or 900.3.3. Instruction 900.3.2 (under the influence) contains a knowledge element, whereas Instruction 900.3.3 (victim incapacitation) does not contain a knowledge requirement.

Updated 6/2018

900.4 Lascivious Acts - Elements. The State must prove all of the following elements of Lascivious Acts With A Child:

1. On or about the ____ day of _____, 19____, the defendant with or without (victim)'s consent:
 - a. fondled or touched the pubes or genitals of (victim); or
 - b. permitted or caused (victim) to fondle or touch the defendant's genitals or pubes; or
 - c. solicited (victim) to engage in a sex act; or
 - d. inflicted pain or discomfort upon (victim); or
 - e. permitted (victim) to inflict pain or discomfort on the defendant.
2. The defendant did so with the specific intent to arouse or satisfy the sexual desires of the defendant or (victim).
3. The defendant was then 16 years of age or older.
4. (Victim) was then under the age of 14 years.
5. The defendant and (victim) were not then married to each other.*

If the State has proved all of the elements, the defendant is guilty of Lascivious Acts With A Child. If the State has failed to prove any one of the elements, the defendant is not guilty of

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Lascivious Acts With A Child (and you will then consider the charge of _____ as explained in Instruction No. _____).

Authority

Iowa Code section [709.8](#)

Comment

Note: *Use this element only if the defendant raises the issue of cohabitation as husband and wife as excusing the conduct and if a fact issue exists.

Note: For discussion of what constitutes genitals, see State v Martens, [569 N.W.2d 482](#) (Iowa 1997).

Updated 6/2020

900.5 Indecent Exposure - Elements. The State must prove all of the following elements of Indecent Exposure:

1. On or about the _____ day of _____, 20____, the defendant:
 - a. exposed [her] [his] genitals or pubes to (victim) who was not then the defendant's spouse;or
 - b. committed a sex act in the presence or view of (name of third person).
2. The defendant did so with the specific intent to arouse or satisfy the sexual desire of the defendant or (victim).
3. (Victim) was offended by the defendant's conduct.
4. The defendant knew or reasonably should have known that the act was offensive to (the Defendant's intended victim) or to other viewers.

If the State has proven all of the elements, the defendant is guilty of Indecent Exposure. If the State has failed to prove any one of the elements, the defendant is not guilty of Indecent Exposure.

Authority

Iowa Code section [709.9](#)

State v. Jorgensen, [758 N.W.2d 830](#) (Iowa 2008)

State v. Isaac, [756 N.W.2d 817](#) (Iowa 2008)

State v. Adams, [436 N.W.2d 49](#) (Iowa 1989)

Rev. 06/09

Comment

Note: Concerning element no. 4, you should decide whether a person may be guilty if he or she only "reasonably should have known that the act was offensive" to the victim. See State v. Hutt, [330 N.W.2d 788](#) (Iowa 1983).

Note: For discussion of what constitutes genitals, see State v Martens, [569 NW2d 482](#) (Iowa 1997)

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Rev. 12/08

900.6 Assault With Intent To Commit Sexual Abuse - Serious Injury - Elements. The State must prove all of the following elements of Assault With Intent To Commit Sexual Abuse resulting in [serious injury] [bodily injury]:

1. On or about the _____ day of _____, 20____, the defendant assaulted (name of victim).
2. The defendant did so with the specific intent to commit a sex act by force or against the will of (name of victim).
3. The defendant's assault caused [serious injury] [bodily injury] to (name of victim).

If the State has proved all of the elements, the defendant is guilty of Assault With Intent To Commit Sexual Abuse resulting in [serious injury] [bodily injury]. If the State has failed to prove any one of the elements, the defendant is not guilty of Assault With Intent To Commit Sexual Abuse (and you will then consider the charge of _____ explained in Instruction No. _____).

Authority

Iowa Code section [709.11](#)
State v. Beets, [528 N.W.2d 521](#) (Iowa 1995)

Comment

Note: Iowa Code section [709.11](#) defines three assaults of varying severity, i.e., assaults resulting in serious injury, bodily injury, or no injury. Tailor this instruction to the charge and the facts of each case.

Note: "Assault" is defined in Chapter 800 of these instructions. Iowa Criminal Jury Instruction 200.22 defines serious injury. Iowa Criminal Jury Instruction 200.41 defines bodily injury.

900.7 Indecent Contact With A Child - Elements. The State must prove all of the following elements of Indecent Contact With A Child:

1. On or about the _____ day of _____, 19____, the defendant with or without (victim)'s consent:
 - a. fondled or touched the inner thigh, groin, buttock, anus or breast of (victim); or
 - b. touched the clothing covering the immediate area of the inner thigh, groin, buttock, anus, or breast of (victim); or
 - c. solicited or permitted (victim) to fondle or touch the inner thigh, groin, buttock, anus or breast of the defendant; or

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d. solicited (victim) to engage in (describe act prohibited by Iowa Code sections 709.8(1), (2), or (4)).

2. The defendant did so with the specific intent to arouse or satisfy the sexual desires of the defendant or (victim).

3. The defendant was then:

- a. 18 years of age or older; or
- b. 16 or 17 years of age.

4. (Victim) was then:

- a. under the age of 14 years; or
- b. at least 5 years younger than the defendant.

5. The defendant and (victim) were not then married to each other.

If the State has proved all of the elements, the defendant is guilty of Indecent Contact With A Child. If the State has failed to prove any one of the elements, the defendant is not guilty of Indecent Contact With A Child.

Authority

Iowa Code section [709.12](#)

Comment

Note: Elements 3a and 4a must be used together, as must Elements 3b and 4b.

Rev. 6/09

900.8 Definition Of Sex Act. Concerning element number _____ of Instruction No. _____, "sex act" means any sexual contact:

- 1. By penetration of the penis into the vagina or anus.
- 2. Between the mouth of one person and the genitals of another.
- 3. Between the genitals of one person and the genitals or anus of another.
- 4. Between the finger or hand of one person and the genitals or anus of another person.*
- 5. By a person's use of an artificial sex organ or a substitute for a sexual organ in contact with the genitals or anus of another.

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You may consider the type of contact and the circumstances surrounding it in deciding whether the contact was sexual in nature.

Authority

Iowa Code section [702.17](#)

State v. Monk, [514 N.W.2d 448](#) (Iowa 1994) (contact must be sexual in nature).

State v. Pearson, [514 N.W.2d 452](#) (Iowa 1994) (skin-to-skin contact not required to establish "sex act").

Comment

Note: *There is an exception for licensed persons which should be used if raised by the evidence.

Note: For discussion of what constitutes genitals, see State v Martens, [569 NW2d 482](#) (Iowa 1997)

900.9 Knowledge Of Victim's Age. Concerning element number _____ of Instruction No. _____, the State must prove that (victim) was (describe age requirement involved) at the time of the defendant's act. The defendant's ignorance of (victim)'s age or a belief that (victim) was older is no defense to the crime charged.

Authority

State v. Tague, [310 N.W.2d 209](#) (Iowa 1981)

900.10 Sexual Abuse - Definition Of Force. Concerning element number 2 of Instruction No. _____, the State must prove that the defendant committed a sex act "by force or against the will" of (victim). In order to do so, however, the State does not have to prove that (victim) physically resisted the defendant's acts. The force used by the defendant does not have to be physical. It may consist of threats of violence against (victim) or another person which overcame (victim)'s will by fear.

You may consider all of the circumstances surrounding the defendant's act in deciding whether the act was done by force or against the will of (victim).

Authority

Iowa Code section [709.5](#)

State v. Bauer, [324 N.W.2d 320](#) (Iowa 1982)

Rev. 12/07

900.11 Evidence Of Similar Acts. You have heard evidence that the defendant allegedly committed other acts with (victim) [before] [after] (date of offense charged). If you decide the defendant committed these other acts, you may consider those acts only to determine whether the

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defendant has a sexual passion or desire for (victim). You may not consider them as proving that the defendant actually committed the act charged in this case.

Authority

Iowa Code [701.11](#) (2009)
State v. Cox, [781 N.W.2d 757](#), 768 (Iowa 2010)
State v. Reyes, [744 N.W.2d 95](#), 102 (Iowa 2008)
State v. Munz, [355 N.W.2d 576](#) (Iowa 1984)
State v. Spaulding, [313 N.W.2d 878](#), 880 (Iowa 1981)

Comment

Note; You must also determine whether evidence of similar acts with others is admissible for some other purpose under Iowa R. Evid., rule 404(b), i.e., identity, intent, etc. See, [State v. Cott](#), [283 N.W.2d 324](#) (Iowa 1979). This instruction does not apply to evidence admitted under Iowa R. Evid., rule 404(b).

Rev. 9/10

900.12 Incapacity - Mental - Physical - Definitions. As used in Instruction No. _____,

- a. “Mentally Incapacitated” means that a person is temporarily incapable of controlling the person’s own conduct due to the influence of a narcotic, anesthetic, or intoxicating substance.
- b. “Physically helpless” means that a person is unable to communicate an unwillingness to act because the person is unconscious, asleep, or otherwise physically limited.
- c. “Physically incapacitated” means that a person has a bodily impairment or handicap that substantially limits the person’s ability to resist or flee.

Authority

Iowa Code section [709.1A](#), added by H. F. 661, Acts of the 78th General Assembly, 1999.
Iowa Code section [708.4](#), as amended by H.F. 501, Acts of the 78th General Assembly, 1999.
Iowa Code section [702.18](#).

Comment

Note: Use only that definition alleged and supported by the evidence.

Note: Iowa Criminal Jury Instruction 200.22 (Serious Injury) and Iowa Criminal Jury Instruction 200.2 (Specific Intent) should be used. If appropriate, use Iowa Criminal Jury Instruction 200.41 (Bodily Injury).

900.13 Lascivious Conduct With A Minor – Elements. The State must prove all of the following elements of Lascivious Conduct With A Minor:

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1. On or about the ____ day of _____, 20____, the defendant [forced] [persuaded] [coerced] (victim), with or without his/her consent, to disrobe or partially disrobe.
2. The defendant engaged in such conduct with the specific intent to arouse or satisfy the sexual desires of the defendant or (victim).
3. At the time of the conduct, the defendant was then 18 years of age or older.
4. At the time of the conduct, the defendant was in a position of authority over (victim).
5. At the time of the conduct, (victim) was under the age of 18 and never married.

If the State has proved all of the elements, the defendant is guilty of Lascivious Conduct With A Minor. If the State has failed to prove any one of the elements, the defendant is not guilty of Lascivious Conduct With A Minor.

Comment:

See Iowa Code chapter 232C regarding emancipated minors.

Authority

Iowa Code section [709.14](#)

Iowa Code section [599.1](#)

New. 9/10

910.1 Sexual Exploitation Of Minors - Elements (Class C. Felony). The State must prove both of the following elements of Sexual Exploitation of Minors:

1. On or about the ____ day of _____, 19____, the defendant [employed] [used] [persuaded] [induced] [enticed] [coerced] [knowingly permitted] [caused] a person under the age of 18 years to:
 - a. engage in (describe "prohibited sexual act" defined by Iowa Code section 728.1(8)).
 - b. engage in the simulation of (describe "prohibited sexual act" defined by Iowa Code section 728.1(8)).
2. The defendant [knew] [had reason to know] [intended] that the act would be:
 - a. photographed.
 - b. filmed.
 - c. preserved in a [negative] [slide] [book] [magazine] [print or visual medium].

If the State has proved both of the elements, the defendant is guilty of Sexual Exploitation of Minors. If the State has failed to prove either of the elements, the defendant is not guilty.

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Authority

Iowa Code section [728.12\(1\)](#)

Iowa Code section [728.1\(8\)](#)

Iowa Code section [728.1\(6\)](#)

910.2 Sexual Exploitation Of Minors - Elements (Class D Felony). The State must prove both of the following elements of Sexual Exploitation Of Minors:

1. On or about the _____ day of _____, 20____, the defendant knowingly promoted (describe material as defined by Iowa Code section 728.1(2)).
2. The material depicted a live performance of a person under the age of 18 years:
 - a. engaging in (describe "prohibited sexual act" defined by Iowa Code section 728.1(8)).
 - b. engaged in the simulation of (describe "prohibited" sexual act" defined by Iowa Code section 728.1(8)).

If the State has proved both of the elements, the defendant is guilty of Sexual Exploitation Of Minors. If the State has failed to prove either of the elements, the defendant is not guilty.

Authority

Iowa Code section [728.12\(2\)](#)

Iowa Code section [728.1\(2\)](#)

Iowa Code section [728.1\(8\)](#)

Iowa Code section [728.1\(4\)](#)

Iowa Code section [728.1\(9\)](#)

Iowa Code section [728.1\(6\)](#)

910.3 Sexual Exploitation Of Minors - Elements (Misdemeanor). The State must prove both of the following elements of Sexual Exploitation of Minors:

1. On or about the _____ day of _____, 20____, the defendant knowingly [purchased] [possessed] a [negative] [slide] [book] [magazine] [print or visual medium].
2. That material shows a person under the age of 18 years:
 - a. engaging in (describe "prohibited sexual act" defined by Iowa Code section 728.1(8)).
 - b. engaged in the simulation of (describe "prohibited sexual act" defined by Iowa Code section 728.1(8)).

If the State has proved both of the elements, the defendant is guilty of Sexual Exploitation Of Minors. If the State has failed to prove either of the elements, the defendant is not guilty.

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Authority

Iowa Code section [728.12\(3\)](#)

Iowa Code section [728.1\(4\)](#)

Iowa Code section [728.1\(8\)](#)

Iowa Code section [728.1\(6\)](#)

910.4 Knowingly - Definition. Concerning element number _____ of Instruction No _____, "knowingly" means being aware of the character of the matter.

Authority

Iowa Code section [728.1\(4\)](#)

910.5 Promote - Elements. Concerning element number _____ of Instruction No. _____, "promote" means to procure, manufacture, issue, sell, give, provide, lend, mail, deliver, transfer, transmute, transmit, publish, distribute, circulate, disseminate, present, exhibit, or advertise. It also means to offer or agree to do any of these acts.

Authority

Iowa Code section [728.1\(9\)](#)

Comment

Note: Use only those portions of the instruction supported by the evidence.

920.1 Pattern, Practice, Or Scheme Of Sexual Exploitation - Elements (Felony). The State must prove all of the following elements of Pattern, Practice, Or Scheme Of Sexual Exploitation:

1. On or about the _____ day of _____, 20____, the defendant:
 - a. Kissed (victim); or
 - b. Touched the clothed or unclothed inner thigh, breast, groin, buttock, anus, pubes, or genitals of (victim); or
 - c. Performed a sex act with (victim); or
 - d. Engaged in [specify sexual conduct] with (victim).*
2. The defendant engaged in this conduct as part of a pattern or practice or scheme of conduct.
3. The defendant did so with the specific intent to arouse or satisfy the sexual desires of the defendant or (victim).
4. The defendant was then a counselor or therapist.

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5. (Victim) was then:

- a. A patient, client or emotionally dependent former patient or client; or
 - b. A former patient or client, and the conduct occurred within one year of the termination of the mental health services provided by the defendant.
6. The defendant's conduct was not part of a necessary examination or treatment provided (victim) by the defendant while acting within the scope of the practice or employment in which the defendant was engaged.**

If the State has proved all of the elements, the defendant is guilty of Pattern, Practice, Or Scheme Of Sexual Exploitation. If the State has failed to prove any one of the elements, the defendant is not guilty of Pattern, Practice Or Scheme Of Sexual Exploitation, and you will then consider the crime of Sexual Exploitation explained in Instruction No. _____.

Authority

Iowa Code section [709.15\(1\)\(f\)\(1\)](#)

Comment

Concerning element 2, no Iowa case has interpreted “pattern or practice or scheme of conduct”, but see Doe v. Hartz, [134 F3d 1339](#), 1342-43 (8th Cir. 1998).

Note: *Use only specifications supported by the evidence.

**Use only when this statutory affirmative defense is raised by the defendant and supported by the evidence.

Note: For discussion of what constitutes genitals, see State v Martens, [569 N.W.2d 482](#) (Iowa 1997)

Iowa Criminal Jury Instruction 200.2 (Specific Intent).

Iowa Criminal Jury Instruction 900.8 (Sex Act).

Iowa Criminal Jury Instruction 920.6 (Emotionally Dependent)

920.2 Sexual Exploitation Elements (Aggravated Misdemeanor). The State must prove all of the following elements of Sexual Exploitation:

1. On or about the _____ day of _____, 20__ , the defendant:
 - a. Kissed (victim); or
 - b. Touched the clothed or unclothed inner thigh, breast, groin, buttock, anus, pubes, or genitals of (victim); or
 - c. Performed a sex act with (victim); or
 - d. Engaged in [specify sexual conduct] with (victim).*

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2. The defendant did so with the specific intent to arouse or satisfy the sexual desires of the defendant or (victim).
3. The defendant was then a counselor or therapist.
4. (Victim) was then an emotionally dependent patient or client or was an emotionally dependent former patient or client.
5. The defendant's conduct was not a part of a necessary examination or treatment provided (victim) by the defendant while acting within the scope of the practice or employment in which the defendant was engaged.**

If the State has proved all of the elements, the defendant is guilty of Sexual Exploitation. If the State has failed to prove any one of the elements, the defendant is not guilty.

Authority

Iowa Code section [709.15\(1\)\(f\)\(2\)](#)

Comment

Note: *Use only specifications supported by the evidence.

**Use only when this statutory affirmative defense is raised by the defendant and supported by the evidence.

Note: For discussion of what constitutes genitals, see State v Martens, [569 N.W.2d 482](#) (Iowa 1997)

Iowa Criminal Jury Instruction 200.2 (Specific Intent)

Iowa Criminal Jury Instruction 900.8 (Sex Act)

Iowa Criminal Jury Instruction 920.6 (Emotionally Dependent)

Rev. 6/16

920.3 Sexual Exploitation - Elements (Serious Misdemeanor). The State must prove all of the following elements of Sexual Exploitation:

1. On or about the _____ day of _____, 20____, the defendant:
 - a. Kissed (victim); or
 - b. Touched the clothed or unclothed inner thigh, breast, groin, buttock, anus, pubes, or genitals of (victim); or
 - c. Performed a sex act with (victim); or
 - d. Engaged in [specify sexual conduct] with (victim).*
2. The defendant did so with the specific intent to arouse or satisfy the sexual desires of the defendant or (victim).

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3. The defendant was then a counselor or therapist.

4. (Victim) was:

a. A patient or client; or

b. A former patient or client, and the conduct occurred within one year of the termination of the mental health services provided by the defendant.

5. The defendant's conduct was not part of a necessary examination or treatment provided (victim) by the defendant while acting within the scope of the practice or employment in which the defendant was engaged.**

If the State has proved all of the elements, the defendant is guilty of Sexual Exploitation. If the State has failed to prove any one of the elements, the defendant is not guilty.

Authority

Iowa Code section [709.15\(1\)\(f\)\(3\)](#)

Comment

Note: *Use only specifications supported by the evidence.

**Use only when this statutory affirmative defense is raised by the defendant and supported by the evidence.

Note: For discussion of what constitutes genitals, see State v. Martens, [569 N.W.2d 482](#) (Iowa 1997)

Iowa Criminal Jury Instruction 200.2 (Specific Intent)

Iowa Criminal Jury Instruction 900.8 (Sex Act)

Iowa Criminal Jury Instruction 920.6 (Emotionally Dependent)

920.4 Counselor Or Therapist - Definition. Concerning element number _____ of Instruction No. _____, the State must prove that the defendant was a physician, psychologist, nurse, professional counselor, social worker, marriage or family therapist, alcohol or drug counselor, member of the clergy, or any other person, whether or not licensed or registered by the State, who provides or purports to provide mental health services.

Authority

Iowa Code section [709.15\(1\)\(a\)](#)

920.5 Mental Health Service - Definition. Concerning element number _____ of Instruction No. _____, the State must prove that the defendant provided or purported to provide treatment, assessment, or counseling of another person for a cognitive, behavioral, emotional, mental or social dysfunction, including an intrapersonal or interpersonal dysfunction.

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Authority

Iowa Code section [709.15\(1\)\(b\)](#)

920.6 Emotionally Dependent - Definition. Concerning element number _____ of Instruction No. _____, the State must prove that (victim's) emotional condition or the nature of the treatment provided by the defendant was such that the defendant knew or had reason to know* that (victim) was significantly impaired in the ability to withhold consent to sexual conduct by the defendant.

You may but are not required to conclude that a former patient or client is dependent for one year following the termination of mental health services.

Authority

Iowa Code section [709.15\(1\)\(c\)](#)

Comment

Note: Iowa Criminal Jury Instruction 200.3 (Knowledge).

Caveat: *The Committee takes no position on whether *State v. Hutt*, [330 N.W.2d 788](#) (Iowa 1983) (proof of actual knowledge required in prosecution for possession of stolen property) has any application to this statute.

920.7 Former Patient Or Client - Definition. Concerning element number _____ of Instruction No. _____, the State must prove that (victim) received mental health services from the defendant.

Authority

Iowa Code section [709.15\(1\)\(d\)](#)

920.8 Patient Or Client - Definition. Concerning element number _____ of Instruction No. _____, the State must prove that (victim) was receiving mental health services from the defendant.

Authority

Iowa Code section [709.15\(1\)\(e\)](#)

920.9 Pattern, Practice, Or Scheme Of Sexual Exploitation By School Employee - Elements (Felony). The State must prove all of the following elements of Pattern, Practice, Or Scheme Of Sexual Exploitation by a School Employee:

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1. On or about the ____ day of _____, 20____, the defendant:
 - a. Kissed (victim); or
 - b. Touched the clothed or unclothed inner thigh, breast, groin, buttock, anus, pubes, or genitals of (victim); or
 - c. Performed a sex act with (victim); or
 - d. Engaged in [specify sexual conduct] with (victim).*
2. The defendant engaged in this conduct as part of a pattern or practice or scheme of conduct.
3. The defendant did so with the specific intent to arouse or satisfy the sexual desires of the defendant or (victim).
4. The defendant was then a school employee.
5. (Victim) was then a student.
6. The defendant's conduct was not necessary in the performance of the school employee's duties while acting within the scope of employment.**

If the State has proved all of the elements, the defendant is guilty of Pattern, Practice, Or Scheme Of Sexual Exploitation by a School Employee. If the State has failed to prove any one of the elements, the defendant is not guilty of Pattern, Practice Or Scheme Of Sexual Exploitation by a School Employee, and you will then consider the crime of Sexual Exploitation by a School Employee explained in Instruction No. _____.

Authority

Iowa Code section [709.15\(5\)\(a\)](#)

Comment

Concerning element 2, no Iowa case has interpreted “pattern or practice or scheme of conduct”, but see Doe v. Hartz, [134 F3d 1339](#), 1342-43 (8th Cir. 1998)

Note: *Use only specifications supported by the evidence.

**Use only when this statutory affirmative defense is raised by the defendant and supported by the evidence.

Note: For discussion of what constitutes genitals, see State v Martens, [569 N.W.2d 482](#) (Iowa 1997)

Iowa Criminal Jury Instruction 200.2 (Specific Intent).

Iowa Criminal Jury Instruction 900.8 (Sex Act).

NEW 6/16

920.10 Sexual Exploitation by a School Employee Elements (Aggravated Misdemeanor).

The State must prove all of the following elements of Sexual Exploitation by a School Employee:

1. On or about the ____ day of _____, 20____, the defendant:
 - a. Kissed (victim); or
 - b. Touched the clothed or unclothed inner thigh, breast, groin, buttock, anus, pubes, or genitals of (victim); or
 - c. Performed a sex act with (victim); or
 - d. Engaged in [specify sexual conduct] with (victim).*
2. The defendant did so with the specific intent to arouse or satisfy the sexual desires of

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the defendant or (victim).

3. The defendant was then a school employee.
4. (Victim) was then a student.
5. The defendant's conduct was not necessary in the performance of the school employee's duties while acting within the scope of employment.**

If the State has proved all of the elements, the defendant is guilty of Sexual Exploitation by a School Employee. If the State has failed to prove any one of the elements, the defendant is not guilty.

Authority

Iowa Code section [709.15\(5\)\(b\)](#)

Comment

Note: *Use only specifications supported by the evidence.

**Use only when this statutory affirmative defense is raised by the defendant and supported by the evidence.

Note: For discussion of what constitutes genitals, see State v Martens, [569 N.W.2d 482](#) (Iowa 1997).

Iowa Criminal Jury Instruction 200.2 (Specific Intent)

Iowa Criminal Jury Instruction 900.8 (Sex Act)

920.11 School Employee - Definition. Concerning element number _____ of Instruction No. _____, the State must prove that the defendant was:

1. An administrator, teacher, or other licensed professional, including an individual who holds a statement of professional recognition, who provides educational assistance to students; or
2. A person issued a coaching authorization.

“Administrator” means a person who is licensed to coordinate, supervise, or direct an educational program or the activities of other practitioners.

“Teacher” means a licensed member of a school's instructional staff who diagnoses, prescribes, evaluates, and directs student learning in a manner which is consistent with professional practice and school objectives, shares responsibility for the development of an instructional program and any coordinating activities, evaluates or assesses student progress before and after instruction, and who uses the student evaluation or assessment information to promote additional student learning.

“License” means the authority that is given to allow a person to legally serve as a practitioner, a school, an institution, or a course of study to legally offer professional development programs, other than those programs offered by practitioner preparation schools, institutions, courses of study, or area education agencies.

Authority

Iowa Code section [709.15\(1\)\(f\)](#)

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Iowa Code section [272.1](#)

Iowa Code section [272.31](#)

920.12 Student - Definition. Concerning element number _____ of Instruction No. _____, the State must prove that (victim) was a person who is currently enrolled in or attending a public or nonpublic elementary or secondary school, or who was a student enrolled in or who attended a public or nonpublic elementary or secondary school within thirty (30) days of the acts alleged in element number _____ of Instruction No. _____.

Authority

Iowa Code section [709.15\(1\)\(g\)](#)

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CHAPTER 1000

KIDNAPPING AND RELATED OFFENSES

[1000.1](#) Kidnapping In The First Degree – Elements.

[1000.2](#) Kidnapping In The Second Degree Dangerous Weapons – Elements. (Rev. 6/2015)

[1000.3](#) Kidnapping In the Second Degree-Ransom-Elements. (New 6/2015)

[1000.4](#) Kidnapping In The Third Degree – Elements.

[1000.5](#) Kidnapping - Confinement, Removal (When Used With Another Public Offense)
Definition. (Rev.6/2015)

[1000.6](#) Kidnapping - Torture – Definition.

[1000.7](#) Kidnapping - Intent To Secretly Confine – Definition.

[1000.8](#) False Imprisonment – Elements.

[1000.9](#) Child Stealing – Elements.

[1000.10](#) Violating Custodial Order By Relative – Elements.

[1000.11](#) Harboring A Runaway Child – Elements.

[1000.12](#) Enticing A Minor – Elements.

[1000.13](#) Enticing – Definition.

[1000.14](#) Enticing – Overt Act.

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1000.1 Kidnapping In The First Degree - Elements. The State must prove all of the following elements of Kidnapping In The First Degree:

1. On or about the ____ day of _____, 20____, the defendant [confined (victim)] [removed (victim) from (place)].
2. The defendant did so with the specific intent to:
 - a. hold (victim) for ransom.
 - b. use (victim) as a shield or hostage
 - c. inflict serious injury upon (victim).
 - d. subject (victim) to sexual abuse.
 - e. secretly confine (victim).
 - f. interfere with the performance of any government function.

(Omit those not charged or supported by the evidence.)

3. The defendant knew [he] [she] did not have the [consent] [authority] of (victim) to do so.
4. As a result of the [confinement] [removal] (victim) [suffered a serious injury] [was intentionally subjected to torture] [was sexually abused].

If the State has proved all of the elements, the defendant is guilty of Kidnapping In The First Degree. If the State has failed to prove any one of the elements, then the defendant is not guilty of Kidnapping In The First Degree (and you will then consider the charge of _____ explained in Instruction No. ____).

Authority

Iowa Code section [710.2](#)
State v. Newman, [326 N.W.2d 788](#) (1982)

Comment

Note: When the result of the kidnapping is a serious injury, Iowa Criminal Jury Instruction 200.22 should be used. Where the result of kidnapping is sexual abuse, Iowa Criminal Jury Instruction 200.1 (Intent) and Instruction 900.8, as well as the applicable definition of Sexual Abuse under Chapter 900 of the Iowa Criminal Jury Instructions should be used.

Rev. 12/07

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1000.2 Kidnapping In The Second Degree – Dangerous Weapon - Elements. The State must prove all of the following elements of Kidnapping In The Second Degree:

1. On or about the _____ day of _____, 20____, the defendant [confined (victim)] [removed (victim) from (place)].
2. The defendant did so with the specific intent to:
 - a. use (victim) as a shield or hostage.
 - b. inflict serious injury upon (victim).
 - c. subject (victim) to sexual abuse.
 - d. secretly confine (victim).
 - e. interfere with the performance of any government function.

(Omit those not charged or supported by the evidence.)

3. The defendant knew [he] [she] did not have the [consent] [authority] of (victim) to do so.
4. The defendant was armed with a dangerous weapon at the time [he] [she] [confined] [removed] (victim).

If the State has proved all of the elements, the defendant is guilty of Kidnapping In The Second Degree. If the State has failed to prove any one of the elements, then the defendant is not guilty of Kidnapping In The Second Degree (and you will then consider the charge of _____ explained in Instruction No. _____).

Authority

Iowa Code section [710.3](#)
State v. Misner, [410 N.W.2d 216](#) (1987)

Comment

Note: Iowa Criminal Jury Instruction 200.21 (Dangerous Weapon) should be used.

Rev. 6/2015

1000.3 Kidnapping In The Second Degree - Ransom - Elements. The State must prove all of the following elements of Kidnapping In The Second Degree:

1. On or about the _____ day of _____, 20____, the defendant [confined (victim)] [removed (victim) from (place)].
2. The defendant did so with the specific intent to hold (victim) for ransom.
3. The defendant knew [he] [she] did not have the [consent] [authority] of (victim) to do so.

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If the State has proved all of the elements, the defendant is guilty of Kidnapping In The Second Degree. If the State has failed to prove any one of the elements, then the defendant is not guilty of Kidnapping In The Second Degree (and you will then consider the charge of _____ explained in Instruction No. _____).

Authority

Iowa Code section [710.3](#)
State v. Misner, [410 N.W.2d 216](#) (1987)

New 6/2015

1000.4 Kidnapping In The Third Degree - Elements. The State must prove all of the following elements of Kidnapping In The Third Degree:

1. On or about the ____ day of _____, 20____, the defendant [confined (victim)] [removed (victim) from (place)].
2. The defendant did so with the specific intent to:
 - a. use (victim) as a shield or hostage.
 - b. inflict serious injury upon (victim).
 - c. subject (victim) to sexual abuse.
 - d. secretly confine (victim).
 - e. interfere with the performance of any government function.

(Omit those not charged or supported by the evidence.)

3. The defendant knew [he] [she] did not have the [consent] [authority] of (victim) to do so.

If the State has proved all of the elements, the defendant is guilty. If the State has failed to prove any one of the elements, then the defendant is not guilty.

Authority

Iowa Code section [710.4](#)

Rev. 6/2015

1000.5 Kidnapping - Confinement, Removal (When Used With Another Public Offense) - Definition. Concerning element number ____ of Instruction No. _____, [confinement] [removal] requires more than what is included in the commission of the crime of (insert underlying offense).

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A person is "confined" when [his] [her] freedom to move about is substantially restricted by force, threat or deception. The person may be confined either in the place where the restriction began or in a place to which [he] [she] has been removed.

No minimum time of confinement or distance of removal is required. It must be more than slight. The [confinement] [removal] must have significance apart from the (insert underlying offense).

In determining whether [confinement] [removal] exists, you may consider whether:

1. The risk of harm to (victim) was substantially increased.
2. The risk of detection was significantly reduced.
3. Escape was made significantly easier.

Authority

State v. Robinson, [859 N.W.2d 464](#) (Iowa 2015)
State v. Hatter, [414 N.W.2d 333](#) (Iowa 1987)
State v. Misner, [410 N.W.2d 216](#) (Iowa 1987)
State v. Mead, [316 N.W.2d 440](#) (Iowa 1982)
State v. Marr, [316 N.W.2d 176](#) (Iowa 1982)
State v. Rich, [305 N.W.2d 739](#) (Iowa 1981)

Comment

Caveat: See, State v. Misner, supra, for discussion of whether this instruction is applicable to cases where the underlying offense is not sexual abuse.

1000.6 Kidnapping - Torture - Definition. Concerning element number _____ of Instruction No.____, "torture" means the intentional infliction of severe physical or mental pain.

Authority

Iowa Code section [710.2](#)
State v. Cross, [308 N.W.2d 25](#) (Iowa 1981)

1000.7 Kidnapping - Intent To Secretly Confine - Definition. Concerning element number of Instruction No.____, an intent to secretly confine means more than restricting the movement of (victim). It means an intent to conceal or hide (victim) or prevent [his] [her] discovery.

Comment

Note: See Iowa Code section [710.1\(4\)](#)
Iowa Criminal Jury Instruction 200.2 (Specific Intent)

1000.8 False Imprisonment - Elements. The State must prove all of the following elements of the crime of False Imprisonment:

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1. On or about the ____ day of _____, 20____, the defendant intentionally confined (victim).
2. (Victim) was confined against [his] [her] will.
3. The defendant did not have a reasonable belief that [he] [she] had a right or authority to confine (victim).

If the State has proved all of the elements, then the defendant is guilty. If the State has failed to prove any one of the elements, then the defendant is not guilty.

Authority

Iowa Code section [710.7](#)

Comment

Note: Iowa Criminal Jury Instruction 1000.5 (Confinement).

1000.9 Child Stealing - Elements. The State must prove all of the following elements of Child Stealing:

1. On or about the ____ day of _____, 20____, the defendant [forcibly] [fraudulently] [took] [decoyed] [enticed] (child) away from (custodian).
2. At the time, the defendant knew [he] [she] had no authority to take the child.
3. (Child) was under the age of fourteen years.
4. The defendant did so with the intent to detain or conceal (child) from (custodian).
5. a. The defendant was not a relative of (child) and [he] [she] took the child for the sole purpose of assuming custody.
b. The defendant was a relative of (child) but did not take the child for the sole purpose of assuming custody.

(Use element 5a or 5b as charged and supported by the evidence.)

6. (Custodian) had lawful custody of (child).*

If the State has proved all of the elements, then the defendant is guilty. If the State has failed to prove any one of the elements, then the defendant is not guilty.

Authority

Iowa Code section [710.5](#)

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Comment

Note: With this offense, Iowa Criminal Jury Instruction 200.1 (Intent) should be used.

Note: *This element may not be appropriate where the custodian is a guardian or parent.

1000.10 Violating Custodial Order By Relative - Elements. The State must prove all of the following elements of Violating a Custodial Order:

1. On or about the ____ day of _____, 20____, (custodian) had [custody] [physical care] of (child) by court order.
2. Defendant was a relative of the child.
3. The defendant took and concealed the (child) from (custodian) in violation of a court order.
4. At the time, (child) was under the age of fourteen.

If the State has proved all of the elements, the defendant is guilty. If the State has failed to prove any one of the elements, the defendant is not guilty.

Authority

Iowa Code section [710.6](#)

1000.11 Harboring A Runaway Child - Elements. The State must prove all of the following elements for Harboring A Runaway Child:

1. On or about the ____ day of _____, 20____, defendant [provided aid to] [supported] [sheltered] (child).
2. Defendant intended to [commit a criminal act involving (child)] [force] [entice] (child) to commit a criminal act.]
3. (Child) was under eighteen years of age.
4. (Child) was voluntarily absent from [his] [her] home, without the consent of [his] [her] [parent] [guardian] [custodian].

If the State has proved all of the elements, then the defendant is guilty. If the State has failed to prove any one of the elements, the defendant is not guilty.

Authority

Iowa Code section [710.8](#)

New 06/13

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1000.12 Enticing A Minor – Elements. The State must prove all of the following elements of Enticing a Minor:

1. On or about the _____ day of _____, 20____, the defendant [enticed] [attempted to entice] (victim).
2. The defendant did so with the specific intent to commit [sexual abuse] [sexual exploitation] [illegal act] upon (victim).
3. The defendant committed an overt act evidencing [his][her] purpose to entice (victim).
4. At the time [(victim) was enticed] [defendant attempted to entice (victim)], either:
 - a. (victim) was a minor under the age of [thirteen] [sixteen]; or
 - b. the defendant reasonably believed (victim) was under [thirteen] [sixteen] years of age.

Authority

Iowa Code section [710.10](#)

Notes

If the victim is married or emancipated, see Iowa Code section 599.1 and 232C.4.

If “attempted to entice” is alleged, see Iowa Criminal Jury Instruction 200.18 – Attempt.

1000.13 Enticing – Definition. To “entice” means to wrongfully invite, tempt, solicit, lure, coax, seduce, or persuade a person to do a thing. In determining whether the defendant enticed another, you must look not only to the actions and conduct of the defendant, but also to the impact of those actions upon the victim.

Authority

State v. Hansen, [750 N.W.2d 111](#) (Iowa 2008)

State v. Osmundson, [546 N.W.2d 907](#) (Iowa 1996)

New 06/13

1000.14 Enticing – Overt Act. An “overt act” is any act indicating the person’s intent to accomplish the enticement. The overt act itself does not have to be a criminal act. The defendant cannot be guilty of [enticing] [attempting to entice] unless you find that [he] [she] committed an overt act that showed that it was the defendant’s purpose to entice (victim).

Authority

Iowa Code section [710.10\(5\)](#)

State v. Hansen, [750 N.W.2d 111](#) (Iowa 2008)

New 06/13

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CHAPTER 1100

ROBBERY AND EXTORTION

Robbery

[1100.1](#) Robbery In The First Degree - Elements

[1100.2](#) Robbery In The Second Degree – Elements

[1100.3](#) Robbery In The Third Degree – Elements (New 12/2018)

Extortion

[1110.1](#) Extortion - Elements

[1110.2](#) Extortion - Defense

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1100.1 Robbery In The First Degree - Elements. The State must prove all of the following elements of Robbery in the First Degree:

1. On or about the _____ day of _____, 20____, the defendant had the specific intent to commit a theft.
2. To carry out [his] [her] intention or to assist [him] [her] in escaping from the scene, with or without the stolen property, the defendant:
 - a. Committed an assault on (victim) as defined in Instruction No. _____ and in committing the assault the defendant [intended to inflict a serious injury upon another][caused bodily injury or mental illness to (victim)][used or displayed a dangerous weapon in connection with the assault][caused serious injury to (victim)][used any object to penetrate the genitalia or anus of another person] or
 - b. Threatened (victim) with, or purposely put (victim) in fear of immediate serious injury *or*
 - c. Threatened to immediately commit (name of forcible felony).

(Use element 2a, b or c as may be charged and supported by the evidence.)

3. The defendant:
 - a. Purposely inflicted or attempted to inflict a serious injury on (victim) *or*
 - b. Was armed with a dangerous weapon.

(Use element 3a or b as may be charged and supported by the evidence.)

If the State has proved all of the elements, the defendant is guilty of Robbery In The First Degree. If the State has failed to prove any one of the elements, the defendant is not guilty of Robbery In The First Degree (and you will then consider the charge of Robbery In The Second Degree explained In Instruction No. _____).

Authority

Iowa Code section [711.1](#)

Iowa Code section [711.2](#)

State v. Ortiz, [905 N.W.2d 174](#) (Iowa 2017)

Comment

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Note: The terms "assist" and "escaping" are to be given their ordinary meanings. State v. Terry, [544 N.W.2d 449](#) (Iowa 1996) (fact-finder required to focus on defendant's actions, not reasonableness of pursuer's conduct).

(Rev. 12/2018)

1100.2 Robbery In The Second Degree - Elements. The State must prove all of the following elements of Robbery In The Second Degree:

1. On or about the _____ day of _____, 20____, the defendant had the specific intent to commit a theft.
2. In carrying out [his] [her] intention or to assist [him] [her] in escaping from the scene, with or without the stolen property, the defendant:
 - a. Committed an assault on (victim) as defined in Instruction No. _____ and in committing the assault the defendant [intended to inflict a serious injury upon another][caused bodily injury or mental illness to (victim)][used or displayed a dangerous weapon in connection with the assault][caused serious injury to (victim)][used any object to penetrate the genitalia or anus of another person] or
 - b. Threatened (victim) with or purposely put (victim) in fear of immediate serious injury *or*
 - c. Threatened to immediately commit (name of forcible felony).

(Use element 2a, b or c as may be charged and supported by the evidence.)

If the State has proved both of the elements, the defendant is guilty of Robbery In The Second Degree. If the State has failed to prove any one of the elements, the defendant is not guilty of Robbery In The Second Degree (and you will then consider the charge of _____ as explained in Instruction No. _____).

Authority

Iowa Code section [711.1](#)

Iowa Code section [711.3](#)

State v. Ortiz, [905 N.W.2d 174](#) (Iowa 2017)

(Rev. 12/2018)

1100.3 Robbery In The Third Degree – Elements. The State must prove all of the following elements of Robbery In The Third Degree:

1. On or about the _____ day of _____, 20____, the defendant had the specific intent to commit a theft.

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2. In carrying out [his] [her] intention or to assist [him] [her] in escaping from the scene, with or without the stolen property, the defendant committed an assault on (victim) as defined in Instruction No. ____.

If the State has proved both of the elements, the defendant is guilty of Robbery In The Third Degree. If the State has failed to prove any one of the elements, the defendant is not guilty of Robbery In The Third Degree (and you will then consider the charge of _____ as explained in Instruction No. ____).

Authority

Iowa Code section [711.1](#)

Iowa Code section [711.3A](#)

State v. Ortiz, [905 N.W.2d 174](#) (Iowa 2017)

Note: Use Iowa Criminal Jury Instruction 800.1 defining Assault.

(New 12/2018)

1110.1 Extortion - Elements. The State must prove all of the following elements of Extortion:

1. On or about the ____ day of _____, 20____, the defendant threatened to (set forth the manner of the offense as charged and supported by the evidence).
2. The defendant intended to communicate the threat towards (name of person threatened).
3. The threat was made for the purpose of obtaining something of value for the defendant or another person.
4. The defendant did not reasonably believe that [he] [she] had a right to make threats in order to [recover property] [be paid for property or services] [recover a debt to which [he] [she] had a good faith claim].

If the State has proved all of the elements, the defendant is guilty of Extortion. If the State has failed to prove any one of the elements, the defendant is not guilty of Extortion.

Authority

Iowa Code section [711.4](#)

State v. Jackson, [305 N.W.2d 420](#) (Iowa 1981)

Comment

Note: Use element number 4 only when it has been raised by the defendant. However, element number 4 cannot be used if the threat is to commit a public offense.

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1110.2 Extortion - Defense. With regard to element number 4 of Instruction No. _____, whether the defendant reasonably believed that [he] [she] had a right to make threats depends on the facts and circumstances existing at the time of the threat.

If the defendant believes [he] [she] had a right to make the threat and you find that a reasonable person under the circumstances would believe they had a right to make the threat, then the defendant would not be guilty of Extortion.

Authority

Iowa Code section [711.4](#)

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CHAPTER 1200

ARSON

[1200.1](#) Arson In The First Degree - Elements

[1200.2](#) Arson In The First Degree - Reasonable Anticipation Of Presence Of Person

[1200.3](#) Arson In The Second Degree - Elements

[1200.4](#) Arson In The Third Degree - Elements

[1200.5](#) Arson - Defense - Insurer Fraudulently Exposed To Risk

[1200.6](#) Arson - Actual Destruction Or Damage Of Property - No Defense

[1200.7](#) Reckless Use Of Fire Or Explosives - Elements

[1200.8](#) Possession Of Explosive Or Incendiary Materials Or Devices - Elements

[1200.9](#) Possession Of Explosive Or Incendiary Materials Or Devices - Public Offense - Definition

[1200.10](#) Threats Or Attempts - Elements

[1200.11](#) False Reports - Elements

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1200.1 Arson In The First Degree - Elements. The State must prove all of the following elements of Arson In The First Degree:

1. On or about the _____ day of _____, the defendant [caused a fire or explosion] [placed a burning, combustible, incendiary or explosive device or material] in or near property.
2. (Name of device or material) was an [incendiary or explosive device][combustible, incendiary or explosive material] . (Use this paragraph only if supported by the evidence).
3. The defendant intended to destroy or damage the property or knew the property would probably be destroyed or damaged.
4. [The presence of a person in the property could have been reasonably anticipated.][The fire resulted in a death of a firefighter.]
5. The defendant did not have the consent of the owner, or an insurer was exposed fraudulently to risk of loss, or the acts were done in such a way that the [property][life][of another] was unreasonably endangered. (Use this paragraph only if the affirmative defense of consent is raised by the defendant and supported by the evidence.)

If the State has proved all of the elements, the defendant is guilty of Arson in the First Degree. If the State has failed to prove any one of the elements, the defendant is not guilty of Arson in the First Degree (and you will then consider the charge of _____ in Instruction No. _____).

Authority

Iowa Code section [712.1](#)
Iowa Code section [712.2](#)
Iowa Code section [712.3](#)
Iowa Code section [712.4](#)

Comment

Caveat: Under a previous version of Iowa's arson statute, the Iowa Supreme Court held that arson is a general intent crime. Veverka v. Cash, [318 N.W.2d 447](#), 450 (Iowa 1982). The arson statute, Iowa code section [712.1](#), was repealed and replaced by the Iowa legislature in 1979. The committee cautions State v. Woodworth suggests that the first alternative in element 3 is a specific intent crime. See State v. Woodworth, 2006 WL 228769 (Iowa Ct.App. No. 04-0096 Feb. 1, 2006) at *7-8.

Rev. 9/10

1200.2 Arson In The First Degree - Reasonable Anticipation Of Presence Of Person.

Concerning element number 4 of Instruction No. _____, the State must prove that a reasonable person in defendant's position would have anticipated someone would be in or on the property. The possibility of the presence of a person is not sufficient.

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1200.3 Arson In The Second Degree - Elements. The State must prove the following elements of crime of Arson In The Second Degree:

1. On or about the ____ day of _____, 20____, the defendant [caused a fire or explosion] [placed a burning, combustible, incendiary or explosive material or device] in or near property.
2. The (name of material or device) was a combustible, incendiary or explosive material or device. (Use this paragraph only if supported by the evidence.)
3. The defendant [intended to destroy or damage the property] [knew the property would probably be destroyed or damaged].
4. The property was [a building] [a structure] [real property] [standing crops] [personal property].
5. The value of the personal property exceeded \$500. (Use this paragraph only if personal property is involved.)
6. The defendant did not have the consent of the owner, or an insurer was exposed fraudulently to risk of loss, or the acts were done in such a way that the property of another was unreasonably endangered. (Use this paragraph only if affirmative defense of consent is raised by the defendant and supported by the evidence.)

If the State has proved all of the elements, the defendant is guilty of Arson In The Second Degree. If the State has failed to prove any one of the elements, the defendant is not guilty of Arson In the Second Degree (and you will then consider the charge of _____ explained in Instruction No. ____).

Authority

Iowa Code section [712.1](#)

Iowa Code section [712.3](#)

Comment

Note: If the specific intent alternative in element 3 is submitted, Iowa Criminal Jury Instruction 200.2 (Specific Intent) should be used.

Rev. 9/10

1200.4 Arson In The Third Degree - Elements. The State must prove the following elements of the crime of Arson In The Third Degree:

1. On or about the ____ day of _____, 19____, the defendant [caused a fire or explosion] [placed a burning, combustible, incendiary or explosive material or device] in or near property.
2. The (name of material or device) was a combustible, incendiary or explosive material or device. (Use this paragraph only if supported by the evidence.)

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3. The defendant [intended to destroy or damage the property] [knew the property would probably be destroyed or damaged].
4. The property was personal property having a value of \$500 or less.
5. The defendant did not have the consent of the owner, or an insurer was exposed fraudulently to risk of loss, or the acts were done in such a way that the property of another was unreasonably endangered. (Use this paragraph only if the affirmative defense of consent is raised by the defendant and supported by the evidence.)

Authority

Iowa Code section [712.1](#)

Iowa Code section [712.4](#)

Comment

Note: If the specific intent alternative in element 3 is submitted, Iowa Criminal Jury Instruction 200.2 (Specific Intent) should be used.

Rev. 9/10

1200.5 Arson - Defense - Insurer Fraudulently Exposed To Risk. Concerning element number 5 of Instruction No. _____, the State must prove an insurer was fraudulently exposed to risk. The fact the property was insured is not enough to prove the insurer was fraudulently exposed to risk. The State must produce other evidence proving the defendant damaged or destroyed the property for the purpose of collecting insurance proceeds.

1200.6 Arson - Actual Destruction Or Damage Of Property - No Defense. The State does not have to prove the property was actually destroyed or damaged to prove the defendant guilty.

1200.7 Reckless Use Of Fire Or Explosives - Elements. The State must prove all of the following elements of Reckless Use Of Fire Or Explosives:

1. On or about the ____ day of _____, 19____, the defendant used [fire] [name of device or material].
2. (Name of device or material) was an explosive or incendiary device or material. (Omit this paragraph if fire was used.)
3. The defendant used the [fire] [name of device or material] in a reckless manner.
4. The use of the [fire] [name of device or material] endangered the property or safety of another.

If the State has proved all of the elements, the defendant is guilty of Reckless Use Of Fire Or Explosives. If the State has failed to prove any one of the elements, the defendant is not guilty.

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Authority

Iowa Code section [712.5](#)

Comment

Note: With this offense, also use Iowa Criminal Jury Instruction 200.20 defining recklessness.

1200.8 Possession Of Explosive Or Incendiary Materials Or Devices - Elements. The State must prove all of the following elements of Possession Of Explosive Or Incendiary Materials Or Devices:

1. On or about the ____ day of _____, 19____, the defendant possessed (name of device or material).
2. (Name of device or material) was an [explosive] [incendiary] device or material.
3. Defendant possessed (name of device or material) with intent to use it to commit the crime of (crime).

If the State has proved all of the elements, the defendant is guilty of Possession Of Explosive Or Incendiary Materials Or Devices. If the State has failed to prove any one of the elements, the defendant is not guilty.

Authority

Iowa Code section [712.6](#)

1200.9 Possession Of Explosive Or Incendiary Materials Or Devices - Public Offense - Definition. Concerning element number ____ of Instruction No. 3, the crime of (crime) is defined as follows:

(Set forth terms of appropriate statute.)

1200.10 Threats Or Attempts - Elements. The State must prove the following elements of [Threats] [Attempts] To Place [Explosive] [Incendiary] [Destructive] Materials Or Devices:

1. On or about the ____ day of _____, 19____, the defendant [threatened] [attempted] to place an [explosive] [incendiary] [destructive] device or material in an area.
2. Defendant [threatened] [attempted] to place it in an area where [person] [property] would be endangered.

If the State has proved both of the elements, the defendant is guilty. If the State has failed to prove either of the elements, the defendant is not guilty.

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Authority

Iowa Code section [712.8](#)

1200.11 False Reports - Elements. The State must prove all of the following elements of False Reports:

1. On or about the ____ day of _____, 20____, the defendant [conveyed] [caused to be conveyed] information concerning the placement of an incendiary or explosive device or material or other destructive substance or device.
2. The defendant [conveyed] [caused to be conveyed] information that the [device] [material] [substance] was in a place where [persons] [property] would be endangered.
3. When conveying the information, the defendant knew the information was false.

If the State has proved all of the elements, the defendant is guilty of False Reports. If the State has failed to prove any one or more of the elements, the defendant is not guilty of False Reports.

Authority

Iowa Code section [712.7](#)

Comment

If the report concerns an incendiary device or incendiary material, use Iowa Criminal Jury Instruction 200.49 (Incendiary Device or Material).

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CHAPTER 1300

BURGLARY AND RELATED OFFENSES

[1300.1](#) Burglary In The First Degree - Elements - Breaks Structure

[1300.2](#) Burglary In The Second Degree - Elements - Breaks Structure

[1300.3](#) Burglary In The Third Degree - Elements - Breaks Structure

[1300.4](#) Burglary In The First Degree - Elements - Enters Structure

[1300.5](#) Burglary In the Second Degree - Elements - Enters Structure

[1300.6](#) Burglary In The Third Degree - Elements - Enters Structure

[1300.7](#) Burglary In The First Degree - Elements - Remains In Structure

[1300.8](#) Burglary In The Second Degree - Elements - Remains In Structure

[1300.9](#) Burglary In The Third Degree - Elements - Remains In Structure

[1300.10](#) Attempted Burglary - Guide

[1300.11](#) Burglary - Breaking - Definition

[1300.12](#) Burglary - Enter - Definition

[1300.13](#) Burglary - Occupied Structure - Definition

[1300.14](#) Burglary - Permission Or Authority - Definition

[1300.15](#) Possession Of Burglar's Tools - Elements

[1300.16](#) Definition Of Burglar's Tools

[1300.17](#) Possession Of Burglar's Tools - Intent to Commit Burglary

[1300.18](#) Possession Of Burglar's Tools - Burglary Defined

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1300.1 Burglary In The First Degree - Elements - Breaks Structure. The State must prove all of the following elements of Burglary In The First Degree.

1. On or about the _____ day of _____, 20____, the defendant broke into (describe place).
2. The (describe place) was an occupied structure as defined in Instruction No. _____.
3. One or more persons were present in the occupied structure.
4. The defendant did not have permission or authority to break into (describe place).
5. The defendant did so with the specific intent to commit a [felony of (describe felony)] [theft] [assault].
6. a. During the incident the defendant possessed [an explosive or incendiary device or material] [a dangerous weapon].
b. During the burglary, [he] [she] [intentionally] [recklessly] inflicted bodily injury on (name of victim).
c. The defendant performed or participated in a sex act with (name of victim) which would constitute sexual abuse.

(Use element 6a, b, or c as may be charged and supported by the evidence.)

If the State has proved all of the elements the defendant is guilty of Burglary In The First Degree. If the State has failed to prove any one of the elements, the defendant is not guilty of Burglary In The First Degree (and you will then consider the charge of _____ explained in Instruction No. _____).

Authority

Iowa Code section 713.1
Iowa Code section 713.3
State v. Olsen, 482 N.W.2d 452 (Iowa App. 1992)

Comment

If the specific intent charged is to commit a felony, in addition to designating the particular felony, an instruction including the elements of that felony must be given. State v. Mesch, 574 NW2d 10, 14 (Iowa 1998)

If a sex act is charged in element 6, instruction 900.8 (definition of a sex act) and one or more alternatives of 900.3 (definition of sexual abuse) should also be given.

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1300.2 Burglary In The Second Degree - Elements - Breaks Structure. The State must prove all of the following elements of Burglary In The Second Degree:

1. On or about the _____ day of _____, 20____, the defendant broke into (describe place).
2. The (describe place) was an occupied structure as defined in Instruction No. _____.
3. The defendant did not have permission or authority to break into (describe place).
4. The defendant did so with the specific intent to commit a [felony of (describe felony)] [theft] [assault].
5. a. During the incident [the defendant had possession of an explosive or incendiary device or material] [the defendant had possession of a dangerous weapon] [a bodily injury resulted to any person].
b. One or more persons were present in or upon the occupied structure.

[Use elements 5(a) or (b) as may be charged and supported by the evidence.]

If the State has proved all of the elements, the defendant is guilty of Burglary In The Second Degree. If the State has failed to prove any one of the elements, the defendant is not guilty of Burglary In The Second Degree (and you will then consider the charge of _____ explained in Instruction No. _____).

Authority

Iowa Code section [713.1](#)

Iowa Code section [713.3](#)

Iowa Code section [713.5](#)

State v. Spurgeon, 533 N.W.2d 216 (Iowa 1995)

State v. Olsen, [482 N.W.2d 452](#) (Iowa App. 1992)

Comment

Note: Second Degree Burglary, which includes bodily injury to “any person” would apply to situations where a person is injured during the burglary but not in or upon the occupied structure. Otherwise, it would be First Degree Burglary. Another possible scenario would be if the “person” injured in the occupied structure was a defendant.

Note: If the specific intent charged is to commit a felony, in addition to designating the particular felony, an instruction including the elements of that felony must be given. State v. Mesch, [574 NW2d 10](#), 14 (Iowa 1998)

7/06

1300.3 Burglary In The Third Degree - Elements - Breaks Structure. The State must prove all of the following elements of Burglary In The Third Degree:

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1. On or about the _____ day of _____, 20____, the defendant broke into (describe place).
2. The (describe place) was an occupied structure as defined in Instruction No. _____.
3. The defendant did not have permission or authority to break into (describe place).
4. The defendant did so with the specific intent to commit a [felony of (describe felony)] [theft] [assault].

If the State has proved all of the elements, the defendant is guilty of Burglary In The Third Degree. If the State has failed to prove any one of the elements, the defendant is not guilty of Burglary In The Third Degree and you will then consider the charge of _____ explained in Instruction No. _____.

Authority

Iowa Code section [713.1](#)
Iowa Code section [713.3](#)
Iowa Code section [713.5](#)
Iowa Code section [713.6A](#)

Comment

If the specific intent charged is to commit a felony, in addition to designating the particular felony, an instruction including the elements of that felony must be given. State v. Mesch, [574 NW2d 10](#), 14 (Iowa 1998)

7/06

1300.4 Burglary In The First Degree - Elements - Enters Structure. The State must prove all of the following elements of Burglary In The First Degree:

1. On or about the _____ day of _____, 20____, the defendant entered (describe place).
2. The (describe place) was an occupied structure as defined in Instruction No. _____.
3. One or more persons were present in the occupied structure.
4. The defendant did not have permission or authority to enter (describe place).
5. (Describe place) was not open to the public.
6. The defendant did so with the specific intent to commit a [felony of (describe felony)] [theft] [assault].
7. a. During the incident the defendant possessed [an explosive or incendiary device or material] [a dangerous weapon].

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- b. During the burglary, [he] [she] [intentionally] [recklessly] inflicted bodily injury on (name of victim).
- c. The defendant performed or participated in a sex act with (name of victim) which would constitute sexual abuse.

(Use element 7a, b, or c as may be charged and supported by the evidence.)

If the State has proved all of the elements, the defendant is guilty of Burglary In The First Degree. If the State has failed to prove any one of the elements, the defendant is not guilty of Burglary In The First Degree and you will then consider the charge of _____ explained in Instruction No. _____.

Authority

Iowa Code section [713.1](#)

Iowa Code section [713.3](#)

Iowa Code section [713.5](#)

State v. Franklin, [368 N.W.2d 716](#) (Iowa 1985)

State v. Olsen, [482 N.W.2d 452](#) (Iowa App. 1992)

Comment

If the specific intent charged is to commit a felony, in addition to designating the particular felony, an instruction including the elements of that felony must be given. State v. Mesch, [574 NW2d 10](#), 14 (Iowa 1998)

If a sex act is charged in element 7, instruction 900.8 (definition of a sex act) and one or more alternatives of 900.3 (definition of sexual abuse) should also be given.

7/06

1300.5 Burglary In The Second Degree - Elements - Enters Structure. The State must prove all of the following elements of Burglary In The Second Degree:

1. On or about the _____ day of _____, 20____, the defendant entered into (describe place).
2. The (describe place) was an occupied structure as defined in Instruction No. _____.
3. The defendant did not have permission or authority to enter (describe place).
4. (Describe place) was not open to the public.
5. The defendant did so with the specific intent to commit a [felony of (describe felony)] [theft] [assault].

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6. a. During the incident [the defendant had possession of an explosive or incendiary device or material] [the defendant had possession of a dangerous weapon] [a bodily injury resulted to any person].

b. One or more persons were present in or upon the occupied structure.

[Use elements 6(a) or (b) as may be charged and supported by the evidence.]

If the State has proved all of the elements, the defendant is guilty of Burglary In The Second Degree. If the State has failed to prove any one of the elements, the defendant is not guilty of Burglary In The Second Degree and you will then consider the charge of _____ as explained in Instruction No. _____.

Authority

Iowa Code section 713.1

Iowa Code section 713.3

Iowa Code section 713.5

State v. Spurgeon, 533 N.W.2d 216 (Iowa 1995)

Comment

Note: Second Degree Burglary, which includes bodily injury to "any person" would apply to situations where a person is injured during the burglary but not in or upon the occupied structure. Otherwise, it would be First Degree Burglary. Another possible scenario would be if the "person" injured in the occupied structure was a defendant.

Note: If the specific intent charged is to commit a felony, in addition to designating the particular felony, an instruction including the elements of that felony must be given. State v. Mesch, 574 NW2d 10, 14 (Iowa 1998)

7/06

1300.6 Burglary In The Third Degree - Elements - Enters Structure. The State must prove all of the following elements of Burglary In The Third Degree:

1. On or about the ____ day of _____, 20____, the defendant entered (describe place).
2. The (describe place) was an occupied structure as defined in Instruction No. _____.
3. The defendant did not have permission or authority to enter (described place).
4. The (describe place) was not open to the public.
5. The defendant did so with the specific intent to commit a [felony of (describe felony)] [theft] [assault].

If the State has proved all of the elements, the defendant is guilty of Burglary In The Third Degree. If the State has failed to prove any one of the elements, the defendant is not guilty of

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Burglary In The Third Degree and you will then consider the charge of _____ explained in Instruction No. ____.

Authority

Iowa Code section 713.1
Iowa Code section 713.3
Iowa Code section 713.5
Iowa Code section 713.6A

Comment

If the specific intent charged is to commit a felony, in addition to designating the particular felony, an instruction including the elements of that felony must be given. State v. Mesch, [574 NW2d 10](#), 14 (Iowa 1998)

7/06

1300.7 Burglary In The First Degree - Elements - Remains In Structure. The State must prove all of the following elements of Burglary In The First Degree:

1. On or about the ____ day of _____, 20__, the defendant remained in (describe place).
2. The (describe place) was an occupied structure as defined in Instruction No. ____.
3. One or more persons were present in the occupied structure.
4. a. The defendant did not have permission or authority to remain in (describe place).
b. The defendant's permission or authority to remain in (describe place) had ended.

(Use element 4a or b as may be charged and supported by the evidence.)

5. The defendant did so with the specific intent to commit a [felony of (describe felony)] [theft] [assault].

6. a. During the incident the defendant possessed [an explosive or incendiary device or material] [a dangerous weapon].

b. After the defendant remained [he] [she] [intentionally] [recklessly] inflicted bodily injury on (name of victim).

c. The defendant performed or participated in a sex act with (name of victim) which would constitute sexual abuse.

(Use element 6a, b or c as may be charged and supported by the evidence.)

If the State has proved all of the elements, the defendant is guilty of Burglary In The First Degree. If the State has failed to prove any one of the elements, the defendant is not guilty of Burglary In

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The First Degree (and you will then consider the charge of _____ explained in Instruction No. _____).

Authority

Iowa Code section [713.1](#)

Iowa Code section [713.3](#)

Iowa Code section [713.5](#)

State v. Franklin, [368 N.W.2d 716](#) (Iowa 1985)

State v. Olsen, [482 N.W.2d 452](#) (Iowa App. 1992)

Comment

If the specific intent charged is to commit a felony, in addition to designating the particular felony, an instruction including the elements of that felony must be given. [State v. Mesch, 574 NW2d 10](#), 14 (Iowa 1998)

If a sex act is charged in element 6, instruction 900.8 (definition of a sex act) and one or more alternatives of 900.3 (definition of sexual abuse) should also be given.

7/06

1300.8 Burglary In The Second Degree - Elements - Remains In Structure. The State must prove all of the following elements of Burglary In The Second Degree:

1. On or about the _____ day of _____, 20____, the defendant remained in (describe place).
2. The (describe place) was an occupied structure as defined in Instruction No. _____.
3. a. The defendant did not have permission or authority to remain in (describe place).
- b. The defendant's permission or authority to remain in (describe place) had ended.

(Use element 3(a) or (b) as may be charged and supported by the evidence.)

4. The defendant did so with the specific intent to commit a [felony of (describe felony)] [theft] [assault].

5. a. During the incident [the defendant had possession of an explosive or incendiary device or material] [the defendant had possession of a dangerous weapon] [a bodily injury resulted to any person].

b. One or more persons were present in or upon the occupied structure.

(Use elements 5(a) or (b) as may be charged and supported by the evidence.)

If the State has proved all of the elements, the defendant is guilty of Burglary In The Second Degree. If the State has failed to prove any one of the elements, the defendant is not guilty of

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Burglary In The Second Degree and you will then consider the charge of _____ as explained in Instruction No. _____.

Authority

Iowa Code section 713.1

Iowa Code section 713.3

Iowa Code section 713.5

State v. Spurgeon, 533 N.W.2d 216 (Iowa 1995)

Comment

Note: Second Degree Burglary, which includes bodily injury to "any person," would apply to situations where a person is injured during the burglary but not in or upon the occupied structure. Otherwise, it would be First Degree Burglary. Another possible scenario would be if the "person" injured in the occupied structure was a defendant.

Note: If the specific intent charged is to commit a felony, in addition to designating the particular felony, an instruction including the elements of that felony must be given. State v. Mesch, 574 NW2d 10, 14 (Iowa 1998)

7/06

1300.9 Burglary In The Third Degree - Elements - Remains In Structure. The State must prove all of the following elements of Burglary In The Second Degree:

1. On or about the _____ day of _____, 20____, the defendant remained in (describe place).
2. The (describe place) was an occupied structure as defined in Instruction No. _____.
3. a. The defendant did not have permission or authority to remain in (describe place).
b. The defendant's permission or authority to remain in (describe place) had ended.

(Use element 3(a) or (b) as may be charged and supported by the evidence.)

4. The defendant did so with the specific intent to commit a [felony of (describe felony)] [theft] [assault].

If the State has proved all of the elements, the defendant is guilty of Burglary In The Third Degree. If the State has failed to prove any one of the elements, the defendant is not guilty of Burglary In The Third Degree (and you will then consider the charge of _____ as explained in Instruction No. _____)

Authority

Iowa Code section 713.1

Iowa Code section 713.3

Iowa Code section 713.5

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Comment

If the specific intent charged is to commit a felony, in addition to designating the particular felony, an instruction including the elements of that felony must be given. State v. Mesch, 574 NW2d 10, 14 (Iowa 1998)

7/06

1300.10 Attempted Burglary - Guide. If the charge is Attempted Burglary, use the marshaling instructions for the applicable burglary (breaks, enters, remains) and insert the word "attempt" or "attempted" wherever applicable, coupled with Instruction No. 200.18.

Authority

Iowa Code section 713.2

Iowa Code section 713.4

Iowa Code section 713.6

Iowa Code section 7.316(b)

State v. Erving, 346 N.W.2d 833 (Iowa 1984)

State v. Blanton, 454 N.W.2d 901 (Iowa App. 1990)

1300.11 Burglary - Breaking - Definition. The term "breaks" or "broke" means removing or putting aside any obstruction to enter a structure. No damage need result to the property. For example, the pushing open of an unlatched or partially-opened door to gain entry would be "breaking" within the meaning of the law.

Authority

State v. Hougland, 197 N.W.2d 364 (Iowa 1972)

State v. Murray, 222 Iowa 925, 270 N.W. 355 (1936)

1300.12 Burglary - Enter - Definition. "To enter" means entering a structure with any part of the body, or with an instrument intended to be used to commit a felony, assault or theft.

1300.13 Burglary - Occupied Structure - Definition. A [building] [structure] [appurtenance to a building or structure] [land, water or air vehicle] is an "occupied structure" if it:

1. Is adapted for overnight accommodation of persons; or
2. Is occupied by persons for the purpose of carrying on business or activity; or
3. Is used for the storage or safekeeping of anything of value unless it is too small or not designed to allow a person to physically [enter] [occupy] it.

A [building] [structure] [appurtenance to a building or structure] [land, water or air vehicle] is an "occupied structure" whether or not a person is actually present.

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Authority

Iowa Code section [702.12](#)

State v. Williams, [409 N.W.2d 187](#) (Iowa 1987)

State v. Sylvester, [331 N.W.2d 130](#) (Iowa 1983)

State v. Buss, [325 N.W.2d 384](#) (Iowa 1982)

Comment

Note: Omit that portion of the instruction which is not charged and supported by the evidence.

Note: If an appurtenance to a building is an issue, this instruction must be modified. See State v. Baker, [560 N.W.2d 10](#) (Iowa 1997).

7/06

1300.14 Burglary - Permission Or Authority - Definition. A person has permission or authority to enter or remain in an occupied structure which is open to the public. However, a person does not have permission or authority to enter or remain in an occupied structure open to the public if:

1. The person defies a lawful order not to enter.
2. The person defies a lawful order to leave the occupied structure.
3. The person, without permission or authority, enters or remains in a part of the occupied structure not open to the public.
4. The person enters or remains in the occupied structure without permission or authority after it is closed to the public.

Authority

State v. Franklin, [368 N.W.2d 716](#) (Iowa 1985)

State v. King, [344 N.W.2d 562](#) (Iowa Ct. App 1983)

Comment

Note: Omit that portion of instruction which is not charged and supported by the evidence.

1300.15 Possession Of Burglar's Tools - Elements. The State must prove both of the following elements of Possession of Burglar's Tools:

1. On or about the ____ day of _____, 20____, the defendant had in [his] [her] possession (describe the implement).
2. The defendant intended to use (describe the implement) to commit a burglary.

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If the State has proved both of the elements, the defendant is guilty of Possession of Burglar's Tools. If the State has failed to prove either element, the defendant is not guilty.

Authority

Iowa Code section [713.7](#)

Comment

Note: See Iowa Criminal Jury Instruction 200.47 (Possession).

7/06

1300.16 Definition Of Burglar's Tools. The term "burglar's tools" means a key or such tools, instruments, devices or explosives as are commonly used by burglars; or tools, instruments, devices or explosives which are capable of being used to commit the crime of burglary. It is not necessary that the implements be designed or made specifically for unlawful use. If tools, keys, instruments, devices or explosives are suitable to use in committing a burglary, it is immaterial that they were designed and adapted for honest and lawful use. A single tool, by itself, might not be adapted for use in a burglary unless used in combination with other tools, and the presence of other tools in combination may indicate their suitability for use in a burglary.

Authority

State v. Knudtson, [195 N.W.2d 698](#) (Iowa 1972)
State v. Van Voltenburg, [147 N.W.2d 869](#) (Iowa 1967)

1300.17 Possession Of Burglar's Tools - Intent To Commit Burglary. The State must prove the defendant intended to commit burglary. The intent must be in the mind of the defendant at the time [he] [she] possessed burglar's tools. However, it is not necessary for the State to prove an intent to commit a specific burglary at any particular time or place, but only an intent to commit the crime of burglary on some occasion of [his] [her] choice.

Authority

State v. Hobbs, [107 N.W.2d 238](#) (Iowa 1961)

1300.18 Possession Of Burglar's Tools - Burglary Defined. Burglary may be committed in several different ways. Any person who has the intent to commit a felony, assault or theft and without permission or authority (1) enters an occupied structure not open to the public, or (2) remains inside after it is closed to the public or after [his] [her] permission or authority to be there has expired, or (3) breaks an occupied structure, commits burglary.

Authority

Iowa Code section [713.1](#)

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CHAPTER 1400

THEFT

- [1400.1](#) Theft - Taking - Elements
- [1400.2](#) Theft - Taking - Intention To Deprive - Definition
- [1400.3](#) Theft - Taking - Concealment Of Unpurchased Goods - Evidence Of Intent
- [1400.4](#) Theft - Elements - Misappropriation
- [1400.5](#) Theft - Definition - Trust
- [1400.6](#) Theft - Definition - Misappropriation
- [1400.7](#) Theft - Evidence Of Misappropriation
- [1400.8](#) Elements - Conceals Or Appropriates Found Property
- [1400.9](#) Theft - Definition - Appropriates
- [1400.10](#) Theft - Elements - Obtaining Property By Deception
- [1400.11](#) Theft - Deception - Inserting Unauthorized Token
- [1400.12](#) Inference Of Deception
- [1400.13](#) Theft - Elements - Exercising Control Over Stolen Property
- [1400.14](#) Theft - Exercising Control Over Stolen Property - No Obligation of State To Prove Conviction For Theft
- [1400.15](#) Theft - Inference Of Knowledge Property Was Stolen
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- [1400.17](#) Theft - Definition - False Check
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- [1400.19](#) Theft - Defense - Claim Of Right
- [1400.20](#) Theft - Definition - Property
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[1400.23](#) Theft - Taking Of A Motor Vehicle - Elements

[1400.24](#) Theft - Elements - Operating Without Owner's Consent

[1400.25](#) Fraudulent Practices – Elements

[1400.25A](#) Fraudulent Practices - Definition - Single Fraudulent Practice

[1400.26](#) Fraudulent Practices - Definition - Value

[1400.27](#) Degrees Of Theft - Definition And Interrogatory

[1400.28](#) Value Of Motor Vehicle - Interrogatory

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1400.1 Theft - Taking - Elements. The State must prove all of the following elements of Theft:

1. On or about the _____ day of _____, 19____, the defendant took possession or control of (property).
2. The defendant did so with the intent to deprive (victim) of the (property).
3. The property, at the time of the taking, [belonged to] [was in the possession of] (victim).

If the State has proved all of the elements, the defendant is guilty. You must then determine the degree of Theft, as explained to you in Instruction No. _____. If the State has failed to prove any one of the elements, the defendant is not guilty.

Authority

Iowa Code section [714.1\(1\)](#)

Comment

Note: Iowa Criminal Jury Instruction 200.2 (Specific Intent)
Iowa Criminal Jury Instruction 1400.19 (Claim Of Right) if raised by the defendant, should be used.

1400.2 Theft – Possession or Control - Definition. “Possession or control” as used in element 1 of Instruction number ____ means to secure dominion or exert control over an object, or to use an object in a manner beyond the person’s authority to do so.

Authority

State v. Donaldson, [663 N.W.2d 882](#) (Iowa 2003)

Comment

Under certain factual situations, the Court may consider instructing on joint or constructive possession. See State v. Horrell, [260 Iowa 945](#), 954-56, [151 N.W.2d 526](#), 532-34 (1967).

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1400.3 Theft - Taking - Concealment Of Unpurchased Goods - Evidence Of Intent. If the State has proved the defendant concealed unpurchased merchandise on [his] [her] person or belongings, this conduct may be considered as evidence of the defendant's intent to commit a theft.

Authority

Iowa Code section [714.5](#)

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1400.4 Theft - Elements - Misappropriation. The State must prove both of the following elements of Theft:

1. a. The defendant had possession of (property) by reason of a trust, as explained in Instruction No. _____.

b. The defendant had possession or control of (property), which was owned by (name).

(Use element 1a or 1b as may be charged and supported by the evidence).

2. On or about the _____ day of _____, 20____, the defendant intentionally misappropriated the property by [using it] [disposing of it] in a manner which was [inconsistent with or a denial of the trust] [inconsistent with the owner's rights].

If the State has proved both of the elements, the defendant is guilty. You must then determine the degree of Theft, as explained to you in Instruction No. _____. If the State has failed to prove either of the elements, the defendant is not guilty.

Authority

Iowa Code section [714.1\(2\)](#)
[Eggman v. Scurr](#), [311 N.W.2d 77](#) (Iowa 1981)

Comment

Note: Iowa Criminal Jury Instruction 200.1 (General Intent); Iowa Criminal Jury Instruction 200.47 (Possession); and Iowa Criminal Jury Instruction 1400.19 (Claim Of Right), if raised by the defendant, should be used.

1400.5 Theft - Definition - Trust. Concerning element number 1a of Instruction No. _____, a person has property in [his] [her] "trust" when it is given to [him] [her] by the owner or a third person to be held in safekeeping. This creates a special relationship with respect to the property, and the person who receives the property is known as a "trustee".

In this case, it is alleged the duties of the defendant were: (set forth the terms of the trust) and the defendant violated those duties by [misappropriating the property] [using or disposing of the property in a manner which was a denial of the trust].

1400.6 Theft - Definition - Misappropriation. Concerning element number 2 of Instruction No. _____, "misappropriate" means that a person, knowing [he] [she] had no right or permission to do so, exercises control over property or aids a third person in exercising control, so that the benefit or value of the property is lost to the owner. Misappropriation may also occur when a person knowingly disposes of the property for [his] [her] own benefit or for the benefit of a third person.

Comment

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Note: Use Iowa Criminal Jury Instruction 200.3 (Knowledge)

1400.7 Theft - Evidence Of Misappropriation. Concerning element number _____ of Instruction No. _____, if a [renter] [lessee] [bailee] fails to return personal property within 72 hours after a time specified in a written agreement, you may conclude the defendant intended to misappropriate it.

Authority

Iowa Code section [714.1\(2\)](#)

1400.8 Elements - Conceals Or Appropriates Found Property. The State must prove all of the following elements of Theft:

1. That (property) belonging to (owner of property) had been lost.
2. On or about the _____ day of _____, 20____, the defendant possessed the property.
3. The defendant knew (owner of property) was the owner of the property.
4. [He] [She] intentionally [concealed it] [appropriated it to [his] [her] own use].

If the State has proved all of the elements, the defendant is guilty. You must then determine the degree of Theft, as explained to you in Instruction No. _____. If the State has failed to prove any one of the elements, the defendant is not guilty.

Authority

Iowa Code section [714.1\(2\)](#)

Eggman v. Scurr, [311 N.W.2d 77](#) (Iowa 1981)

Comment

Note: Iowa Criminal Jury Instruction 200.1 (General Intent); Iowa Criminal Jury Instruction 200.3 (Knowledge) and Iowa Criminal Jury Instruction 1400.19 (Claim Of Right), is raised by the defendant, should be used.

1400.9 Theft - Definition - Appropriates. Concerning element number 3 of Instruction No. _____, "appropriate" means to exercise control over the property, or to aid a third person to exercise control over it so as to acquire its value or benefit, or to dispose of the property for one's own benefit or use.

1400.10 Theft - Elements - Obtaining Property By Deception. The State must prove all of the following elements of Theft:

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1. On or about the ____ day of _____, 20____, the defendant did (set forth acts of deception - words, conduct, or representation) to (victim).
2. The defendant knowingly deceived (victim) in one or more of the following ways: (add the appropriate subsections of 702.9 of the Code).
3. The defendant obtained [labor or services] [transfer of possession] [control or ownership] [the beneficial use of property] from (victim) by the deception.

If the State has proved all of the elements, the defendant is guilty. You must then determine the degree of Theft, as explained to you in Instruction No. _____. If the State has failed to prove any of the elements, the defendant is not guilty.

Authority

Iowa Code section [714.1\(3\)](#)

State v. Williams, [674 N.W.2d 69](#) (Iowa 2004)

State v. Hogrefe, [557 N.W.2d 871](#) (Iowa 1996) (theft by deception based on postdated check).

10/4

1400.11 Theft - Deception - Inserting Unauthorized Token. Concerning element number _____ of Instruction No. _____, "deception" means "knowingly inserting anything other than lawful money or authorized token into the money slot of any machine which dispenses goods or services."

1400.12 Inference Of Deception. You may conclude goods and/or services were obtained by deception where payment for goods and/or services is ordinarily paid immediately upon receiving them, and the defendant [refused to pay] [left the premises without paying or offering to pay] [left without obtaining the owner/operator's permission to pay later].

Authority

Iowa Code section [714.1\(3\)](#)

1400.13 Theft - Elements - Exercising Control Over Stolen Property. The State must prove all of the following elements of Theft:

1. (Describe property) was stolen.
2. On or about the ____ day of _____, 20____, the defendant exercised control over the property.
3. At the time, the defendant knew the property had been stolen.
4. The defendant did not intend to promptly return it to the owner or to deliver it to an appropriate public officer. (Use only when appropriate and supported by the evidence.)

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If the State has proved all of the elements, the defendant is guilty. You must then determine the degree of Theft, as explained to you in Instruction No. _____. If the State has failed to prove any one of the elements, the defendant is not guilty.

Authority

State v. Hutt, [330 N.W.2d 788](#) (Iowa 1983) (actual knowledge required)
State v. Ogle, [367 N.W.2d 289](#) (Iowa App. 1985) (actual knowledge required)
State v. McCormack, [293 N.W.2d 209](#) (Iowa 1980)
Eggman v. Scurr, [311 N.W.2d 77](#) (Iowa 1981)

Comment

Note: Iowa Criminal Jury Instruction 200.47 (Possession)
Iowa Criminal Jury Instruction 200.3 (Knowledge)

1400.14 Theft - Exercising Control Over Stolen Property - No Obligation Of State To Prove Conviction For Theft. In considering whether or not the (description of property) was previously stolen, the State does not need to prove that the person(s) who stole the property has been convicted of the crime.

1400.15 Theft - Inference Of Knowledge Property Was Stolen. If the State has proved each of the following facts, then you may conclude the defendant knew or believed the property had been stolen:

1. The property found in the defendant's possession was stolen property.
2. [The property was previously stolen from two or more persons at different times.] [The defendant was a [dealer] [person] familiar with the value of such property and had acquired it for a price far below its reasonable value.]

Authority

Iowa Code section [714.1\(4\)](#)

1400.16 Theft - Elements - Secured Property. The State must prove all of the following elements of Theft:

1. The defendant gave (victim) a (describe type of instrument) which was a security interest for (property).
2. On or about the ____ day of _____, 20____, the defendant owed a balance under the terms of the (type of instrument) to (victim).
3. On or about the ____ day of _____, 20____, the defendant willfully [destroyed] [hid] [took] [disposed of] the property.

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4. The defendant did so with the specific intent to defraud (victim).

If the State has proved all of the elements, the defendant is guilty. You must then determine the degree of Theft, as explained to you in Instruction No. _____. If the State has failed to prove any one of the elements, the defendant is not guilty.

Authority

Iowa Code section [714.1\(5\)](#)

Comment

Note: Iowa Criminal Jury Instruction 200.2 (Specific Intent)

Where the defendant is given custody of the property in one county and disposes of the property in another county, see State v. Dykes, [261 Iowa 1363](#), [158 N.W.2d 154](#) (1968)

1400.17 Theft - Definition - False Check. The State must prove all of the following elements of Theft:

1. On or about the _____ day of _____, 20____, the defendant did [make] [utter] [draw] [deliver] [give] to (victim) a [check] [draft] [written order] in the amount of \$_____.
2. The [check] [draft] [written order] was drawn on (e.g., bank).
3. The defendant received [property] [services] [money] in exchange for the [check] [draft] [written order].
4. The defendant knew at the time [he] [she] gave the [check] [draft] [written order] to (victim) it would not be paid by the [bank] [other institution] because (state facts shown by evidence, e.g., insufficient funds, closed account, no account).

If the State has proved all of the elements, the defendant is guilty. You must then determine the degree of Theft, as explained to you in Instruction No. _____. If the State has failed to prove any one of the elements, the defendant is not guilty.

Authority

Iowa Code section [714.1\(6\)](#)
State v. Smith, [300 N.W.2d 90](#) (Iowa 1981)

Comment

Note: Iowa Criminal Jury Instruction 200.3 (Knowledge)

Note: Criminal liability may be based on a postdated check. State v. Hogrefe, [557 N.W.2d 871](#) (Iowa 1996) (overruling prior theft by check cases that held otherwise).

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Caveat: If supported by the evidence, the following element should be included in the above instruction:

"That (victim) exchanged the property or services for a [check] [draft], [written order] which [he] [she] believed would be honored when presented".

State v. James, [310 N.W.2d 197](#) (Iowa 1981)

1400.18 Theft - Prima Facie Evidence Of Knowledge Check Would Not Be Good When Presented. Concerning element number _____ of Instruction No. _____, if the defendant received written notice by certified mail (or notice in the manner of serving an original notice) that the [check] [draft] [written order] had not been paid by the bank and [he] [she] did not pay the amount within ten days after that, you may conclude the defendant knew the check would not be paid when presented.

Authority

Iowa Code section [714.1\(6\)](#)

1400.19 Theft - Defense - Claim Of Right. A person who [takes] [obtains] [disposes of] [uses] [acquires] property is not guilty of Theft if [he] [she] reasonably believes [he] [she] has a right, privilege, or permission to do so, or if [he] [she] does in fact have such right, privilege or permission.

Authority

Iowa Code section [714.4](#)

1400.20 Theft - Definition - Property. Property is anything of value, whether publicly or privately owned. The term includes both tangible and intangible property, labor or services. The term includes "real property" and "personal property".

Authority

Iowa Code section [702.14](#)

1400.21 Theft Or Fraudulent Practices - Definition - Value. The "value" of [property] [services] means its highest value by any reasonable standard at the time of the theft. Reasonable standard includes, but is not limited to, the property's actual value, its replacement value, or its market value within the community.

Authority

Iowa Code section [714.3](#)

Iowa Code section [714.4](#)

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1400.22 Theft - Definition - Single Theft.

If [money] [property] is stolen from the same person or location by two or more acts, or from different persons by two or more acts which occur in approximately the same location or time period, or from different locations by two or more acts within a thirty-day period, so that the thefts are attributable to a single scheme, plan or conspiracy, these acts may be considered a single theft and the value may be the total value of all the property stolen.

Authority

Iowa Code section [714.3](#)

1400.23 Theft - Taking Of A Motor Vehicle - Elements. The State must prove all of the following elements of Theft:

1. On or about the _____ day of _____, 20____, the defendant knowingly took possession or control of an automobile.
2. The defendant did so with the specific intent permanently to deprive (victim) of the automobile.
3. At the time of the taking, the automobile [belonged to] [was in the possession of] (victim).

If the State has proved all of the elements, the defendant is guilty. You must then determine the degree of Theft, as explained to you in Instruction No. _____. If the State has failed to prove any one of the elements, the defendant is not guilty.

Authority

Iowa Code section [714.1\(1\)](#)

Iowa Code section [714.2\(2\)](#)

State v. Schminkey, [597 N.W.2d 785](#) (Iowa 1999)

Comment

Note: Iowa Criminal Jury Instruction 200.2 (Specific Intent) should be used with this offense. If the defendant raises the defense of "claim of right," see Iowa Criminal Jury Instruction 1400.19. Also, Iowa Code section [714.7](#) (Operating Without Owner's Consent) may, under appropriate circumstances, be a lesser included offense, and if so, refer to Iowa Criminal Jury Instruction 1400.24.

Iowa Criminal Jury Instruction 1400.2 (Definition of Possession or Control).

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1400.24 Theft - Elements - Operating Without Owner's Consent. The State must prove both of the following elements of Operating Without Owner's Consent:

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1. On or about the ____ day of _____, 20____, the defendant intentionally took possession or control of an automobile belonging to (victim).

2. The possession or control was without consent of (victim).

If the State has proved both of the elements, the defendant is guilty. If the State has failed to prove either of the elements, the defendant is not guilty.

Authority

Iowa Code section [714.7](#)
State v. McCormack, [293 N.W.2d 209](#) (Iowa 1980)

Comment

Note: Iowa Criminal Jury Instruction 200.1 (General Intent) should be used.

Iowa Criminal Jury Instruction 200.47 (Possession)

1400.25 Fraudulent Practices - Elements. The State must prove both of the following elements:

1. On or about the ____ day of _____, 20____, the defendant did (set forth facts alleged to be a fraudulent practice as set out in one or more subsections of 714.8 of the Iowa Code).
2. [He] [She] did the acts [with the requisite knowledge and intent].

If the State has proved both of the elements, the defendant is guilty. You must then determine the degree of Fraudulent Practice, as explained to you in Instruction No. _____. If the State has failed to prove either of the elements, the defendant is not guilty.

Authority

State v. Hoyman, [863 N.W.2d 1](#) (Iowa 2015)
State v. McSorley, [549 N.W.2d 807](#) (Iowa 1996)

Comment

Note: Element number 2 will be defined by the specific language of the relevant subsection of section 714.8. Additionally, the Supreme Court's Hoyman decision held that knowing something to be false in the context of subsection 714.8(4) necessarily required the State to also prove defendant possessed the intent to deceive. The parties should consider whether the specific language of the subsection relied upon requires the same result.

Note: Where "knowledge" is an element, Iowa Criminal Jury Instruction 200.3 should be given. Where there is a "Specific Intent" element, Iowa Criminal Jury Instruction 200.2 should be given.

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1400.25A Fraudulent Practices - Definition - Single Fraudulent Practice. If [money] [property] [a service] involved in two or more acts of fraudulent practice is from the same person or location, or from different persons by two or more acts which occur in approximately the same location or time period so that the fraudulent practices are attributable to a single scheme, plan or conspiracy, these acts may be considered a single fraudulent practice and the value may be the total value of all the [money] [property] [service] involved.

Authority

Iowa Code section [714.14](#)

Comment

Note: For cases in which the pre-2014 version of section 714.14 is applicable, the word “involved” should be replaced with “obtained”. State v. Hoyman, [863 N.W.2d 1](#) (Iowa 2015)

NEW 6/16

1400.27 Degrees Of Theft, Fraudulent Practices - Definition And Interrogatory. If you find the defendant guilty of [Theft] [Fraudulent Practice], you should then determine the degree of [Theft] [Fraudulent Practice]. I have attached a question which must be answered, and by so doing, you will determine the degree of [Theft] [Fraudulent Practice].

In answering the question, the State must prove the value of the property [taken] [implicated] [affected] [involved]. You will check the blank next to the appropriate value on the verdict form.

The following are the different degrees of [Theft] [Fraudulent Practice]:

1. Property valued \$200 or less is Fifth Degree [Theft] [Fraudulent Practice].
2. Property valued more than \$200 but not more than \$500 is Fourth Degree [Theft] [Fraudulent Practice].
3. Property valued more than \$500 but not more than \$1,000 is Third Degree [Theft] [Fraudulent Practice].
4. Property valued more than \$1,000 but not more than \$10,000 is Second Degree [Theft] [Fraudulent Practice].
5. Property valued more than \$10,000 is First Degree [Theft] [Fraudulent Practice].

Authority

Iowa Code sections [714.9](#)-.14

Comment

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Caveat: This instruction should only be used when the degree of theft or fraudulent practice involves the value of property taken, implicated, affected or involved. It is not appropriate to those thefts or fraudulent practices in which value is immaterial. Only the definitions of the degrees of theft or fraudulent practices and the corresponding interrogatories which are charged and supported by the evidence should be given.

Note: For cases in which the pre-2014 version of section 714.14 is applicable, the word “involved” should be replaced with “obtained”. State v. Hoyman, [863 N.W.2d 1](#) (Iowa 2015).

Note: The following would appear on the verdict forms:

"We, the jury, find the value of the property taken by the defendant to be:

1. Not more than \$200 dollars." _____
2. More than \$200 but not more than \$500." _____
3. More than \$500 but not more than \$1,000." _____
4. More than \$1,000 dollars but not more than \$10,000." _____
5. More than \$10,000." _____

Rev. 6/16

1400.28 Value Of Motor Vehicle - Interrogatory. If you find the defendant guilty of theft, you will then answer the question which is attached to the verdict form.

Comment

Note: The following would appear on the verdict form:

"Does the value of the motor vehicle exceed \$5,000?"

Yes _____ No _____

(Check the appropriate blank)

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CHAPTER 1500

FORGERY

[1500.1](#) Forgery - 715A.2(1)(a)

[1500.2](#) Forgery - 715A.2(1)(b)

[1500.3](#) Uttering A Forged Instrument - 715A.2(1)(c) and 715.2(1)(a)

[1500.4](#) Uttering A Forged Instrument - 715A.2(1)(c) and 715.2(1)(b)

[1500.5](#) Forgery - Credit Card

[1500.6](#) Credit Card - Defense

[1500.7](#) Credit Card - Degree Of Forgery

[1500.8](#) Uttering A Forged Instrument - Definition Of Utter

[1500.9](#) Identity Theft - Elements

[1500.10](#) Identification Information - Definition

[1500.11](#) Identity Theft - Definition - Value

[1500.12](#) Identity Theft - Definition - Single or Multiple Theft

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1500.1 Forgery - 715A.2(1)(a). The State must prove both of the following elements:

1. On or about the _____ day of _____, 20____, the defendant altered (insert type of "writing") without the permission of (name).
2. a. The defendant specifically intended to defraud or injure (name).
- b. The defendant knew the alteration would facilitate a fraud or injury.

If the State has proved both of these elements, the defendant is guilty of Forgery. If the State has failed to prove either of these elements, the defendant is not guilty.

Authority

Iowa Code section [715A.2\(1\)\(a\)](#)

Comment

Note: Use 2a or 2b depending upon the charge.

The term "alter" means to change or modify an existing document. State v. White, [563 N.W. 2d 615](#) (Iowa 1997). If alteration is an issue, an instruction defining that term may be given.

10/97

1500.2 Forgery - 715A.2(1)(b). The State must prove all of the following elements of Forgery:

1. On or about the _____ day of _____, 20____, the defendant (insert statutory term)* a (type of "writing").
2. a. Without (name)'s authority the defendant made the (type of "writing") appear to be the act of (name).
- b. The defendant's act made the (type of "writing") appear to have been done [at a time] [at a place] [in a numbered sequence] other than as it was actually done.
- c. The defendant's act made the (type of "writing") appear to be a copy of an original when no original existed.
3. a. The defendant specifically intended to defraud or injure (name of person injured or defrauded).
- b. The defendant knew the act would facilitate a fraud or injury.

If the State has proved all of these elements, the defendant is guilty of Forgery. If the State has failed to prove any one of these elements, the defendant is not guilty.

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Authority

Iowa Code section [715A.2\(1\)\(b\)](#)

Comment

Note: *From [715A.2\(1\)\(b\)](#)

Use that portion of elements 2 or 3 required by the charge.

1500.3 Uttering A Forged Instrument - [715A.2\(1\)\(c\)](#) And [715A.2\(1\)\(a\)](#). The State must prove both of the following elements of Forgery:

1. On or about the _____ day of _____, 20____, the defendant uttered a (type of "writing") that the defendant knew had been altered without the permission of (name).
2. a. The defendant specifically intended to defraud or injure (name of person injured or defrauded).
- b. The defendant knew [he] [she] was helping to accomplish a fraud or injury.

If the State has proved both of the elements, the defendant is guilty of Forgery. If the State has failed to prove either of these elements, the defendant is not guilty.

Authority

Iowa Code section [715A.2\(1\)\(c\)](#)

Iowa Code section [715A.2\(1\)\(a\)](#)

Comment

Note: Use 2a or 2b depending upon the charge.

1500.4 Uttering A Forged Instrument - [715A.2\(1\)\(c\)](#) And [715A.2\(1\)\(b\)](#). The State must prove all of the following elements:

1. On or about the _____ day of _____, 20____, the defendant uttered a (type of "writing") that the defendant knew had been (statutory term)* by another.
2. a. The defendant knew the (type of writing) had been (statutory term)* so it would appear to be the act of one who did not authorize the act.
- b. The defendant knew the (type of writing) had been (statutory term)* so it would appear to have been done [at a time] [at a place] [in a numbered sequence] other than it really was.
- c. The defendant knew the (type of writing) had been (statutory term)* so it would appear to be a copy of an original when no original existed.

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3. a. The defendant specifically intended to defraud or injure (name of person injured or defrauded).

b. The defendant knew [he] [she] was helping to accomplish a fraud or injury.

If the State has proved all of these elements, the defendant is guilty of Forgery. If the State has failed to prove any of these elements, the defendant is not guilty.

Authority

Iowa Code section [715A.2\(1\)\(c\)](#)

Iowa Code section [715A.2\(1\)\(b\)](#)

Comment

Note: *From [715A.2\(1\)\(b\)](#)

Use only those portions of elements 2 or 3 required by the charge.

1500.5 Forgery - Credit Card. The State must prove both of the following elements of Forgery:

1. On or about the ____ day of _____, 20 ____, the defendant used a credit card for the purpose of obtaining (name of property or service).

2. a. The defendant knew the credit card was [stolen] [forged] [revoked] [cancelled].

b. The defendant knew [he] [she] was not authorized to use the credit card.

If the State has proved both of these elements, the defendant is guilty of Forgery and you must then determine the degree of the Forgery as explained to you in Instruction No. _____. If the State has failed to prove either of these elements, the defendant is not guilty.

Authority

Iowa Code section [715A.6](#)

Comment

Note: Use 2a or 2b depending upon the charge.

Note: In the event the defendant claims the defense of Iowa Criminal Jury Instruction 1500.6, use the following paragraph in lieu of the last paragraph of this instruction:

"If the State has proved both of these elements, you will then determine if the defendant has proved [his] [her] defense according to Instruction No. _____. If the defendant has failed to prove [his] [her] defense according to this instruction, the defendant is guilty of Forgery. You must then determine the degree of the Forgery, as explained to you in Instruction No. _____. If

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the defendant has proved [his] [her] defense, or the State has failed to prove either of the elements, the defendant is not guilty."

1500.6 Credit Card - Defense. The Defendant claims, as a defense to the charge, that [he] [she] had the intent and ability to meet all of the obligations of the credit card. [He] [she] must prove this by a preponderance of the evidence.

Authority

Iowa Code section 715JA.6

Comment

Note: Use Iowa Criminal Jury Instruction 100.12

1500.7 Credit Card - Degree Of Forgery - Definition And Interrogatory. If you find the defendant guilty of Forgery, you must then determine the degree of the Forgery by Credit Card. I have attached a question which must be answered, and by so doing, you will determine the degree of the Forgery.

In answering the question, the State must prove the value of the property or services which the defendant obtained or sought to obtain. You will check the blank next to the appropriate value on the verdict form.

The following are the two degrees of Forgery by Credit Card:

1. Property or services valued at \$500 or less.
2. Property or services valued more than \$500.

Note: The following would appear on the verdict form:

We, the jury, find the value of the property or services obtained or sought to be obtained to be:

1. \$500 or less.
2. More than \$500.

1500.8 Uttering A Forged Instrument - Definition Of Utter. A person utters a writing when [he] [she] offers it to another and represents it is genuine.

Authority

State v. Weaver, [149 Iowa 403](#), [128 N.W. 559](#) (1910)

1500.9 Identity Theft - Elements. The State must prove both of the following elements of Identity Theft:

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On or about the _____, of _____, _____, the defendant:

1. fraudulently used or attempted to fraudulently use,
2. another person's identification information, and
3. the defendant intended to obtain credit, property, services, or other benefit.

If the State has proved all of these elements, the defendant is guilty of Identity Theft. If the State has failed to prove any one of these elements, the defendant is not guilty.

Authority

Iowa Code § 715A.8, H.F.170, Acts of the 80th General Assembly, 2003 ("The bill eliminates the element that a person 'fraudulently' obtain the identification information prior to using or attempting to use the information....").

Rev. 9/10

1500.10 Identification Information - Definition. "Identification information" means, but is not limited to: a person's name, address, date of birth, telephone number, driver's license number, nonoperator's identification card number, social security number, student identification number, military identification number, alien identification number, signature, electronic mail signature, electronic identifier or screen name, biometric identifier, genetic identification information, access device, logo, symbol, trademark, place of employment, employee identification number, parent's legal surname prior to marriage, demand deposit account number, savings or checking account number, or credit card number of a person.

Authority

Iowa Code section [715A.8\(1\)](#), as added by H. F. 659, Acts of the 78th General Assembly, 1999.

Rev. 9/10

1500.11 Identity Theft - Definition - Value. The value of the [credit][property][services] is its highest value by any reasonable standard at the time the identity theft is committed. "Reasonable standard" included but is not limited to market value within the community, actual value, or replacement value.

Authority

Iowa Code section [715A.9](#), added by H.F. 659, Acts of the 78th General Assembly, 1999.

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1500.12 Identity Theft - Definition - Single or Multiple Theft. If [credit][property][services] is obtained by two or more acts from the same person or location, or from different persons by two or more acts which occur in approximately the same location or time period so that the identity thefts are attributable to a single scheme, plan or conspiracy, these acts may be considered a single identity theft and the value may be the total value of all the [credit][property][services] involved.

Authority

Iowa Code section [715A.9](#), added by H. F. 659, Acts of the 78th General Assembly, 1999.

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CHAPTER 1600

CRIMINAL MISCHIEF AND CRIMINAL TRESPASS

Criminal Mischief

- [1600.1](#) Criminal Mischief - Damage, Destroy, Etc. - Elements
- [1600.2](#) Degrees Of Criminal Mischief - Definitions And Interrogatory
- [1600.3](#) Criminal Mischief In The First Degree - Substantial Interruption, Etc. - Elements
- [1600.4](#) Criminal Mischief In The Third Degree - Legal Instrument - Elements
- [1600.5](#) Criminal Mischief In The Third Degree - Safety Devices
- [1600.6](#) Criminal Mischief In The Third Degree - Disinterment

Criminal Trespass

- [1610.1](#) Criminal Trespass - With Intent - Elements
- [1610.2](#) Criminal Trespass - Refusal To Leave - Elements
- [1610.3](#) Criminal Trespass - Interference With Use - Elements
- [1610.4](#) Criminal Trespass - Wrongful Use, Etc. - Elements
- [1610.5](#) Criminal Trespass - Property - Definition
- [1610.6](#) Criminal Trespass - Defense - Elements

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1600.1 Criminal Mischief - Damage, Destroy, Etc. - Elements. The State must prove all the following elements of Criminal Mischief:

1. On or about the _____ day of _____, 20____, the defendant [damaged] [altered] [defaced] [destroyed] (describe property) belonging to (name of victim).
2. The defendant acted with the specific intent to [damage] [deface] [alter] [destroy] the property.
3. When the defendant [damaged] [defaced] [altered] [destroyed] the property, [he] [she] did not have the right to do so.

If the State has proved all of the elements, the defendant is guilty and you must then determine the degree of Criminal Mischief, as explained to you in Instruction No. _____. If the State has failed to prove any one of the elements, the defendant is not guilty.

Authority

Iowa Code section [716.1](#)
State v. Chang, [587 N.W.2d 459](#) (Iowa 1998)

Comment

Note: Use this instruction only when the property is damaged, etc. Where the Criminal Mischief is the "substantial interruption or impairment," then Iowa Criminal Jury Instruction 1600.3 should be used.

Iowa Criminal Jury Instruction 200.2 (Specific Intent)

1600.2 Degrees Of Criminal Mischief - Definitions And Interrogatory. If you find the defendant guilty of Criminal Mischief, you must then determine the degree of Criminal Mischief. I have attached a question which must be answered, and by so doing, you will determine the degree of Criminal Mischief.

In answering the question, the State must prove the cost of [repair] [replacement] of the property [destroyed] [damaged] [defaced] [altered]. You will check the blank next to the appropriate value.

The following are the different degrees of Criminal Mischief:

1. Criminal Mischief in the Fifth Degree occurs when cost of [replacing] [repairing] the property is \$200 or less.
2. Criminal Mischief in the Fourth Degree occurs when the cost of [replacing] [repairing] the property is more than \$200 but not more than \$500.
3. Criminal Mischief in the Third Degree occurs when the cost of [replacing] [repairing] the property is more than \$500 but not more than \$1,000.

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4. Criminal Mischief in the Second Degree occurs when the cost of [replacing] [repairing] the property is more than \$1,000 but not more than \$10,000.

5. Criminal Mischief in the First Degree occurs when the cost of [replacing] [repairing] the property is more than \$10,000.

Comment

Caveat: This instruction should be used only when the degree of Criminal Mischief involves the cost of repair or replacement. Only the definitions of the degree of Criminal Mischief supported by the evidence should be given.

Note: The following would appear on the verdict form.

1. The cost of [repair] [replacement] is not more than \$200.
2. The cost of [repair] [replacement] is more than \$200 but no more than \$500.
3. The cost of [repair] [replacement] is more than \$500 but not more than \$1,000.
4. The cost of [repair] [replacement] is more than \$1,000 but not more than \$10,000.
5. The cost of [repair] [replacement] is more than \$10,000.

1600.3 Criminal Mischief In The First Degree - Substantial Interruption, Etc. - Elements.

The State must prove all of the following elements of Criminal Mischief In The First Degree:

1. On or about the _____ day of _____, 20____, the defendant [damaged] [defaced] [altered] [destroyed] (describe the property) belonging to (name of entity).
2. (Name of entity) was a [corporation] [common carrier] [municipal public utility] providing service of (e.g., electricity) to the public.
3. The [damage] [defacing] [alteration] [destruction] of the property [caused] [was intended to cause] a substantial interruption or impairment of service provided by (name of entity).
4. The defendant acted with the specific intent to [damage] [deface] [alter] [destroy] the property.
5. When the defendant [damaged] [defaced] [destroyed] [altered] the property, [she] [he] did not have the right to do so.

If the State has proved all of the elements, the defendant is guilty of Criminal Mischief in the First Degree. If the State has failed to prove any one of the elements, the defendant is not guilty.

Authority

Iowa Code section [716.3](#)

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State v. Chang [587 N.W.2d 459](#) (Iowa 1998)

Comment

Note: Iowa Criminal Jury Instruction 200.2 (Specific Intent)

1600.4 Criminal Mischief In The Third Degree - Legal Instrument - Elements. The State must prove all of the following elements of Criminal Mischief In The Third Degree:

1. On or about the _____ day of _____, 20____, the defendant [damaged] [defaced] [altered] [destroyed] (describe property) belonging to (name of victim).
2. The property was a [deed] [will] [commercial paper] [civil process] [criminal process] [instrument having legal effect].
3. The defendant acted with the specific intent to [damage] [deface] [alter] [destroy] the (describe property).
4. When the defendant [damaged] [destroyed] [altered] [defaced] the property, [she] [he] did not have the right to do so.

If the State has proved all of the elements, the defendant is guilty of Criminal Mischief in the Third Degree. If the State has failed to prove any one of the elements, the defendant is not guilty.

Authority

Iowa Code section [716.5](#)
State v. Chang, [587 N.W.2d 459](#) (Iowa 1998)

Comment

Note: Iowa Criminal Jury Instruction 200.2 (Specific Intent)

1600.5 Criminal Mischief In The Third Degree - Safety Devices. The State must prove all of the following elements of Criminal Mischief In The Third Degree:

1. On or about the _____ day of _____, 20____, the defendant [damaged] [defaced] [altered] [destroyed] (describe property).
2. The property was a [light] [signal] [obstruction] [barricade] [guard] which had been placed or erected to [enclose] [an unsafe or dangerous place] [alert persons to an unsafe or dangerous condition].
3. The defendant acted with the specific intent to [damage] [deface] [alter] [destroy] the (describe property).
4. The act of the defendant caused the (describe property) to be substantially less effective than it was before.

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5. When the defendant [damaged] [defaced] [altered] [destroyed] the (describe property), [she] [he] did not have the right to do so.

If the State has proved all of the elements, the defendant is guilty of Criminal Mischief In The Third Degree. If the State has failed to prove any one of the elements, the defendant is not guilty.

Authority

Iowa Code section [716.5](#)
State v. Chang, [587 N.W.2d 459](#) (Iowa 1998)

Comment

Note: Iowa Criminal Jury Instruction 200.2 (Specific Intent)

1600.6 Criminal Mischief In The Third Degree - Disinterment. The State must prove all of the following elements of Criminal Mischief In The Third Degree:

1. On or about the _____ day of _____, 20____, the defendant disinterred human remains [from a burial site]* [that have state and national significance from a historical or scientific standpoint for the inspiration and benefit of the United States]** (Select alternative as charged and supported by the evidence.)

2. The defendant acted with the specific intent to disinter human remains.

3. The defendant did so [without authority]* [without the permission of the state archaeologist]** (Select alternative as charged and supported by the evidence.)

If the State has proved all of the elements, the defendant is guilty of Criminal Mischief In The Third Degree. If the State has failed to prove any one of the elements, the defendant is not guilty.

Authority

*Iowa Code section [716.5\(1\)](#)
**Iowa Code section [716.5\(2\)](#)
State v. Chang, [587 N.W.2d 459](#) (Iowa 1998)

Comment

Note: Iowa Criminal Jury Instruction 200.2 (Specific Intent)

1610.1 Criminal Trespass - With Intent - Elements. The State must prove all of the following elements of Criminal Trespass:

1. On or about the _____ day of _____, 20____, the defendant entered [upon] [in] the property of another.

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2. The defendant did not have the express permission of (statutory term).
3. When the defendant entered, [he] [she] had the specific intent to [commit the crime of (crime)] [use] [remove] [alter] [damage] [harass] [place] any object on or in the property]] [hunt, fish or trap on the property].
4. The defendant [injured (name of victim)] [caused damage of more than \$200].

If the State has proved all of the elements, the defendant is guilty of Criminal Trespass. If the State has failed to prove any one of the elements, the defendant is not guilty.

Authority

Iowa Code section [716.7\(2\)\(a\)](#)
Iowa Code section [716.8](#)

Comment

Note: For definition of "Specific Intent", see Iowa Criminal Jury Instruction 200.2

If the defendant asserts the statutory exception of 716.7(2)(a), an additional element requiring the State to negate the exception should be added.

There are no degrees of Criminal Trespass. Criminal Trespass that does not cause personal injury or property damage of more than \$200 is a simple misdemeanor. This is a lesser included offense. The instructions and verdict forms should be drafted accordingly.

Rev. 6/16

1610.2 Criminal Trespass - Refusal To Leave - Elements. The State must prove all of the following elements of Criminal Trespass:

1. On or about the _____ day of _____, 19____, the defendant [entered] [remained on] the property of another.
2. The defendant acted after being [notified] [requested] [not to enter] [to leave].
3. (Statutory term) [notified] [requested] defendant to [leave] [not enter].
4. While acting, the defendant [injured (name of victim)] [caused damage of more than \$200].

If the State has proved all of the elements, the defendant is guilty of Criminal Trespass. If the State has failed to prove any of the elements, the defendant is not guilty.

Authority

Iowa Code section [716.7\(2\)\(b\)](#)
Iowa Code section [716.8](#)

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Comment

Note: There are no degrees of Criminal Trespass. Criminal Trespass that does not cause personal injury or property damage of more than \$200 is a simple misdemeanor. This is a lesser included offense. The instructions and verdict forms should be drafted accordingly.

Rev. 6/16

1610.3 Criminal Trespass - Interference With Use - Elements. The State must prove all of the following elements of Criminal Trespass:

1. On or about the ____ day of _____, 20____, the defendant entered the property of another.
2. The defendant entered [for the purpose] [with the effect] of unduly interfering with the lawful use of property of others.
3. The defendant [injured (name of victim)] [caused damage of more than \$200].

If the State has proved all of the elements, the defendant is guilty of Criminal Trespass. If the State has failed to prove any one of the elements, the defendant is not guilty.

Authority

Iowa Code section [716.7\(2\)\(c\)](#)

Iowa Code section [716.8](#)

Comment

Note: There are no degrees of Criminal Trespass. Criminal Trespass that does not cause personal injury or property damage of more than \$200 is a simple misdemeanor. This offense is a lesser included offense. The instruction and verdict forms should be drafted accordingly.

Rev. 6/16

1610.4 Criminal Trespass - Wrongful Use, Etc. - Elements. The State must prove all of the following elements of Criminal Trespass:

1. On or about the ____ day of _____, 20____, the defendant was [upon] [in] the property of another.
2. That while [upon] [in] the property, the defendant wrongfully [used] [removed] [altered] [damaged] (property) [harassed (name of victim)] [placed (describe object) on the property].
3. The defendant did not have the actual or implied permission of (statutory term).
4. The defendant [injured (name of victim)] [caused damage of more than \$200].

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If the State has proved all of the elements, the defendant is guilty of Criminal Trespass. If the State has failed to prove any one of the elements, the defendant is not guilty.

Authority

Iowa Code section [716.7\(2\)\(d\)](#)

Iowa Code section [716.8](#)

Comment

Note: There are no degrees of Criminal Trespass. Criminal Trespass that does not cause personal injury or property damage of more than \$200 is a simple misdemeanor. This is a lesser included offense. The instruction and verdict forms should be drafted accordingly.

Rev. 6/16

1610.5 Criminal Trespass - Property - Definition. "Property" means any land, dwelling, building, conveyance, vehicle, or other temporary or permanent structure, whether publicly or privately owned.

Authority

Iowa Code section [716.7\(1\)](#)

1610.6 Criminal Trespass - Defense - Elements. The defendant claims [he] [she] entered the property only to retrieve personal property.

You must find the defendant not guilty unless the State proves any of the following:

1. The defendant entered the property for a purpose other than retrieving personal property which had accidentally or inadvertently [been thrown] [fallen] [strayed] [blown] onto the property.
2. The defendant did not take the most direct and accessible route to and from the retrieved personal property.
3. The defendant did not leave the property as quickly as possible.
4. The defendant unduly interfered with the lawful use of the property.

Authority

Iowa Code section [716.7\(3\)](#)

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CHAPTER 1700

COMPUTER CRIME

[1700.1](#) Computer Damage - Elements

[1700.2](#) Computer Theft - Elements

[1700.3](#) Definitions

[1700.4](#) Degrees of Computer Damage and Theft - Definitions

[1700.5](#) Degrees of Computer Damage and Theft - Interrogatory

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1700.1 Computer Damage - Elements. The State must prove all of the following elements of Computer Damage:

1. On or about the _____ day of _____, 20____, the defendant [damaged] [destroyed] [altered] (describe the computer property) belonging to (victim).
2. The defendant did so knowingly.
3. At the time the defendant [damaged] [destroyed] [altered] the property, [he] [she] had no authority to do so.
4. The defendant altered the property with the specific intent to injure or defraud (victim).*

If the State has proved all of the elements, the defendant is guilty of Computer Damage. You must then determine the degree of Computer Damage, as explained in Instruction No. _____. If the State has failed to prove any one of the elements, the defendant is not guilty.

Authority

Iowa Code section [716A.3](#)

Comment

Note: *Use element 4 only if the defendant is charged with "altering" computer property under Iowa Code section [716A.3](#)

Note: Use Iowa Criminal Jury Instruction 200.3 (Knowledge). If element 4 is used, Iowa Criminal Jury Instruction_200.2 (Specific Intent) should also be given.

1700.2 Computer Theft - Elements. The State must prove all of the following elements of Computer Theft:

1. On or about the _____ day of _____, 19____, the defendant [accessed] [caused to be accessed] [took] [transferred] [concealed] [retained possession of] (describe computer property).
2. The defendant did so knowingly.
3. a. The defendant did so for the purpose of obtaining [services] [information] [property] from (victim).*
- b. The defendant did so with the specific intent to permanently deprive (victim) of possession of the property.*
4. At the time the defendant [accessed] [caused to be accessed] [took] [transferred] [concealed] [retained possession of] the property, [he] [she] had no authority to do so.

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If the State has proved all of the elements, the defendant is guilty of Computer Theft. You must then determine the degree of Computer Theft, as explained in Instruction No. _____. If the State has failed to prove any one of the elements, the defendant is not guilty.

Authority

Iowa Code section 716A.9

Comment

Note: *Use element 3A if an illegal "accessing" is charged under Iowa Code section 716A.9. Otherwise, use element 3b.

Note: Use Iowa Criminal Jury Instruction 200.3 (Knowledge). If element 3b is used, Iowa Criminal Jury Instruction 200.2 (Specific Intent) should also be given.

1700.3 Definitions. "Access" means to instruct, communicate with, store data in, or retrieve data from a computer, computer system or computer network.

"Computer" means an electronic device which performs logical, arithmetical and memory functions by manipulations of electronic or magnetic impulses, and includes all input, output, processing, storage, computer software, and communication facilities which are connected or related to the computer in a computer system or computer network.

"Computer system" means related, connected or unconnected computers or peripheral equipment.

"Computer network" means a set of related, remotely connected services and communication facilities including two or more computers with capability to transmit data among them through communication facilities.

"Computer program" means an ordered set of instructions or statements that, when executed by a computer, causes the computer to process data.

"Data" means a representation of information, knowledge, facts, concepts, or instructions that has been prepared or is being prepared in a formalized manner and has been processed, or is intended to be processed in a computer. Data may be in any form including, but not limited to, printouts, magnetic storage media, punched cards, and as stored in the memory of a computer.

"Services" means the use of a computer, computer system, or computer network and includes, but is not limited to, computer time, data processing, and storage functions.

"Property" means anything of value whether publicly or privately owned and includes both tangible and intangible property as well as [computers] [computer data] [computer information] [computer software] [computer programs].

"Loss of property" means the greater of either the retail value of the property involved or the reasonable [replacement] [repair] cost.*

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"Loss of services" means the reasonable value of the damage created by the unavailability or lack of usefulness of the property or services involved until [repair] [replacement] can be made.

Authority

Iowa Code section [716A.1](#)

Comment

Note: Use only those definitions which are charged and supported by the evidence.

Note: *When evidence of both reasonable replacement cost and repair cost is offered, the Court should instruct on only the lesser of the two costs. Iowa Code section [716A.1\(10\)\(b\)](#).

1700.4 Degrees Of Computer Damage And Theft - Definitions. If you find the defendant guilty of Computer [Damage] [Theft], you must then determine the degree of Computer [Damage] [Theft]. I have attached a question which must be answered, and by so doing, you will determine the degree of computer [damage] [theft].

The State must prove the value of any loss of property or services. To answer the attached question, you will check the blank next to the appropriate value.

The following are the degrees of Computer [Damage] [Theft]:

1. Computer [Damage] [Theft] in the 5th degree occurs when the loss of [property] [services] is not more than \$50.
2. Computer [Damage] [Theft] in the 4th degree occurs when the loss of [property] [services] is more than \$50 but not more than \$100.
3. Computer [Damage] [Theft] in the 3rd degree occurs when the loss of [property] [services] is more than \$100 but not more than \$500.
4. Computer [Damage] [Theft] in the 2nd degree occurs when the loss of [property] [services] is more than \$500 but not more than \$5,000.
5. Computer [Damage] [Theft] in the 1st degree occurs when the loss of [property] [services] is more than \$5,000.

Authority

Iowa Code sections [716A.4](#) to 716A.8
Iowa Code sections 716A.10 to 716A.14

Comment

Note: Use only those portions of the instruction charged and supported by the evidence.

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1700.5 Degrees Of Computer Damage And Theft - Interrogatory. We, the jury, find the loss of [property] [services] caused by the defendant to be:

1. Not more than \$50.
2. More than \$50, but not more than \$100.
3. More than \$100, but not more than \$500.
4. More than \$500, but not more than \$5,000.
5. More than \$5,000.

Comment

Note: This question should appear on the guilty verdict form. Use only those portions of the question charged and supported by the evidence.

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CHAPTER 1800

OFFENSES AGAINST THE GOVERNMENT AND BRIBERY

[1800.1](#) Insurrection - Elements

[1800.2](#) Impersonating A Public Official - Elements

[1800.3](#) Falsifying Public Documents - Elements

Official Misconduct

[1810.1](#) Felonious Misconduct In Office - Elements

Bribery and Corruption

[1820.1](#) Bribery - Elements

[1820.2](#) Accepting A Bribe - Elements

Commercial Bribery

[1830.1](#) Commercial Bribery - Donor

[1830.2](#) Commercial Bribery - Donee

[1830.3](#) Definition - Employer

[1830.4](#) Definition - Gratuity

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1800.1 Insurrection - Elements. The State must prove both of the following elements of Insurrection:

1. On or about the ____ day of _____, 20____, the defendant and at least two other persons acted together and used physical violence against [other people] [property].
2. The defendant and these other persons did so for the purpose of:
 - a. [Interfering with] [disrupting] [destroying] the government of (describe governmental subdivision).
 - b. preventing any (describe executive, judicial, or legislative body or officer) from performing [his] [her] [their] lawful function.

If the State has proved both of the elements, the defendant is guilty of Insurrection. If the State has failed to prove either of the elements, the defendant is not guilty.

Authority

Iowa Code section [718.1](#)

1800.2 Impersonating A Public Official - Elements. The State must prove both of the following elements of Impersonating a Public Official:

1. On or about the ____ day of _____, 20____, the defendant falsely [claimed to be] [assumed to act as] (describe public office).
2. The defendant had no authority to do so.

If the State has proved both of the elements, the defendant is guilty of Impersonating a Public Official. If the State has failed to prove either of the elements, the defendant is not guilty.

Authority

Iowa Code section [718.2](#)

1800.3 Falsifying Public Documents - Elements. The State must prove both of the following elements of Falsifying Public Documents:

1. On or about the ____ day of _____, 19____, the defendant:
 - a. [made] [altered] [a public document] [an instrument which appeared to be a public document].
 - b. possessed [a seal] [a counterfeit seal] of (describe the governmental subdivision, agency, or officer).

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2. The defendant had no right or authority to do so.

If the State has proved both of the elements, the defendant is guilty of Falsifying A Public Document. If the State has failed to prove either of the elements, the defendant is not guilty.

Authority

Iowa Code section [718.5](#)

Comment

Note: See State v. Ortega, [418 N.W.2d 57](#) (Iowa 1988), for the definition of "public document".

1810.1 Felonious Misconduct In Office - Elements. The State must prove both of the following elements of Misconduct In Office:

1. On or about the ____ day of _____, 19____, the defendant was a public [officer] [employee].
2. On that date the defendant knowingly:
 - a. made or gave a false [entry] [return] [certificate] [receipt].
 - b. [falsified a public record] [issued a document falsely appearing to be a public document].

If the State has proved both of the elements, the defendant is guilty of Misconduct in Office. If the State has failed to prove either of the elements, the defendant is not guilty.

Authority

Iowa Code section [721.1](#)

Comment

Note: This instruction relates only to "felonious" Misconduct In Office. See, Iowa Code section 721.2 for a definition of "nonfelonious" Misconduct In Office.

1820.1 Bribery - Elements. The State must prove all of the following elements of Bribery:

1. On or about the ____ day of _____, 19____, (name of recipient):
 - a. was serving as a (describe public capacity).
 - b. had been [elected] [selected] [appointed] [employed] [engaged] as (describe public capacity).
 - c. was a witness in a [judicial hearing] [arbitration hearing] [official inquiry].

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d. was a member of a board of arbitration.

2. The defendant then [offered] [promised] [gave] a [thing of value] [benefit] to (name of recipient).

3. The defendant did so with [an agreement or arrangement] [the understanding] that the [promise] [thing of value] [benefit] would influence the [act] [vote] [opinion] [judgment] [decision] [exercise of discretion] of (name of recipient) as (describe recipient's official capacity).

If the State has proved all of the elements, the defendant is guilty of Bribery. If the State has failed to prove any one of the elements, the defendant is not guilty.

Authority

Iowa Code section [722.1](#)

1820.2 Accepting A Bribe - Elements. The State must prove all of the following elements of Accepting a Bribe:

1. On or about the _____ day of _____, 20____, the defendant:

a. was serving as a (describe public capacity).

b. had been [elected] [selected] [appointed] [employed] [engaged] to serve as a (describe public capacity).

c. was a witness in a [judicial hearing] [arbitration hearing] [official inquiry].

d. was a member of a board of arbitration.

2. The defendant then [solicited] [knowingly accepted] [knowingly received] a [promise] [thing of value] [benefit].

3. The defendant did so with an understanding or arrangement that the [promise] [thing of value] [benefit] would influence [his] [her] [act] [vote] [opinion] [judgment] [decision] [exercise of discretion] as (describe the defendant's official capacity).

If the State has proved all of the elements, the defendant is guilty of Accepting a Bribe. If the State has failed to prove any one of the elements, the defendant is not guilty.

Authority

Iowa Code section [722.2](#)

1830.1 Commercial Bribery - Donor. The State must prove all of the following elements of Commercial Bribery:

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1. On or about _____, the defendant engaged in a business transaction, or series of transactions, with (name of the recipient or intended recipient of the gratuity).
2. At that time, (name of the recipient or intended recipient of the gratuity) was an [employee] [officer] [agent] [representative] of (name of employer or principal), acting on behalf of [his] [her] [employer] [principal].
3. At that time, defendant [offered] [delivered], directly or indirectly to (name of intended recipient) a gratuity as defined in Instruction No. _____.
4. The gratuity was [offered] [delivered] by the defendant in consideration for (name of intended recipient) doing an act, or not doing an act, which conduct the defendant had reason to know was in conflict with (name of intended recipient's) employment relation and duties to (name of the employer or principal).

If the State has proved all of the elements, the defendant is guilty of Commercial Bribery. If the state has failed to prove any one of the elements, the defendant is not guilty.

Authority

Iowa Code Section [722.10\(2\)](#)

1830.2 Commercial Bribery - Donee. The State must prove all of the following elements of Commercial Bribery:

1. On or about _____, defendant was an [employee] [officer] [agent] [representative] of (name of employer or principal).
2. At the time, defendant acted in a business transaction or series of transactions with (person who delivered the gratuity).
3. At that time, the defendant [solicited] [received] from (person who delivered the gratuity) a gratuity as defined in Instruction No. _____.
4. The gratuity was received for the benefit, directly or indirectly, of the defendant.
5. The gratuity was [solicited] [received] by the defendant in consideration for the defendant doing an act, or not doing an act, which conduct defendant had reason to know was in conflict with [his] [her] employment relation and duties to (the employer) (the principal).

If the State has proved all of the elements, the defendant is guilty of Commercial Bribery. If the State has failed to prove any one of the elements, the defendant is not guilty.

Authority

Iowa Code Section [722.10\(2\)](#)

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1830.3 Definition - Employer. As used in Instruction No. _____, "employer" includes any sole proprietor, partnership, corporation, association, or other entity or organization.

Authority

Iowa Code Section [722.10\(1\)\(a\)](#)

1830.4 Definition - Gratuity. As used in Instruction No. _____, the term "gratuity" means consideration in any form, including but not limited to a gift, commission, discount and bonus.

Authority

Iowa Code Section [722.10\(1\)\(c\)](#)

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CHAPTER 1900

INTERFERENCE WITH OFFICIAL ACTS AND ESCAPE

Escape

[1900.1](#) Escape - Elements

[1900.2](#) Escape - Elements - Voluntary Absence From Facility

[1900.3](#) Permitting Prisoner To Escape - Elements

[1900.4](#) Assisting Prisoner To Escape - Elements - Intent To Aid Escape

[1900.5](#) Furnishing Intoxicant To An Inmate - Elements

[1900.6](#) Furnishing Controlled Substance To An Inmate – Elements

[1900.7](#) Necessity in Escaping From Place of Confinement.

Interference With An Official Act

[1910.1](#) Interference With An Official Act - Elements

[1910.2](#) Interference With Official Acts - Definition - Resistance Or Obstructions

[1910.3](#) Preventing Apprehension Or Obstructing Prosecution Or Defense - Elements

[1920.1](#) Eluding a Peace Officer - Elements

[1930.1](#) Disarming a Peace Officer With Discharge of a Weapon - Elements

[1930.2](#) Definition of a Peace Officer

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1900.1 Escape - Elements. The State must prove all of the following elements of Escape:

1. The defendant had previously been [convicted of] [charged with] [arrested for] a [felony] [misdemeanor].
2. By reason of the [conviction] [charge] [arrest], the defendant had been placed in the custody of [(name), who was a (public officer)(public employee)] [name of place].
3. On or about the ____ day of _____, the defendant intentionally [escaped from the custody of (name)] [left (name of place)], [attempted to escape from the custody of (name)] [attempted to leave (name of place)], without the permission of [custodian] [name of place].

If the State has proved all of the elements, the defendant is guilty of Escape. If the State has failed to prove any one of the elements, the defendant is not guilty.

Authority

Iowa Code section [719.4\(1\)\(2\)](#)
State v. Burtlow, [299 N.W.2d 665](#) (Iowa 1980)
State v. Breitbach, [488 N.W.2d 444](#) (Iowa 1992)
State v. Smith, [690 N.W.2d 75](#) (Iowa 2004)

Comment

If an attempt to escape is alleged, use Iowa Criminal Jury Instruction 200.18(Attempt).

If the defendant was in the custody of a detention facility, community-based correctional facility or institution, do not use the “name of person” alternatives in elements 2 or 3. For the definition of “community-based correctional facility”, see Iowa Code §905.1(2).

Rev. 7/05

1900.2 Voluntary Absence From A Facility - Elements. The State must prove all of the following elements of the crime of Voluntary Absence From A Facility:

1. The defendant had previously been committed to (place where the defendant was required to be).
2. (Place where the defendant was required to be) was [an institution under the control of the Iowa Department of Corrections] [a jail] [a correctional institution] [a community-based correctional facility].
3. While in custody, the defendant was required to be at (place where the defendant was required to be).
4. On or about the ____ day of _____, 20____, the defendant was knowingly and voluntarily absent from the place [he] [she] was required to be.

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If the State has proved all of the elements, the defendant is guilty of Voluntary Absence From A Facility. If the State has failed to prove any one of the elements, the defendant is not guilty.

Authority

Iowa Code section 719.4(3)

State v. Burtlow, 299 N.W.2d 665 (Iowa 1980)

State v. Breitbach, 488 N.W.2d 444 (Iowa 1992)

State v. Smith, 690 N.W.2d 75 (Iowa 2004)

Comment

For the definition of “community-based correctional facility”, see Iowa Code §905.1(2).

Rev. 7/05

1900.3 Permitting Prisoner To Escape - Elements. The State must prove all of the following elements of the crime of Permitting A Prisoner To Escape:

1. On or about the ____ day of _____, 20____, (name of prisoner) was in custody by reason of a [conviction for] [charge of] a crime.
2. The defendant was a [jailer] [public officer] [public employee].
3. (Name of prisoner) [attempted an escape] [escaped] from custody.
4. The defendant knowingly and voluntarily [permitted] [aided or abetted] (name of prisoner) to [attempt an escape] [escape].

If the State has proved all of the elements, the defendant is guilty of Permitting A Prisoner To Escape. If the State has failed to prove any one of the elements, the defendant is not guilty.

Authority

Iowa Code section 719.5

1900.4 Assisting A Prisoner To Escape - Elements - Intent To Aid Escape. The State must prove all of the following elements of Assisting A Prisoner To Escape:

1. On or about the ____ day of _____, 20____, (name of prisoner) was confined in (name of place) by reason of a conviction of (describe conviction).
2. The defendant brought into (name of place) a (describe instrument or device).
3. The defendant did so with specific intent to aid (name of prisoner) in escaping from (name of place).

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If the State has proved all of the elements, the defendant is guilty of Assisting A Prisoner To Escape. If the State has failed to prove any one of the elements, the defendant is not guilty.

Authority

Iowa Code section [719.6](#)

1900.5 Furnishing Intoxicant To An Inmate - Elements. The State must prove all of the following elements of [Furnishing An Intoxicating Beverage To An Inmate] [Introducing An Intoxicating Beverage]:

1. (Name of inmate) was confined in (name of facility).
2. (Name of facility) was a [detention facility] [correctional institution] [institution under the management of the Iowa Department of Corrections].
3. On or about the ____ day of _____, 20 the defendant [furnished or knowingly made available (intoxicating beverage) at that place] [introduced (intoxicating beverage) into that place].
4. (Intoxicating beverage) was an intoxicating beverage.

If the State has proved all of the elements the defendant is guilty of [Furnishing An Intoxicating Beverage To An Inmate] [Introducing An Intoxicating Beverage]. If the State has failed to prove any one of the elements, the defendant is not guilty.

Authority

Iowa Code section [719.7](#)

Comment

Note: Element number 1 should be omitted if the defendant is charged with introducing an intoxicating beverage into the premises.

1900.6 Furnishing A Controlled Substance To An Inmate - Elements. The State must prove all of the following elements of [Furnishing A Controlled Substance To An Inmate] [Introducing A Controlled Substance]:

1. (Name of inmate) was confined in (name of facility).
2. (Name of facility) was a [detention facility] [correctional institution] [institution under the management of the Iowa Department of Corrections].
3. On or about the ____ day of _____, 20__, the defendant [furnished or knowingly made available (controlled substance) to (name of inmate) at that place] [introduced (controlled substance) into that place].

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4. (Controlled substance) was a controlled substance.

If the State has proved all of the elements, the defendant is guilty of [Furnishing A Controlled Substance To An Inmate] [Introducing A Controlled Substance]. If the State has failed to prove any one of the elements, the defendant is not guilty.

Authority

Iowa Code section [719.8](#)

Comment

Note: Element number 1 should be omitted if the defendant is charged with Introducing A Controlled Substance into the premises.

1900.7 Necessity in Escaping From Place of Confinement. A person is justified in escaping from a place of confinement when it is the only choice available.

If the State has proved any one of the following elements, the defendant was not justified.

1. The defendant was not faced with a [specific threat of death] [forcible sexual attack] [substantial bodily injury] in the immediate future.
2. [There was time for a complaint to the authorities] [There did not exist a history of futile complaints which made complaints to the authorities meaningless].
3. There was [time] [opportunity] to resort to the courts.
4. There was [force] [violence] used toward prison personnel or other innocent persons in the escape.
5. The defendant did not immediately report to the proper authorities when [she] [he] reached a position of safety from the immediate threat.

Authority

State v. Beeson, [569 N.W.2d 107](#) (Iowa 1997)

State v. Reese, [272 N.W.2d 863](#) (Iowa 1978)

Comment

Note: Use only the bracketed phrases which the defendant has raised in asserting the defense of necessity.

New June 2020

1910.1 Interference With An Official Act - Elements. The State must prove all of the following elements of Interference With An Official Act:

1. On or about the ____ day of _____, 20____, the defendant:
 - a. knew (name) was a [peace officer] [fire fighter] who was (describe official act).
 - b. knew (name) was serving or executing [civil or criminal process] [an order of a court].
2. The defendant knowingly resisted or obstructed (name) in (describe official act).

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3. The defendant [inflicted a [serious injury] [bodily injury]] [attempted to inflict serious injury] [displayed a dangerous weapon] [was armed with a firearm].

If you find the State has proved all of the elements, the defendant is guilty of Interference With An Official Act. If the State has failed to prove any one of the elements, the defendant is not guilty.

Authority

Iowa Code section [719.1](#)
State v. Thomas, [262 N.W.2d 607](#) (Iowa 1978)

Comment

Note: The crime of interference with official acts is a general intent crime. State v. Buchanan, [549 N.W.2d 291](#) (Iowa 1996).

1910.2 Interference With Official Acts - Definition - Resistance or Obstruction. "Resist" means to oppose intentionally, interfere with or withstand. "Obstruct" means to hinder intentionally, retard or delay.

Verbal harassment is not resistance or obstruction unless it is a verbal threat made with the ability and apparent intention to carry out the threat.*

Authority

Iowa Code section [719.1](#)
State v. Donner, [243 N.W.2d 850](#) (Iowa 1976)

Comment

Note: *This statement should be included if verbal harassment is the means of resistance or obstruction.

1910.3 Preventing Apprehension Or Obstructing Prosecution Or Defense - Elements. The State must prove both of the following elements of [Preventing Apprehension] [Obstructing a Prosecution] [Obstructing a Defense]:

1. On or about the ____ day of _____, 20____, the defendant:

a. [destroyed] [altered] [concealed] [disguised] (evidence) which would have been evidence in the trial of (name) for (name of crime).

b. [made available false evidence] [furnished false information] with intent that it be used in the trial of (name) for (name of crime).

c. induced (name of witness), a witness with knowledge material to the trial of (name) for (name of crime) to [leave the state] [conceal [himself] [herself] [fail to appear when subpoenaed]].

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2. The defendant's act was done with specific intent to [prevent the apprehension of (name)] [obstruct the [prosecution] [defense] of (name)].

If the State has proved both of the elements, the defendant is guilty of [Preventing Apprehension] [Obstructing a Prosecution] [Obstructing a Defense]. If the State has failed to prove either of the elements, the defendant is not guilty.

Authority

Iowa Code section [719.3](#)

1920.1 Eluding a Peace Officer - Elements. The State must prove all of the following elements of Eluding:

1. On or about the ___ day of ___, ___, the defendant was driving a motor vehicle.
2. The defendant willfully [failed to bring the motor vehicle to a stop or otherwise eluded] [attempted to elude] a marked official law enforcement vehicle driven by a uniformed peace officer after being given a visual and audible signal to stop.
3. In doing so the defendant exceeded the speed limit by twenty-five miles per hour or more.
4. At the time, the defendant [was participating in the public offense of (a felony)] [was operating the motor vehicle while under the influence of alcohol or drugs or a combination thereof] [was in violation of section 124.401 of the Code] [‘s acts resulted in a bodily injury to another person].

If the State proved all of these numbered elements, the defendant is guilty of Eluding in the First Degree. If the State has failed to prove Element number 4, the defendant is guilty of Eluding in the Second Degree. If the State has failed to prove elements numbered 3 and 4, the defendant is guilty of Eluding in the Third Degree. If the State has failed to prove either Element 1 or 2, the defendant is not guilty.

Authority

Iowa Code section [321.279](#), as amended by HF 209, Acts of the 78th General Assembly, 1999.

Comment

If appropriate, Iowa Criminal Instruction No. 200.18 (Attempt), Iowa Criminal Instruction No. 200.6 (Participating in a Public Defense) or Iowa Criminal Instruction No. 200.41 (Bodily Injury) should be used. If the alternative of Participating in a felony offense is charged, the definition of the offense should be given in a separate instruction. If the alternative of violation of Section 124.401 of the Code is charged, the definition of the offense should be given in a separate instruction. See, e.g., *State v. Mesch*, [574 N.W.2d 10](#), 14 (Iowa 1998)(must designate particular felony claimed and the elements of that felony in instruction of Assault While Participating in a Felony).

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1930.1 Disarming a Peace Officer With Discharge of a Weapon - Elements. The State must prove all of the following elements of Disarming a Peace Officer With Discharge of a Weapon:

1. On or about the ____ day of _____, _____, the defendant knowingly or intentionally [removed] [attempted to remove] a dangerous weapon from the possession of _____, a peace officer as defined in Instruction No. _____.
2. At that time _____ was performing an act within the scope of his/her lawful duty or authority as a peace officer.
3. Defendant knew or should have known that _____ was a peace officer.
4. Defendant discharged the weapon while [removing][attempting to remove] it from possession of _____.

If the State has proved all of the above elements, the defendant is guilty of Disarming a Peace Officer With discharge of a weapon. If the State has failed to prove element No. 4 the defendant is guilty of Disarming a Peace Officer. If the State has failed to prove elements 1, 2, or 3, the defendant is not guilty.

Authority

Iowa Code section [708.13](#)

Comment

Use Iowa Criminal Instructions No. 200.21 (Dangerous Weapon), 200.3 (Knowledge), and 200.18 (Attempt).

1930.2 Definition of a Peace Officer. As used in Instruction No. _____, a “peace officer” included (a Sheriff and regular deputies who are subject to mandated law enforcement training) (marshals and police officers of cities) (peace officer members of the department of public safety) (parole officers while performing their duties as parole officers) (probation officers while performing their duties as prescribed by the judicial district department of correctional services) (special security officers employed by board of regents institutions) (conservation officers appointed full time by the director of the Iowa Department of Natural Resources) (such employees of the Iowa Department of Transportation as are designated peace officer under law) (such employees of an aviation authority as are designated peace officers under law) (reserve peace officers as qualify under law).

Authority

Iowa Code section [708.13](#), [801.4\(11\)](#), [906.2](#), [907.2](#), [456.13](#) and [724.2A](#).

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CHAPTER 2000

PERJURY

[2000.1](#) Perjury - Elements

[2000.2](#) Perjury - Contradictory Statements - Elements

[2000.3](#) Perjury - Corroboration Of False Statement

[2000.4](#) Perjury - Definition Of Material Fact - Knowledge - Intent

[2000.5](#) Suborning Perjury - Intent To Make False Statements

[2000.6](#) Suborning Perjury - Concealment Of Material Facts

[2000.7](#) Suborning Perjury - Definition - Procure - Induce

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2000.1 Perjury - Elements. The State must prove all of the following elements of Perjury:

1. On or about the _____ day of _____, 19____, the defendant was under [oath] [affirmation].
2. The [oath] [affirmation] was made in (describe proceeding or matter in which statements under oath/affirmation are required or authorized by law).
3. a. The defendant made a statement of material fact: (statement(s)).
b. The defendant denied knowledge of certain material fact: (denial(s)).
4. a. The statement was false when it was made.
b. The denial of the facts was false when it was made.
5. Defendant knew the [statement] [denial] was false.

If the State has proved all of the elements, the defendant is guilty of Perjury. If the State has failed to prove any one of the elements, the defendant is not guilty.

Authority

Iowa Code section [720.2](#)
State v. Fisher, [282 N.W.2d 684](#) (Iowa 1979)
State v. Deets, [195 N.W.2d 118](#) (Iowa 1972)

Comment

Note: See Iowa Criminal Jury Instructions 200.3 and 200.2

Note: The question of whether "the defendant was required to be under oath or affirmation" is a question of law for the determination of the court. The question of materiality was also formerly considered a matter of law; it is now a fact issue to be submitted to the jury. State v. Walker, [574 NW2d 280, 283](#) (Iowa 1998). Also, elements 3a and 4a, or 3b and 4b should be selected and used as supported by the charge and the evidence. When the court submits more than one statement alleged to be false, an interrogatory should be submitted for the jury to find which statements, if any, were false.

6/98

2000.2 Perjury - Contradictory Statements - Element. The State must prove all of the following elements of Perjury:

1. On or about the _____ day of _____, 20____, the defendant was under [oath] [affirmation].
2. The [oath] [affirmation] was made in (describe proceeding or matter in which statements under oath/affirmation are required or authorized by law).

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3. a. The defendant made a statement of fact: (statement(s)).

b. The defendant denied knowledge of certain material facts: (denial(s)).
4. [At another time] [During the same proceeding] while under [oath] [affirmation], the defendant made a contradictory statement of material fact: (statement).
5. a. One of the statements was false

b. The denial was false.
6. The defendant knew such [statement] [denial] was false.

If the State has proved all of the elements, the defendant is guilty of Perjury. If the State has failed to prove any one of the elements, the defendant is not guilty.

Authority

Iowa Code section [720.2](#)

State v. Fisher, [282 N.W.2d 684](#) (Iowa 1979)

State v. Deets, [195 N.W.2d 118](#) (Iowa 1972)

Comment

Note: See Iowa Criminal Jury Instructions 200.3 and 200.2.

Note: The question of whether "the defendant was required to be under oath or affirmation" is a question of law for the determination of the court. The question of materiality was also formerly considered a matter of law; it is now a fact issue to be submitted to the jury. State v. Walker, [574 NW2d 280](#), 283 (Iowa 1998). Also, elements 3a and 4a, or 3b and 4b should be selected and used as supported by the charge and the evidence. When the court submits more than one statement alleged to be false, an interrogatory should be submitted for the jury to find which statements, if any, were false.

6/98

2000.3 Perjury - Corroboration Of False Statement. Evidence that the defendant made contradictory statements has been received. The defendant's contradictory statements alone do not mean one statement is false. The falsity of a statement must be shown by the testimony of other witnesses or by other facts and circumstances in addition to the testimony of one witness.

Authority

State v. Fisher, [282 N.W.2d 684](#) (Iowa 1979)

State v. Thompson, [254 Iowa 331](#), [117 N.W.2d 514](#) (1962)

State v. Mutch, [218 Iowa 1176](#), [255 N.W. 643](#) (1934)

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2000.4 Perjury - Definition Of Material Fact - Knowledge - Intent. A fact is material if it:

1. Supports or attacks the credibility of a witness.
2. Has a tendency to prove or disprove some relevant fact (not necessarily the main fact at issue).
3. Is capable of influencing the [court] [officer] on any issue.

Authority

State v. Fisher, [282 N.W.2d 684](#) (Iowa 1979)
Iowa Criminal Jury Instruction 200.3 (Knowledge)
Iowa Criminal Jury Instruction 200.2 (Specific Intent)

Comment

Note: Whether the statement is material is a fact issue for the jury. State v. Walker, [574 NW2d 280](#), 283 (Iowa 1998).

6/98

2000.5 Suborning Perjury - Intent To Make False Statements. The State must prove all of the following elements of Suborning Perjury:

1. On or about the ____ day of _____, 20____, the defendant [procured] [offered an inducement to] (second person) to make a statement of fact (statement).
2. The statement of fact was to be made under [oath] [affirmation].
3. The statement was false.
4. The defendant knew the statement was false when [he] [she] [procured] [induced] (second person) to make it.
5. The [procurement] [inducement] was made to (second person) by the defendant with the intent that (second person) would make the false statement.

If the State has proved all of the elements, then the defendant is guilty of Suborning Perjury. If the State has failed to prove any one of the elements the defendant is not guilty.

Authority

Iowa Code section [720.3](#)

2000.6 Suborning Perjury - Concealment Of Material Facts. The State must prove both of the following elements of Suborning Perjury:

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1. On or about the ____ day of _____, 19____, the defendant reasonably believed that (second person) would be placed under [oath] [affirmation] to make a statement of fact that (statement).

2. The defendant [procured] [offered an inducement to] (second person) to conceal material facts known to [him] [her].

If the State has proved both of the elements, the defendant is guilty of Suborning Perjury. If the State has failed to prove either of the elements, the defendant is not guilty.

Authority

Iowa Code section [720.3](#)

2000.7 Suborning Perjury - Definition - Procure - Induce. "Procure" means to initiate or bring about an event; to cause something to be done; to contrive or acquire.

"Induce" means to offer something of benefit or value or a reason which would influence, persuade, coax, encourage or invite a person to act.

Authority

State v. Halleck, [308 N.W.2d 56](#) (Iowa 1982) - (Bribe)

State v. Bartilson, [382 N.W.2d 479](#) (Iowa App. 1985) (Intent)

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CHAPTER 2100

VICE

[2100.1](#) Prostitution - Element

[2100.2](#) Prostitution - Offer To Sell Or Purchase - Definition

[2100.3](#) Pimping - Elements - Soliciting Patron Or Sharing In Earnings

[2100.4](#) Pimping - Elements - Furnishing Room For Purpose Of Prostitution

[2100.5](#) Pimping - Knowledge - Definition

[2100.6](#) Pimping - Prostitute – Definition

[2110.1](#) Dissemination of Obscene Materials to a Minor – Elements. (New 6/2017)

[2110.2](#) Obscene Material – Definition (New 6/2017)

[2110.3](#) Prurient interest – Definition (New 6/2017)

[2110.4](#) Community Standards (New 6/2017)

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2100.1 Prostitution - Element. The State must prove the following element of Prostitution:

1. The defendant:
 - a. [sold] [offered for sale] services as a partner in a sex act.
 - b. [purchased] [offered to purchase] the services as a partner in a sex act.

If the State has proved the element, the defendant is guilty of Prostitution. If the State has failed to prove the element, the defendant is not guilty.

Authority

Iowa Code section [725.1](#)

Comment

Note: Select 1a or b which accords with the manner in which the sex act was executed or proffered.

Note: The court should give Iowa Criminal Jury Instruction 900.8 defining sex act when considering this offense.

2100.2 Prostitution - Offer To Sell Or Purchase - Definition. Concerning the element in Instruction No._____, the phrase ("offered for sale") ("offered to purchase") refers to any verbal statement, act, or conduct which invites a person to be a partner in a sex act for money or other thing of value, regardless of whether a sex act occurred or a person made an actual payment of any kind to either person.

The request, solicitation, or acceptance does not have to be in any particular form of words. It can arise from a gesture or other expression which indicates a sex act was to occur.

2100.3 Pimping - Elements - Soliciting Patron Or Sharing In Earnings. The State must prove both of the following elements of Pimping:

1. The defendant:
 - a. solicited another to engage in a sex act with (name of prostitute).
 - b. knowingly [took] [shared] in the earnings of (name of prostitute).
2. At the time (name of prostitute) was a prostitute.

If the State has proved both of the elements, the defendant is guilty of Pimping. If the State has failed to prove either of the elements, the defendant is not guilty.

Authority

Iowa Code section [725.2](#)

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Comment

Note: Select 1a or b which accords with the manner in which the sex act was executed or proffered.

Note: The court should give Iowa Criminal Jury Instruction 900.8 defining sex act when considering this offense.

2100.4 Pimping - Elements - Furnishing Room For Purpose Of Prostitution. The State must prove all of the following elements of Pimping:

1. The defendant furnished a room or place to (name of prostitute).
2. The defendant knew (name of prostitute) was to use it for a sex act.
3. The defendant knew (name) [had sold or offered to sell services] [had purchased or offered to purchase the services of another] as a partner in a sex act.

If the State has proved all of the elements, the defendant is guilty of Pimping. If the State has failed to prove any one of the elements, the defendant is not guilty.

Authority

Iowa Code section [725.2](#)

2100.5 Pimping - Knowledge - Definition. Concerning element number _____ of Instruction No. _____, the phrase:

- a. "knowingly [took] [shared] in the earnings"
- b. "knew that such person was to use such room or place for a sex act"
- c. "knew that [(name of prostitute) had sold or offered to sell [his] [her] services] [(name) had purchased or offered to purchase the services of another] as a partner in a sex act" refers to the knowledge which the defendant possessed at that time.

For the defendant to [know] [have knowledge of] something means [he] [she] had a conscious awareness that (element requiring knowledge).

2100.6 Pimping - Prostitute - Definition. Concerning element number _____ of Instruction No. _____, the term "prostitute" refers to a person who sells or offers for sale services in order to participate in a sex act.

Authority

Iowa Code section [702.15](#)

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2110.1 Dissemination of Obscene Materials to a Minor – Elements. The State must prove all of the following elements of Dissemination of Obscene Materials to a Minor:

1. On or about the ____ day of _____, 20__, the defendant knowingly exhibited or transferred possession of material to (victim).
2. The material was obscene.
3. (Victim) was then under the age of 18.
4. The defendant was not a parent or guardian of (victim).

If the State has proved all of the elements, the defendant is guilty of Dissemination of Obscene Materials to a Minor. If the State has failed to prove all of the elements, the defendant is not guilty.

Authority

Iowa Code section [728.2](#)

2110.2 – Obscene Material – Definition. "Obscene material" is any material depicting or describing the genitals, sex acts, masturbation, excretory functions, or sadomasochistic abuse which the average person, taking the material as a whole and applying contemporary community standards with respect to what is suitable material for minors, would find appeals to the prurient interest and is patently offensive; and the material, taken as a whole, lacks serious literary, scientific, political, or artistic value.

Authority

Iowa Code section [728.1\(5\)](#)

2110.3 Prurient interest – Definition. “Prurient interest” is a shameful or morbid interest in nudity, sex or excretion.

2110.4 Community Standards. In determining community standards, you are entitled to draw on your own knowledge of the view of the average person in your community or vicinity.

Authority

Iowa Code section [728.2](#)
State v. Canal, [873 N.W.2d 528](#) (Iowa 2009)

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CHAPTER 2200

HABITUAL CRIMINAL

[2200.1](#) Habitual Criminal - Elements

[2200.2](#) Habitual Criminal - Form of Verdict

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2200.1 Habitual Criminal - Elements. (Defendant) was earlier found guilty of (name crime). The State has charged that the defendant is the same person who was convicted of (name crimes and dates). If the defendant has been convicted of these crimes, it will affect the defendant's sentence on the (name crime) charge.

The defendant denies [he] [she] is the person who was convicted of the other crimes. Therefore, the State must prove the following:

1. The defendant was convicted of (name crime) on the ____ day of _____, 19____, in the Court of _____.

(Set forth each separate conviction as charged and supported by the evidence.)

At the end of these instructions, I have attached a verdict form which requires you to find if the defendant has been convicted of the earlier crimes. Remember, the State must prove the defendant is the same person who was convicted of each earlier crime by evidence beyond a reasonable doubt. Your verdict as to each earlier conviction must be unanimous.

Authority

I.R.Crim.P. 2.6(5) - Rules of Criminal Procedure - Allegation Of Prior Conviction
I.R.Crim.P. 2.19(9) - Rules of Criminal Procedure - Trials Involving Prior Convictions
Iowa Code section 902.8 - Habitual Criminal Sentence
Iowa Code section 714.2(3) - Twice Previously Convicted of Theft
Iowa Code section 714.10(2) - Twice Previously Convicted of Fraudulent Practice
Iowa Code section 321J.2(2) (b)(c) - Operating a Motor Vehicle While Under The Influence, Second or Subsequent Offense
State v. Spoonmore, 323 N.W.2d 202 (Iowa 1982) - Court determines if crime is a "felony".
State v. Hanna, 277 N.W.2d 605 (Iowa 1979) - Proof of Prior Convictions
State v. Mason, 203 N.W.2d 292 (Iowa 1972) - Identification of Defendant

Comment

Note: If the defendant claims absence of counsel in prior convictions, burden shifts to the State to prove legal representation or voluntary waiver of representation only after defendant first introduces evidence that [he] [she] was not represented.

State v. Nelson, 234 N.W.2d 368 (Iowa 1975)
State v. Cameron, 167 N.W.2d 689 (Iowa 1969)

2200.2 Habitual Criminal - Form Of Verdict. Do you find the defendant is the person who was convicted of the crime of (name crime) on the ____ day of _____, 20____, in the _____ Court of _____?

Yes _____ No _____

(Foreman/Forewoman)

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Comment

Note: Set forth a separate interrogatory for each conviction charged and supported by the evidence.

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CHAPTER 2300

CONTROLLED SUBSTANCES

[2300.1](#) Manufacturing Or Delivering Controlled Substance - Elements

[2300.2](#) Possession Of Controlled Substance With Intent To Deliver Or Manufacture - Elements

[2300.3](#) Possession - Elements

[2300.4](#) Controlled Substance - Deliver - Manufacture - Definitions

[2300.5](#) Amount of Marijuana

[2300.6](#) Distribution To Persons Under 18 - Elements

[2300.7](#) Degrees Of Crime - Definition And Interrogatory

[2300.8](#) Manufacturing Methamphetamine for Delivery to a Minor - Elements

[2300.9](#) Distribution or Possession With Intent to Distribute Methamphetamine To a Minor
Elements

[2300.10](#) Keeping A Place For Using Or Selling Controlled Substances - Elements

[2300.11](#) Definition of On-Going Use

[2300.12](#) Sentence Enhancements Based on Fact Finding

DRUG STAMP TAX VIOLATIONS

[2310.1](#) Drug Stamp Tax Violation - Elements

[2310.2](#) Taxable substance - Definition

[2310.3](#) Dosage Unit – Definition

SPONSORING, PROMOTING, AIDING A GATHERING

[2320.1](#) Sponsoring A Gathering For Use Of A Controlled Substance - Elements

[2320.2](#) Sponsoring, Promoting, or Aiding A Gathering - Definition

DRUG PARAPHERNALIA

[2330.1](#) Possession Of Drug Paraphernalia - Elements

[2330.2](#) Drug Paraphernalia - Definition **12/01**

[2340.1](#) Ultimate User Defense (NEW 12/2016)

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2300.1 Manufacturing Or Delivering Controlled Substance - Elements. The State must prove both of the following elements of [Manufacturing] [Delivering] A Controlled Substance:

1. On or about the _____ day of _____, 20____, the defendant [manufactured] [delivered] (name of controlled substance).
2. The defendant knew that the substance [he] [she] [manufactured] [delivered] was (name of controlled substance).

If the State has proved both of these elements, the defendant is guilty of [Manufacturing] [Delivering] a Controlled Substance. You must then determine the amount of controlled substance, as explained in Instruction No. _____. If the State has failed to prove either of the elements, the defendant is not guilty of [Manufacturing] [Delivering] a Controlled Substance (and you will then consider the charge of _____ explained in Instruction No. _____).

Authority

Iowa Code section [124.401\(1\)](#)
State v. Osmundson, [241 N.W.2d 892](#) (Iowa 1976)

Comment

Note: If the defendant is charged with delivering marijuana, you may use Iowa Criminal Jury Instruction 2300.5 with this instruction.

Note: Use Iowa Criminal Jury Instruction 200.3 (Knowledge).

Note: Where the chemical name of the controlled substance is not generally known or recognized, circumstantial evidence may be used to prove defendant knew the nature of the material as some kind of a controlled substance. State v. Parrish, [502 N.W.2d 1](#) (Iowa 1993); State v. Reeves, [209 N.W.2d 18](#) (Iowa 1973).

Rev. 7/05

2300.2 Possession Of Controlled Substance With Intent To Deliver Or Manufacture - Elements. The State must prove all of the following elements of Possession Of A Controlled Substance With Intent To [Deliver] [Manufacture]:

1. On or about the _____ day of _____, 20____, the defendant knowingly possessed (name of controlled substance) (a controlled substance).
2. The defendant knew that the substance [he] [she] possessed was [name of controlled substance] [a controlled substance].
3. The defendant possessed the substance with the intent to [deliver] [manufacture] a controlled substance.

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If the State has proved all of these elements, the defendant is guilty of Possession of a Controlled Substance with Intent To [Deliver] [Manufacture]. If the State has failed to prove any one of the elements, the defendant is not guilty of Possession of a Controlled Substance with Intent to [Deliver] [Manufacture] (and you will then consider the charge of _____, explained in Instruction No. _____).

Authority

Iowa Code section [124.401\(1\)](#)
State v. Reeves, [209 N.W.2d 18](#) (Iowa 1973)

Comment

Note: If the defendant is charged with possession of marijuana with intent to deliver, you may use Iowa Criminal Jury Instruction 2300.5 with this instruction.

Use Iowa Criminal Jury Instruction 200.3 (Knowledge).
Use Iowa Criminal Jury Instruction 200.47 (Possession).
Use Iowa Criminal Jury Instruction 200.2 (Specific Intent).

Note: Where the chemical name of the controlled substance is not generally known or recognized, circumstantial evidence may be used to prove defendant knew the nature of the material as some kind of a controlled substance. *State v. Parrish*, [502 N.W.2d 1](#) (Iowa 1993); *State v. Reeves*, [209 N.W.2d 18](#) (Iowa 1973).

2300.3 Possession - Elements. The State must prove both of the following elements of Possession of a Controlled Substance:

1. On or about the _____ day of _____, 20____, the defendant knowingly or intentionally possessed [name of controlled substance] [a controlled substance].
2. The defendant knew that the substance [he] [she] possessed was [name of controlled substance] [a controlled substance].

If the State has proved both of these elements, the defendant is guilty of possession of a controlled substance. If the State has failed to prove either of the elements, the defendant is not guilty.

Authority

Iowa Code section [124.401\(3\)](#)
State v. Reeves, [209 N.W.2d 18](#) (Iowa 1973)

Comment

Note: Use Iowa Criminal Jury Instruction 200.3 (Knowledge).
Use Iowa Criminal Jury Instruction 200.47 (Possession).

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Note: Where the chemical name of the controlled substance is not generally known or recognized, circumstantial evidence may be used to prove defendant knew the nature of the material as some kind of a controlled substance. State v. Parrish, [502 N.W.2d 1](#) (Iowa 1993); State v. Reeves, [209 N.W.2d 18](#) (Iowa 1973).

2300.4 Controlled Substance - Deliver - Manufacture - Definitions. (Name of controlled substance) is a controlled substance.

"Deliver" or "delivery" means the actual, constructive, or attempted transfer of a substance from one person to another.

"Manufacture" means the production, preparation, growing, or processing of a controlled substance, either directly or by extraction from natural substances, or independently by means of chemical process, or both. It includes any packaging or repacking of the substance, or labeling or re-labeling of its container.

Authority

Iowa Code section [124.101\(7\)](#)

Iowa Code section [124.101\(16\)](#)

2300.5 Amount of Marijuana. If you find the defendant guilty of [delivering marijuana] [possessing with intent to deliver marijuana], you must then determine the amount of marijuana and whether it was offered for sale. The State has the burden of proving these matters beyond a reasonable doubt. You will report your decisions by answering the questions attached to these instructions. Your answers to these questions must be unanimous.

Authority

Iowa Code section [124.410](#)

State v. Monroe, [236 N.W.2d 24](#) (Iowa 1975)

Comment

Note: The following should appear on the appropriate verdict form:

1. More than one-half ounce _____.
2. One-half ounce or less _____.

If No. 2 is checked above, you must answer the following: Was the marijuana offered for sale by the defendant? Yes _____ No _____

Rev. 7/05

2300.6 Distribution To Persons Under 18 - Elements. The State must prove all of the following elements of distribution Of A Controlled Substance to Persons Under Age 18:

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1. On or about the ____ day of _____, 20____, the defendant delivered (name of controlled substance) to (name of recipient).
2. The defendant was 18 years or older at the time [he] [she] delivered the (name of controlled substance).
3. (Name of recipient) was under 18 years old at the time the defendant delivered (name of controlled substance) [and was at least three years younger than the defendant].*

If the State has proved all of the elements, the defendant is guilty of Distribution Of A Controlled Substance To Persons Under Age 18. If the State has failed to prove any one of the elements, the defendant is not guilty of Distribution Of A Controlled Substance To Persons Under Age 18 (and you will then consider the charge of _____ explained in Instruction No. _____).

Authority

Iowa Code section [124.406](#)

Comment

Note: *If the controlled substance is other than a narcotic or cocaine listed in Schedule I, II, III, then the additional element that the recipient must be at least three years younger than the defendant must be added. Likewise, this is true if the charge involves a controlled substance in Schedule IV or V.

If there is evidence that a narcotic or cocaine listed in Schedule I or II was distributed in or on or within 1000 feet of a public or private elementary or secondary school, or in or on real property comprising a public park, you should add the following to the appropriate verdict form: "If your verdict is guilty, do you find the State proved the defendant distributed the (name of controlled substance) in or on [or within 1000 feet of a public or private elementary or secondary school ground] [real property comprising a public park]?"

Yes ____.

No ____.

2300.7 Degrees of Crime - Definition And Interrogatory. If you find the defendant guilty of [Delivering] [Manufacturing] [Conspiring To Deliver] [Conspiring To Manufacture] [Possession With Intent To Manufacture] (name of controlled substance), you must then determine the amount of the mixture or substance containing a detectable amount of the (name of controlled substance). I have attached a question which must be answered, and by so doing, you will determine the degree or seriousness of the crime. In answering the question, the State must prove the amount of mixture or substance containing a detectable amount of (name of controlled substance). You will check the blank next to the appropriate amount on the verdict form.

Comment

Caveat: The list of possible answers on the interrogatory should conform to the evidence so that the jury does not have an option of checking a blank which has no basis in the record.

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Note: The following would appear on the verdict form:

"We, the jury, find the amount of mixture or substance containing a detectable amount of (name of controlled substance) to be:

1. More than (set out appropriate quantity of controlled substance in issue containing a detectable amount) of (name of controlled substance)."
2. More than (set out appropriate quantity of controlled substance in issue containing a detectable amount) of (name of controlled substance) but not more than (set out appropriate quantity of controlled substance in issue containing a detectable amount) of (name of controlled substance)."
3. (Set out appropriate quantity of controlled substance in issue containing a detectable amount) of (name of controlled substance) or less."

Authority

Iowa Code section [124.401](#)

2300.8 Manufacturing Methamphetamine for Delivery to a Minor - Elements. The State must prove the following elements of Manufacturing Methamphetamine For Delivery to a Minor:

1. On or about the _____ day of _____, _____, the defendant manufactured a material, compound, mixture, preparation, or substance that contained any detectable amount of methamphetamine for delivery to (name of recipient).
2. The defendant knew that the substance [he][she] manufactured contained a detectable amount of methamphetamine.
3. The defendant was 18 years of older at the time [he][she] manufactured the material, compound, mixture, preparation, or substance that contained any detectable amount of methamphetamine.
4. (Name of Recipient) was under 18 years old at the time.

If the State has proved all of these elements, the defendant is guilty of Manufacturing Methamphetamine For Delivery to a Minor. If the State has failed to prove any one of the elements, the defendant is not guilty of Manufacturing Methamphetamine For Delivery to a Minor (and you will then consider the charge of _____ explained in Instruction No. _____).

Authority

Iowa Code section [124.401D\(1\)](#), added by H.F. 573, Acts of the 78th General Assembly, 1999.

Comment

Note: Use Iowa Criminal Jury Instruction 200.3 (Knowledge).

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2300.9 Distribution or Possession With Intent to Distribute Methamphetamine To a Minor - Elements. The State must prove all of the following elements of [Distribution][Possession With Intent to Distribute] Methamphetamine to a Person Under Age 18:

1. On or about the _____ day of _____, _____, the defendant [delivered][possessed with the intent to deliver] a material, compound, mixture, preparation, or substance that contained any detectable amount of methamphetamine to (name of recipient).
2. The defendant was 18 years or older at the time [he] [she] [delivered][possessed with the intent to deliver] the material, compound, mixture, preparation, or substance.
3. (Name of recipient) was under 18 years old at the time the defendant delivered the material, compound, mixture, preparation, or substance.

If the State has proved all of the elements, the defendant is guilty of [Distribution] [Possession With Intent to Distribute] Methamphetamine to a Person Under Age 18. If the State has failed to prove any of the elements, the defendant is not guilty of [Distribution] [Possession With Intent to Distribute] Methamphetamine to a Person Under Age 18 (and you will then consider the charge of _____ explained in Instruction No. _____).

Authority

Iowa Code section [124.401D\(2\)](#), added by H.F. 573, Acts of the 78th General Assembly, 1999.

Comment

Note: Use Iowa Criminal Jury Instruction 200.3 (Knowledge); 200.47 (Possession); and/or 200.2 (Specific Intent).

2300.10 Keeping a Place for Using or Selling Controlled Substances - Elements. The State must prove the following elements of Keeping a Place for Using or Selling Controlled Substances:

1. On or about _____, 20____. The defendant knowingly kept or permitted another _____ to keep or maintain a [premises] [store] [shop] [warehouse] [dwelling] [temporary or permanent building] [vehicle] [boat] [aircraft] [temporary or permanent structure or place].
2. The defendant knew a substantial purpose for the keeping or maintaining of such place was for the _____ on-going storage, possession, use or sale of one or more controlled substances.

If the State has proved each of these elements, the defendant is guilty of Keeping a Place for Using or Selling Controlled Substances. If the State has failed to prove any of the elements, the defendant is not guilty.

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Iowa Code section [124.402\(1\)\(e\)](#)
State v. Westeen, [591 N.W.2d 203](#) (Iowa 1999)

Comment

If joint criminal conduct, aiding and abetting or conspiracy are alleged by the State, include the appropriate language in the elements.

2300.11 Definition Of On-Going Use. Under element 2 of Instruction No. ____, the State must prove that a substantial purpose of the property's users was for the on-going storage, possession, use or sale of controlled substances. Such use of the property must be continuous to some degree; however, the State need not prove the place was used exclusively for the purpose of on-going storage, possession, use or sale of controlled substances. Incidental use of the place for controlled substance related activity, or a single, isolated occurrence of controlled substance related activity is not sufficient.

If there is other evidence of continuity of the prohibited use, then the State is not required to prove more than a single specific incident of storage, possession, use or sale of controlled substances in or from the property.

Authority

State v. Westeen, [591 N.W.2d 203](#), 209 (Iowa 1999)

2300.12 Sentence Enhancements Based on Fact Finding. If you find the defendant guilty of [Delivering][Manufacturing][Conspiring to Deliver][conspiring to Manufacture] (name of controlled substance) , you must then determine whether [the defendant had a firearm in [his][her] immediate possession or control] [the defendant's acts occurred upon certain real estate][the defendant manufactured methamphetamine in the presence of a minor]. Attached is a question which must be answered. In answering the question, the State must prove [the presence of a weapon/offensive weapon in the immediate possession or control of the defendant][the defendant's acts occurred upon certain real estate][the defendant manufactured methamphetamine in the presence of a minor].

Comment

The following should appear on the verdict form. Use the alternative charged and supported by the evidence.

"If your verdict is guilty, do you find that a [firearm][offensive weapon] was in such close proximity to the defendant as to enable [him][her] to claim immediate dominion over the firearm?
Yes _____
No _____."

Authority

Iowa Code section [124.401\(1\)\(d\), \(e\)](#)
State v. Eickelberg, [574 N.W. 2d 1](#) (Iowa 1997)

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Apprendi v. New Jersey, ____ U.S. ____, [120 S.Ct. 2348](#), 147 L. Ed. 2d 435 (2000)

“If your verdict is guilty, do you find that the defendant’s acts occurred [in or on, or within one thousand feet of the real property comprising a public or private elementary or secondary school] [in or on a public park, public swimming pool, public recreation center][on a marked school bus]?”

Yes _____
No _____.”

Authority

Iowa Code section [124.401A](#)
State v. Ortiz, __ N.W. 2d (Iowa, Oct. 2000)
Apprendi v. New Jersey, ____ U.S. ____, [120 S.Ct. 2348](#), [147 L.Ed. 2d 435](#) (2000)

“If your verdict is guilty, do you find that the defendant manufactured methamphetamine, its salts, isomers, or salts of its isomers when [a minor was physically present during the activity] [the activity was conducted in the residence of a minor] [the activity was conducted in a building where minors can reasonably be expected to be present] [the activity was conducted in a room offered to the public for overnight accommodation] [the activity was conducted in any multiple-unit residential building] ?

Yes _____
No _____.”

Authority

Iowa Code section [124.401C](#)
Apprendi v. New Jersey, ____ U.S. , [120 S.Ct. 2348](#), [147 L. Ed. 2d 435](#) (2000)

Comment

Note: Use Iowa Criminal Jury Instruction 2300.4 (Manufacture).

2310.1 Drug Stamp Tax Violation - Elements. The State must prove each of the following elements of Drug Stamp Tax Violation:

1. On or about the ____ day of _____, 20____, the defendant knowingly [possessed] [distributed] [offered to sell] a taxable substance as defined in Instruction No. ____.
2. Defendant [[shipped] [transported] [imported] into this State]] [[acquired] [purchased] [possessed] [manufactured] [produced] in this State]]:
 - a. Seven or more grams of [a taxable substance, (name of substance)]; [a mixture of marijuana and other taxable substance(s), (name(s) of substance(s)].

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- b. Forty-two and one-half grams or more of a substance consisting of or containing marijuana.
 - c. One or more unprocessed marijuana plants.
 - d. Ten or more dosage units of a taxable substance not sold by weight.
3. The taxable substance that defendant [possessed] [distributed] [offered to sell] did not have permanently affixed to it a stamp, label or other official indication of payment of the state tax imposed on the substance.

If the State has proved each of these elements, the defendant is guilty of violating the Iowa Drug Stamp Tax law. If the State has failed to prove one or more of the elements, the defendant is not guilty (and you will then consider the charge of _____, as explained in Instruction No. ____).

Authority

Iowa Code section [453B.12](#)
Iowa Code section [453B.1\(3\)](#)

Comment

Note: Use Iowa Criminal Jury Instruction 200.3 (Knowledge)

Use Iowa Criminal Jury Instruction 200.47 (Possession).

Note: Under Element 2, use only one of alternatives (a), (b), (c), or (d) as supported by the evidence. If (d) is used, use Iowa Criminal Jury Instruction 2310.3.

Note: Possession of a Controlled Substance, Delivery of a Controlled Substance, or Manufacture of a Controlled Substance may be included offenses. See *State v. Gallup*, [500 N.W.2d 437](#) (Iowa 1993); *State v. Franzen*, [495 N.W.2d 714](#) (Iowa 1993); *State v. Lange*, [495 N.W.2d 105](#) (Iowa 1992); Iowa Criminal Jury Instructions 2300.1, 2300.3.

6/01

2310.2 Taxable Substance - Definition. "Taxable Substance" means a controlled substance, a counterfeit substance, a simulated controlled substance, or marijuana, or a mixture of materials that contains a controlled substance, counterfeit substance, simulated controlled substance or marijuana.

_____ is a [counterfeit] [simulated] controlled substance.

Authority

Iowa Code section [453B.1\(9\)](#)

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Comment

If there is a fact issue whether the substance involved is a controlled substance, simulated controlled substance or marijuana, the appropriate definition in Iowa Code Section 124.401 should be used in place of the second paragraph.

2310.3 Dosage Unit - Definition. As used in element number 2 of Instruction No. _____, "dosage unit" means the unit of measurement in which a substance is dispensed to the ultimate user. It includes, but is not limited to a pill, capsule or microdot.

Authority

Iowa Code section [453B.1\(6\)](#)

Sponsoring, Promoting, or Aiding a Gathering

2320.1 Sponsoring A Gathering For Use Of A Controlled Substance - Elements. The State must prove the following elements of Sponsoring A Gathering For Use Of A Controlled Substance:

1. On or about the _____ day of _____ 20 _____, the defendant sponsored, aided or promoted a gathering of two or more persons, as explained in Instruction No. _____; and
2. The defendant did so with the knowledge or intent that a controlled substance would be distributed, used or possessed at the gathering.

If the State has proved both elements, the defendant is guilty of Sponsoring A Gathering For Use Of A Controlled Substance. If the State has failed to prove either of the elements, then the defendant is not guilty of Sponsoring A Gathering For The Use Of A Controlled Substance.

Authority

Iowa Code section [124.407](#)

State v. Carter, [582 N.W.2d 164](#) (Iowa 1998)

State v. Cartee, [577 N.W.2d 649](#) (Iowa 1998)

State v. Bush, [518 N.W.2d 778](#) (Iowa 1994)

2320.2 Sponsoring, Promoting, Or Aiding A Gathering - Definition. A "gathering" is a coming together of two or more persons in one place, usually for a common purpose.

To "sponsor, aid or promote" a gathering means to actively assist, arrange, support, or take responsibility for it.

Authority

Iowa Code section [124.414\(2\), \(3\)](#)

State v. Cartee, [577 N.W.2d 649](#) (Iowa 1998)

State v. Bush, [518 N.W.2d 778](#) (Iowa 1994)

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Drug Paraphernalia

2330.1 Possession Of Drug Paraphernalia - Elements. The State must prove the following element of Possession Of Drug Paraphernalia:

1. On or about the _____ day of _____ 20____, defendant knowingly or intentionally [manufactured] [delivered] [sold] [possessed] drug paraphernalia as defined in Instruction No. _____.

If the State has proved this element, the defendant is guilty of Possession Of Drug Paraphernalia. If the State has failed to prove this element, the defendant is not guilty of Possession Of Drug Paraphernalia.

Authority

Iowa Code section [124.414 \(2\)](#)

Comment

Note: Iowa Criminal Instruction 200.2 (Specific Intent) will have to be used as will Iowa Criminal Jury Instruction 200.3 (Knowledge).

2330.2 Drug Paraphernalia - Definition. "Drug paraphernalia" is equipment or materials that one intends to use, or knows is intended to be used, primarily for any of the following purposes:

1. To manufacture a controlled substance;
2. To inject, ingest, inhale, or otherwise introduce into the human body a controlled substance;
3. To test the strength, effectiveness, or purity of a controlled substance;
4. To enhance the effect of a controlled substance.

However, drug paraphernalia does not include any equipment or material used in combination with the lawful use of a controlled substance, or the otherwise lawful use of that equipment or material.

Authority

Iowa Code sections [124.414\(1\)\(a\)](#), [124.414\(1\)\(b\)](#)

Comment

Note: Iowa Criminal Instruction 200.2 (Specific Intent) will have to be used as will Iowa Criminal Jury Instruction 200.3 (Knowledge).

12/01

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2340.1 – Ultimate User Defense. The defendant claims that [he] [she] is not guilty under an “Ultimate User” defense. An Ultimate User is a person who has lawfully obtained and possesses a prescription drug for the person’s own use or for the use of a member of the person’s household.

If the State has proven any one of the following elements, then the defendant was not an Ultimate User:

1. The controlled substance was not obtained pursuant to a valid prescription;
2. The defendant did not come into lawful possession of the controlled substance; or
3. The defendant did not lawfully possess the controlled substance for his or her own lawful use pursuant to a valid prescription or for the lawful use of a member of the defendant’s household pursuant to a valid prescription.

Authority

Iowa Code section [124.101\(30\)](#)

Iowa Code section [124.401\(5\)](#)

Iowa Code section [155A.3](#)

State vs. Gibb, [239 N.W.2d 866](#) (Iowa 1976); see also State v. Gallardo, [871 N.W.2d 703](#), No. 14-0350, 2015 Iowa App. LEXIS 803, 2015 WL 5278948 (Iowa Ct. App., Sept. 10, 2015)

Comment

The Ultimate User defense is not applicable unless the defendant has produced sufficient evidence of (1), (2), and (3), above, to raise the defense. In that event the State must prove that the defense does not apply, and the State’s duty to negate the defense should be added as an element of the offense.

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CHAPTER 2400

WEAPONS

[2400.1](#) Possession Of Offensive Weapon - Elements

[2400.2](#) Offensive Weapon - Definition

[2400.3](#) Going Armed With A Concealed Weapon - Elements

[2400.4](#) Going Armed With A Pistol/Revolver/Loaded Firearm Within City Limits - Elements

[2400.5](#) Going Armed - Definition

[2400.6](#) Carrying Pistol/Revolver In Vehicle - Elements

[2400.7](#) Receipt, Transportation Or Possession Of Firearm Or Offensive Weapon By A Felon

[2400.8](#) Firearm - Definition

[2400.9](#) Dominion And Control - Definition

[2400.10](#) Giving False Information When Acquiring A Weapon

[2400.11](#) Trafficking In Stolen Weapons Used In Commission Of A Public Offense - Elements

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2400.1 Possession Of Offensive Weapon - Elements. The State must prove the following elements of Possession Of An Offensive Weapon:

1. On or about the ____ day of _____, 20 __, the defendant possessed (weapon).
2. The defendant knew [he] [she] possessed (weapon).
3. (Weapon) was an offensive weapon.

If the State has proved all of the elements, the defendant is guilty of Possession Of An Offensive Weapon. If the State has failed to prove any one of the elements, the defendant is not guilty.

Authority

Iowa Code section [724.3](#)

Comment

Note: Use Iowa Criminal Jury Instruction 200.3 (Knowledge)
Use Iowa Criminal Jury Instruction 200.47 (Possession)

Note: The term "knowingly" in the statute merely requires that the defendant had knowledge that [he] [she] possessed the weapon within the general meaning of such term. The State does not have to prove that [he] [she] knew that the weapon was "offensive" as statutorily defined.

State v. Leisinger, 364 N.W.2d 200 (Iowa 1985)
State v. Winders, 366 N.W.2d 193 (Iowa 1985)

2400.2 Offensive Weapon - Definition. An offensive weapon is (set forth applicable statutory definition in Section 724.1).

Authority

Iowa Code section [724.1](#)

2400.3 Going Armed With A Concealed Weapon - Elements. The State must prove the following elements of Going Armed With A Concealed Weapon:

1. On or about the ____ day of _____, 20 __, the defendant was armed with a (weapon).
2. The (weapon) was concealed on or about the defendant's person.
3. The (weapon) was a dangerous weapon.

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If the State has proved all of the elements, the defendant is guilty of Going Armed With A Concealed Weapon. If the State has failed to prove any one of the elements, the defendant is not guilty.

Authority

Iowa Code section [724.4](#)

Comment

Note: Use Iowa Criminal Jury Instruction 200.21 (Dangerous Weapon)
Use Iowa Criminal Jury Instruction 2400.5 (Going Armed)

Note: If the defendant asserts one of the statutory exceptions set forth in Iowa Code section [724.4](#), add the appropriate element. State v. Erickson, [362 N.W.2d 528](#) (Iowa 1985).

Note: A weapon is concealed if it is not "discernible by ordinary observation". Concealment does not depend on a defendant's subjective intent. State v. Newsom, [563 N.W. 2d 618](#) (Iowa 1997). If concealment is an issue, an instruction defining the term may be given.
10/97

2400.4 Going Armed With A Pistol/Revolver/Loaded Firearm Within City Limits - Elements. The State must prove both of the following elements of Going Armed With A [Pistol] [Revolver] [Loaded Firearm]:

1. On or about the ____ day of _____, 20____, the defendant was armed with a [pistol] [revolver] [loaded firearm].
2. The defendant was within the city limits of (city).

If the State has proved both of the elements, the defendant is guilty of Going Armed With A [Pistol] [Revolver] [Loaded Firearm] Within City Limits. If the State has failed to prove either of the elements, the defendant is not guilty.

Authority

Iowa Code section [724.4](#)
State v. Erickson, [362 N.W.2d 528](#) (Iowa 1985)

Comment

Note: Use Iowa Criminal Jury Instruction 2400.5 (Going Armed)

If the defendant asserts one of the statutory exceptions set forth in Iowa Code section 724.4, add the appropriate element. State v. Erickson, [362 N.W.2d 528](#) (Iowa 1985).

2400.5 Going Armed - Definition. To "go armed" means the defendant was aware of the weapon and it was in a place where it was readily accessible to the defendant.

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Authority

Iowa Code section 724.4
State v. Erickson, 362 N.W.2d 528 (Iowa 1985)

2400.6 Carrying Pistol/Revolver In Vehicle - Elements. The State must prove both of the following elements of Carrying [Pistol] [Revolver] In Vehicle:

1. On or about the _____ day of _____, 20____, the defendant knowingly [carried] [transported] a [pistol] [revolver] in a vehicle.
2. The [pistol] [revolver] was:
 - a. loaded; or
 - b. unloaded and not inside a [closed and fastened container] [securely wrapped package] which is too large to be concealed on the person; or
 - c. unloaded and not inside a [closed and fastened container] [securely wrapped package] which is too large to be concealed [on the person] [inside a cargo or luggage compartment] where the [pistol] [revolver] will not be readily accessible to any person riding in the [vehicle] [common carrier].

If the State has proved both of the elements, the defendant is guilty of Carrying A [Pistol] [Revolver] In Vehicle. If the State has failed to prove either of the elements, the defendant is not guilty.

Authority

Iowa Code section 724.4
State v. Krana, 246 N.W.2d 293 (Iowa 1976)

Comment

Note: Use Iowa Criminal Jury Instruction 2400.6 (Knowledge)

If the defendant asserts one of the statutory exceptions set forth in Iowa Code section 724.4, add the appropriate element. State v. Erickson, 362 N.W.2d 528 (Iowa 1985).

2400.7 Receipt, Transportation Or Dominion And Control Of Firearm Or Offensive Weapon By A Felon. The State must prove both of the following elements of [Possession] [Receipt] [Transportation] [Dominion And Control] Of [Firearm] [Offensive Weapon] By A Felon:

1. On or about the _____ day of _____, 20____, the defendant knowingly [possessed] [received] [transported] [caused to be transported] [had under [his] [her] dominion and control] a [firearm] [offensive weapon].

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2. The defendant was previously convicted of (name of felony).

If the State proved both of the elements, the defendant is guilty of [Possession] [Receipt] [Transportation] [Dominion And Control] Of [Firearm] [Offensive Weapon] By A Felon. If the State has failed to prove either of the elements, the defendant is not guilty.

Authority

Iowa Code section [724.26](#)

Comment

Note: The judge determines whether or not the offense was a felony as a matter of law under Iowa Code section [724.25\(1\)](#).

If the charge includes the “possession” alternative, Instruction 200.47 (Possession) should be given.

If the defendant asserts one of the statutory exceptions set forth in Iowa Code section 724.27, add the appropriate element.

12/06

2400.8 Firearm - Definition. A "firearm" is any instrument which [will] [is designed to] discharge a [shot] [shell] [projectile][bullet] by the force of a chemical explosive such as gunpowder.

A firearm is a dangerous weapon.

Authority

State v. Pinckney, [306 N.W.2d 726](#) (Iowa 1981)

2400.9 Dominion And Control – Definition. "Dominion and control" means ownership or right to the [firearm] [offensive weapon] and the power or authority to manage, regulate or oversee its use.

2400.10 Giving False Information When Acquiring A Weapon. The State must prove both of the following elements of Giving False Information When Acquiring A Weapon:

1. On or about the ____ day of _____, 20____, the defendant sought to acquire a [pistol] [revolver] from (name).

2. In seeking to acquire the [pistol] [revolver], the defendant knowingly:

a. Gave a false name.

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- b. Presented false identification.
- c. Gave false material information.

If the State has proved both of the elements, the defendant is guilty of Giving False Information When Acquiring A Weapon. If the State has failed to prove either of the elements, the defendant is not guilty.

Authority

Iowa Code section [724.21](#)

2400.11 Trafficking In Stolen Weapons Used In Commission Of A Public Offense - Elements. The State must prove all of the following elements of trafficking in stolen weapons in commission of a public offense:

1. On or about the ____ day of _____, 20____, the defendant knowingly [transferred] [acquired possession of] [facilitated the transfer of] a firearm.
2. The firearm was stolen.
3. The firearm was used in the commission of (name of public offense).

If the State has proved all of the elements, the defendant is guilty of Trafficking in Stolen Weapons Used in Commission of a Public Offense. If the State has failed to prove only element number 3, the defendant is guilty of Trafficking in Stolen Weapons. If the State has failed to prove either element 1 or element 2, the defendant is not guilty.

Authority

Iowa Code section [724.16A](#)

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CHAPTER 2500

OWI and TRAFFIC OFFENSES

[2500.1](#) OWI - Elements - Under The Influence, Concentration Of .10 And Controlled Substance

[2500.2](#) OWI - Elements - No Test

[2500.3](#) OWI - Elements - Test Only

[2500.4](#) OWI - Presumption From Chemical Test

[2500.5](#) OWI - Definition - Under The Influence

[2500.6](#) OWI - Operator - Definition

[2500.7](#) OWI - Refusal To Take Test

[2500.8](#) OWI - Method Of Operation

[2510.1](#) Operating a Motorboat or Sailboat While Intoxicated – Elements.

[2510.2](#) Operating a Motorboat or Sailboat While Intoxicated and Causing Serious Injury Elements.

[2510.3](#) Operating a Motorboat or Sailboat While Intoxicated and Resulting in Death – Elements.

[2510.4](#) Operating a Boat While Intoxicated – Definition – Navigable waters.

[2510.5](#) Operating a Boat While Intoxicated – Definition – Motorboat.

[2510.6](#) Operating a Boat While Intoxicated – Definition – Sailboat.

[2510.7](#) Operating a Boat While Intoxicated – Definition – Vessel.

[2510.8](#) Operating a Boat While Intoxicated – Definition – Watercraft.

[2510.9](#) Operating a Boat While Intoxicated – Definition – Operate.

[2510.10](#) Operating a Boat While Intoxicated – Definition – Use.

[2510.11](#) Operating a Boat While Intoxicated – Definition – Operator.

[2510.12](#) Operating a Boat While Intoxicated – Cause of Death or Serious Injury.

[2510.13](#) Operating a Boat While Intoxicated – Prescription Drug Affirmative Defense.

[2520.1](#) Leaving the Scene of an Accident Resulting in Injury (New 12/2016 – Rev. 6/2017)

[2520.2](#) Leaving the Scene of an Accident Resulting in Death (New 6/2017)

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2500.1 OWI - Elements - Under the Influence, Concentration Of .10 And Controlled Substance. The crime of Operating While Intoxicated can be committed in three ways: (1) by operating a motor vehicle while under the influence of [alcohol] [drugs] [combination of alcohol and drugs], (2) by operating a motor vehicle while having an alcohol concentration of .08 or more, and/or (3) by operating a motor vehicle while having a measurable amount of a controlled substance in the person.

The State must prove both of the following elements of Operating While Intoxicated:

1. On or about the _____ day of _____, 20____, the defendant operated a motor vehicle.
2. At that time, the defendant either: (a) was under the influence of [alcohol] [drugs] [a combination of alcohol and drugs], or (b) had an alcohol concentration of .08 or more, or (c) had any amount of a controlled substance present, as measured in the defendant's blood or urine.

(It is not necessary for all jurors to agree to just (a), (b), or (c). It is only necessary that all jurors agree to at least one of these three alternatives.)

If the State has proved both of the elements, the defendant is guilty. If the State has failed to prove either of the elements, the defendant is not guilty.

Authority

Iowa Code section 321J2(1)(a)(b)
State v. Bratthauer, [354 N.W.2d 774](#) (Iowa 1984)

Comment

Note: For the minimum levels of a controlled substance required for proof of a detectable or measured amount, see 661 I.A.C. 7.9 (321J).

Rev. 06/09

2500.2 OWI - Elements - No Test. The State must prove both of the following elements of Operating While Intoxicated:

1. On or about the _____ day of _____, 20____, the defendant operated a motor vehicle.
2. At that time, the defendant was under the influence of [alcohol] [drugs] [combination of alcohol and drugs].

If the State has proved both of the elements, the defendant is guilty. If the State has failed to prove either of the elements, the defendant is not guilty.

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Authority

Iowa Code section 321J.2(1)(a)

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2500.3 OWI - Elements - Test Only. The State must prove both of the following elements of Operating while Intoxicated:

1. On or about the _____ day of _____, 20____, the defendant operated a motor vehicle.
2. At that time, the defendant had an alcohol concentration of .08 or more.

If the State has proved both of the elements, the defendant is guilty. If the State has failed to prove either of the elements, the defendant is not guilty.

Authority

Iowa Code section 321J.2(1)(b)

Rev. 06/09

2500.4 OWI - Presumption From Chemical Test. The alcohol concentration established by an analysis of a sample of a person's [blood] [breath] [urine] withdrawn within two hours after the person operated a motor vehicle is presumed to be the alcohol concentration at the time [he] [she] operated the motor vehicle.

If you find the defendant was operating a motor vehicle and a sample of [his] [her] [blood] [breath] [urine] was withdrawn within two hours after that operation, you may, but are not required to, conclude that the alcohol concentration established by the analysis of the sample was the alcohol concentration at the time [he] [she] operated the motor vehicle.

Authority

Iowa Code section 321J.2(7)

2500.5 OWI - Definition - Under The Influence. A person is "under the influence" when, by drinking liquor and/or beer, one or more of the following is true:

1. [His] [Her] reason or mental ability has been affected.
2. [His] [Her] judgment is impaired.
3. [His] [Her] emotions are visibly excited.
4. [He] [She] has, to any extent, lost control of bodily actions or motions.

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Authority

State v. Berch, [222 N.W.2d 741](#), 747 (Iowa 1974)
State v. Stout, [247 Iowa 453](#), 457, [74 N.W.2d 208](#) (1956)

2500.6 OWI - Operator - Definition. The term "operate" means the immediate, actual physical control over a motor vehicle that is in motion and/or has its engine running.

Authority

State v. Weaver, [405 N.W.2d 852](#) (Iowa 1987)
State v. Hopkins, [576 N.W.2d 374](#) (Iowa 1998)

7/06

2500.7 OWI - Refusal To Take Test. The defendant was asked to give a [breath] [blood] [urine] sample so it could be analyzed to determine the percent of alcohol in [his] [her] blood. [The defendant refused.] [It is alleged the defendant refused.]

A person is not required to give a sample of any bodily substance; however, you may consider a refusal in reaching your verdict.

Authority

Iowa Code section [321J.16](#)

2500.8 OWI - Method Of Operation. The State does not need to prove how the defendant was driving. However, you may consider [his] [her] manner of driving in deciding if [he] [she] was under the influence of alcohol.

Authority

State v. Langlet, [283 N.W.2d 330](#) (Iowa 1979)
State v. Hepburn, [270 N.W.2d 629](#) (Iowa 1978)

2510.1 Operating a Motorboat or Sailboat While Intoxicated – Elements.

The State must prove the following elements of Operating a [Motorboat] [Sailboat] While Intoxicated:

1. On or about the ____ day of _____, 20____, the defendant operated a [motorboat] [sailboat].
2. The defendant operated the [motorboat] [sailboat] on navigable waters.

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3. At the time, defendant was (a) under the influence of [alcohol] [drugs] [combination of alcohol and drugs]; or (b) had an alcohol concentration of .10 or more; or (c) had a controlled substance present in [his] [her] person as measured in [his] [her] blood or urine. It is only necessary that all jurors agree to at least one of these three alternatives.

If the State has proved all of the above elements, the defendant is guilty of operating a [motorboat] [sailboat] while intoxicated. If the State has failed to prove elements 1, 2 or 3, then the defendant is not guilty.

Authority

Iowa Code section [462A.14\(1\)](#)

Comment

Modify paragraph three of the instruction to fit the facts. For example, if no test was administered, then use only (a).

Note: Use Instruction 2500.4 Presumption from a chemical test.

Note: Use Instruction 2500.5 Definition of under the influence.

Note: Use Instruction 2500.7 Refusal to take a test.

6/01

2510.2 Operating a Motorboat or Sailboat While Intoxicated and Causing Serious Injury – Elements. The State must prove the following elements of Operating a [Motorboat] [Sailboat] While Intoxicated Resulting in Serious Injury:

1. On or about the ____ day of _____, 20____, the defendant operated a [motorboat] [sailboat].
2. The defendant operated the [motorboat] [sailboat] on navigable waters.
3. At the time, defendant was (a) under the influence of [alcohol] [drugs] [a combination of alcohol and drugs]; or (b) had an alcohol concentration of .10 or more; or (c) had a controlled substance present in [his] [her] person as measured in [his] [her] blood or urine. It is only necessary that all jurors agree to at least one of these three alternatives.
4. Defendant caused the serious injury of another person other than [himself] [herself].

If the State has proved all of these elements, the defendant is guilty of operating a [motorboat] [sailboat] while intoxicated resulting in the serious injury of another. If the State has failed to prove element number 4, the defendant is not guilty of the offense of operating a [motorboat] [sailboat] while intoxicated resulting in the serious injury of another and you shall consider the offense of operating a [motorboat] [sailboat] while intoxicated as explained in Instruction No. _____. If the State has failed to prove elements 1, 2 or 3, then the defendant is not guilty.

Authority

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Iowa Code section [462A.14\(2\)\(d\)](#)

Comment

Modify paragraph three of the instruction to fit the facts. For example, if no test was administered, then use only (a).

Note: Use Instruction 2500.4 Presumption from a chemical test.

Note: Use Instruction 2500.5 Definition of under the influence.

Note: Use Instruction 2500.7 Refusal to take a test.

Note: Use Instruction 200.22 Serious injury.

6/01

2510.3 Operating a Motorboat or Sailboat While Intoxicated and Resulting in Death – Elements.

The State must prove the following elements of Operating a [Motorboat] [Sailboat] While Intoxicated and Resulting in Death:

1. On or about the ____ day of _____, 20____, the defendant operated a [motorboat] [sailboat].
2. The defendant operated the [motorboat] [sailboat] on navigable waters.
3. At the time, defendant was (a) under the influence of [alcohol] [drugs] [combination of alcohol and drugs]; or (b) had an alcohol concentration of .10 or more; or (c) had a controlled substance present in [his] [her] person as measured in [his] [her] blood or urine. It is only necessary that all jurors agree to at least one of these three alternatives.
4. Defendant caused the death of another person other than [himself] [herself].

If the State has proved all of the above elements, the defendant is guilty of operating a [motorboat] [sailboat] while intoxicated resulting in the death of another. If the State has failed to prove element number 4, the defendant is not guilty of the offense of operating a [motorboat] [sailboat] while intoxicated resulting in the death of another and you shall consider the offense of operating a [motorboat] [sailboat] while intoxicated as explained in Instruction No. _____. If the State has failed to prove elements 1, 2 or 3, then the defendant is not guilty.

Authority

Iowa Code section [462A.14\(2\)\(e\)](#)

Comment

Modify paragraph three of the instruction to fit the facts. For example, if no test was administered, then use only (a).

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Note: Use Instruction 2500.4 Presumption from a chemical test.
Note: Use Instruction 2500.5 Definition of under the influence.
Note: Use Instruction 2500.7 Refusal to take a test.

6/01

2510.4 Operating a Boat While Intoxicated – Definition – Navigable Waters.

“Navigable waters” means all lakes, rivers, and streams, which can support a vessel capable of carrying one or more persons during a total of six months in one of every ten years.

Authority

Iowa Code section [462A.2\(20\)](#)

6/01

2510.5 Operating a Boat While Intoxicated – Definition – Motorboat.

“Motorboat” means any vessel propelled by an inboard, inboard-outdrive, or outboard engine, whether or not such engine is the principal source of propulsion.

Authority

Iowa Code section [462A.2\(19\)](#)

6/01

2510.6 Operating a Boat While Intoxicated – Definition – Sailboat.

“Sailboat” means any watercraft operated with a sail.

Authority

Iowa Code section [462A.2\(31\)](#)

6/01

2510.7 Operating a Boat While Intoxicated – Definition – Vessel.

“Vessel” means every description of watercraft, other than a seaplane, used or capable of being used as a means of transportation on water or ice.

Authority

Iowa Code section [462A.2\(37\)](#)

6/01

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2510.8 Operating a Boat While Intoxicated – Definition – Watercraft.

“Watercraft” means any vessel which floats upon water and is capable of carrying one or more persons. Ice boats are watercraft.

Authority

Iowa Code section [462A.2\(40\)](#)

6/01

2510.9 Operating a Boat While Intoxicated – Definition – Operate.

“Operate” means to navigate or otherwise use a vessel or motorboat.

Authority

Iowa Code section [462A.2\(22\)](#)

6/01

2510.10 Operating a Boat While Intoxicated – Definition – Use.

“Use” means to operate, navigate, or employ a vessel. A vessel is in use whenever it is upon the water.

Authority

Iowa Code section [462A.2\(36\)](#)

6/01

2510.11 Operating a Boat While Intoxicated – Definition – Operator.

“Operator” means a person who operates or is in actual physical control of a vessel.

Authority

Iowa Code section [462A.2\(23\)](#)

6/01

2510.12 Operating a Boat While Intoxicated – Cause of Death or Serious Injury.

Concerning element number ____ of Instruction No. _____, the defendant caused the [death of] [serious injury to] (victim), if the defendant’s act(s) caused or directly contributed to (victim’s) [death] [serious injury].

Authority

Iowa Code section [462A.14\(d\), \(e\)](#)

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Comment

The instruction is patterned after Instruction 700.11 (cause of death) in the homicide context.

Note: Add the following paragraph when appropriate:

“However, if you find that, in the treatment of the wounds, another was negligent to the extent that such negligence was the sole cause of death, then the act(s) of the defendant did not result in the death of (victim).”

6/01

2510.13 Operating a Boat While Intoxicated – Prescription Drug Affirmative Defense.

The defendant claims that the [drug] that was present in [[his] [her]] [blood] [urine] was legally [prescribed] [dispensed] and was legally taken. The defendant has the burden to prove by a preponderance of the evidence that:

1. the [drug] was [prescribed] [dispensed] for the defendant and
2. was taken in accordance with the directions of a [physician] [dentist] [podiatric physician] [person licensed or registered to distribute or dispense a prescription drug or device in the course of professional practice in [his] [her] state] [person licensed by another state in a health field who is legally authorized to prescribe drugs].

Authority

Iowa Code section [462A.14\(7\)\(b\)](#)

Iowa Code section [155A.3\(11\)](#)

Iowa Code section [155A.3\(28\)](#)

Comment

Use this instruction if the intoxication results only from the presence of a controlled substance in the person’s blood or urine.

Note: Instruction 100.12 Preponderance of the evidence – defenses.

2520.1 Leaving the Scene of an Accident Resulting in Injury. The State must prove all of the following elements of Leaving the Scene of an Accident Resulting in injury.

1. On or about the _____ day of _____, 20____, the defendant was the driver of a vehicle involved in an accident resulting in [bodily injury to] [serious injury to] (victim).
2. At the time of the accident, the defendant had knowledge of the accident.

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3. At the time of the accident the defendant:
 - a) knew the accident resulted in injury or death to another person, or
 - b) knew the accident was of such a nature that a reasonable person would anticipate that injury or death had occurred to another person.
4. The defendant failed to:
 - a) immediately stop the vehicle and remain at the scene of the accident or as close as possible to the scene of the accidentor
 - b) return to and remain at the scene of the accident even though [he] [she] was able to do so.
5. After the accident, the defendant failed to comply with one or more of the following requirements:
 - a) The defendant failed to give the defendant's name, address, and license number of the defendant's vehicle to the person struck, or the driver, occupant or other person attending the vehicle that was struck,
 - b) The defendant failed to exhibit the defendant's driver's license to the person struck, or the driver, occupant or other person attending the vehicle that was struck, and a request was made for the defendant's driver's license;
 - c) The defendant failed to render reasonable assistance, including transporting or arranging for the transport of the person for medical treatment, and it was apparent that medical treatment was necessary, or the injured person requested transportation for medical treatment.

If the State has proved all of the elements, the defendant is guilty of Leaving the Scene of an Accident Resulting in Injury. If the State has failed to prove all of the elements, the defendant is not guilty.

Authority

Iowa Code section [321.261](#)
Iowa Code section [321.263](#)

Comment

The instruction should give either alternative 4a or 4b, as supported by the facts.

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If both alternatives are given, consider giving a special interrogatory to allow the jury to answer which, or whether both, of the alternatives were found.

2520.2 Leaving the Scene of an Accident Resulting in Death. The State must prove all of the following elements of Leaving the Scene of an Accident Resulting in Death:

1. On or about the _____ day of _____, 20__, the defendant was the driver of a vehicle involved in an accident resulting in the death of (victim).
2. At the time of the accident, the defendant had knowledge of the accident.
3. At the time of the accident the defendant:
 - a) knew the accident resulted in injury or death to another person,
 - or
 - b) knew the accident was of such a nature that a reasonable person would anticipate that injury or death had occurred to another person.
4. The defendant failed to:
 - a) immediately stop the vehicle at the scene of the accident or as close as possible to the scene of the accident
 - or
 - b) failed to return to and remain at the scene of the accident even though [he] [she] was able to do so.
5. After the accident, the defendant failed to comply with one or more of the following requirements:
 - a) The defendant failed to remain at the scene of the accident except to seek necessary aid or to report the accident to law enforcement authorities.
 - b) The defendant failed to leave the defendant's driver's license, automobile registration receipt, or other identification data at the scene of the accident, before leaving the scene of the accident.
 - c) The defendant failed to promptly report the accident to law

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enforcement authorities after leaving the scene of the accident.

d) After leaving the scene and reporting the accident to law enforcement authorities, the defendant failed to:

1) immediately return to the scene of the accident,

or,

2) inform law enforcement authorities where the defendant could be located.

If the State has proved all of the elements, the defendant is guilty of Leaving the Scene of an Accident Resulting in Death. If the State has failed to prove all of the elements, the defendant is not guilty.

Authority

Iowa Code section [321.261](#)

Iowa Code section [321.263](#)

Comment

The instruction should give either alternative 4a or 4b, as supported by the facts. If both alternatives are given, consider giving a special interrogatory to allow the jury to answer which, or whether both, of the alternatives were found.

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CHAPTER 2600

INCEST AND CHILD ENDANGERMENT

Incest

[2600.1](#) Incest - Elements

Child Endangerment

[2610.1](#) Child Endangerment - Substantial Risk - Serious Injury

[2610.2](#) Child Endangerment - Use of Unreasonable Force, Cruelty, Torture - Serious Injury

[2610.3](#) Child Endangerment - Evidencing Unreasonable Force, Torture, Cruelty, Serious Injury

[2610.4](#) Child Endangerment - Deprivation Of Food, Clothing, Shelter, Health Care, Supervision

[2610.5](#) Child Endangerment - Deprivation Of Health Care

[2610.6](#) Child Endangerment - Permitting Abuse

[2610.7](#) Child Endangerment - Abandonment

[2610.8](#) Child Endangerment - Unreasonable Force – Definition

[2620.1](#) Neglect or Abandonment of a Dependent Person - Elements.

[2620.2](#) Wanton Neglect of a Resident of a Health Care Facility Causing Serious Injury.

[2620.3](#) Nonsupport of a Dependant Adult.

[2620.4](#) Health Care Facility – Definition.

[2620.5](#) Dependant Adult – Definition.

[2620.6](#) Nonsupport - Elements.

[2620.7](#) Support - Definition.

[2620.8](#) Caretaker-Definition. (New 6/2015)

[2620.9](#) Recklessly-Definition. (New 6/2015)

[2620.10](#) Dependent Adult Abuse-Definition. (New 6/2015)

[2620.11](#) Exploitation-Definition. (New 6/2015)

[2620.12](#) Sexual Exploitation-Definition. (New 6/2015)

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[2620.13](#) Wanton Neglect of a Dependent Adult-Elements. (New 6/2015)

[2620.14](#) Intentional Dependent Adult Abuse by a Caretaker Resulting in Serious Injury-Elements. (New 6/2015)

[2620.15](#) Intentional Dependent Adult Abuse by a Caretaker Resulting in Physical Injury-Elements. (New 6/2015)

[2620.16](#) Reckless Dependent Adult Abuse by a Caretaker Resulting in Serious Injury-Elements. (New 6/2015)

[2620.17](#) Reckless Dependent Adult Abuse by a Caretaker Resulting in Physical Injury-Elements. (New 6/2015)

[2620.18](#) Dependent Adult Abuse by a Caretaker-Elements. (New 6/2015)

[2620.19](#) Dependent Adult Abuse by a Caretaker by Exploitation-Elements. (New 6/2015)

[2620.20](#) Dependent Adult Abuse by a Caretaker by Exploitation-Value. (New 6/2015)

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2600.1 Incest - Elements. The State must prove all of the following elements of Incest:

1. On or about the ____ day of _____, 20____, the defendant performed a sex act with (name).
2. At the time of the sex act, the defendant and (name) were related to each other as (statutory term).
3. At such time, defendant knew [he] [she] and (name) were so related.

If the State has proved all of the above elements, the defendant is guilty of Incest. If the State has failed to prove all of the above elements, the defendant is not guilty of Incest. If the State has failed to prove any one of the elements, the defendant is not guilty.

Authority

Iowa Code section [726.2](#)

Comment

Note: For definition of "sex act" see Iowa Criminal Jury Instruction 900.8.

For definition of "knowledge" see Iowa Criminal Jury Instruction 200.3.

6/88

2610.1 Child Endangerment - Substantial Risk - Serious Injury. The State must prove all of the following elements of Child Endangerment:

1. On or about the ____ day of _____, 20____, the defendant was the [{parent} {guardian} {person having custody or control}] of (name) {or a member of the household in which (name) resided}].
2. (Name) was [under the age of fourteen years] [a mentally or physically handicapped minor under the age of eighteen].
3. The defendant acted with knowledge that [he] [she] was creating a substantial risk to (name)'s [physical] [mental] [emotional] health or safety.
4. The defendant's act resulted in serious injury to (name).*

If the State has proved all of the elements, the defendant is guilty of Child Endangerment. If the State has failed to prove any one of the elements, the defendant is not guilty of Child Endangerment (and you will then consider the crime of _____ explained in Instruction No. _____).

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Authority

Iowa Code section [726.6\(1\)\(a\)](#)

Iowa Code section [726.6\(3\)](#)

State v. James, [693 N.W.2d 353](#) (Iowa 2005)

Comment

Note: *Delete if felony child endangerment is not charged and supported by the evidence.

Rev. 12/2017

2610.2 Child Endangerment - Use Of Unreasonable Force, Cruelty, Torture - Serious Injury. The State must prove all of the following elements of Child Endangerment:

1. On or about the _____ day of _____, 20____, the defendant was the [{parent} {guardian} {person having custody or control}] of (name) {or a member of the household in which (name) resided}].
2. (Name) was [under the age of fourteen years] [a mentally or physically handicapped minor under the age of eighteen].
3. a. The defendant intentionally committed an act or series of acts which used unreasonable force, torture, or cruelty that resulted in physical injury to (name); or
b. The defendant intentionally committed an act or series of acts which used unreasonable force, torture, or cruelty with the specific intent to cause serious injury to (name).*
4. The defendant's act resulted in serious injury to (name).**

If the State has proved all of the elements, the defendant is guilty of Child Endangerment. If the State has failed to prove any one of the elements, the defendant is not guilty of Child Endangerment (and you will then consider the crime of _____ as explained in Instruction No. _____).

Authority

Iowa Code section [726.6\(1\)\(b\)](#)

Iowa Code section [726.6\(3\)](#)

Comment

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Note: *If the specific intent alternative is submitted, Iowa Criminal Jury Instruction 200.2 (Specific Intent) should be used.

**Delete if felony child endangerment is not charged and supported by the evidence.

2610.3 Child Endangerment - Evidencing Unreasonable Force, Torture, Cruelty - Serious Injury. The State must prove the following elements of Child Endangerment:

1. On the ____ day of _____, 20____, the defendant was the [{parent} {guardian} {person having custody or control}] of (name) {or a member of the household in which (name) resided}].
2. (Name) was [under the age of fourteen years] [a mentally or physically handicapped minor under the age of eighteen].
3. The defendant intentionally threatened (name) with [unreasonable force] [torture] [cruelty].
4. The defendant's threats caused substantial mental or emotional harm to (name).
5. The harm to (name) was a serious injury.*

If the State has proved all of the elements, the defendant is guilty of Child Endangerment. If the State has failed to prove any one of the elements, the defendant is not guilty of Child Endangerment (and you will then consider the crime of _____ explained in Instruction No. _____).

Authority

Iowa Code section [726.6\(1\)\(c\)](#)

Iowa Code section [726.6\(3\)](#)

Comment

Note: *Delete if felony child endangerment is not charged and supported by the evidence.

2610.4 Child Endangerment - Deprivation Of Food, Clothing, Shelter, Health Care, Supervision. The State must prove the following elements of Child Endangerment:

1. On or about the ____ day of _____, 20____, the defendant was the [{parent} {guardian} {person having custody or control}] of (name) {or a member of the household in which (name) resided}].

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2. (Name) was [under the age of fourteen years] [a mentally or physically handicapped minor under the age of eighteen].
3. The defendant intentionally deprived (name) of necessary [food] [clothing] [shelter] [health care] [supervision] appropriate to (name)'s age].
4. The defendant was reasonably able to provide it.
5. As a result, (name) suffered substantial [physical] [mental] [emotional] harm.
6. The harm to (name) was a serious injury.*

If the State has proved all of the elements, the defendant is guilty of Child Endangerment. If the State has failed to prove any one of the elements, the defendant is not guilty of Child Endangerment (and you will then consider the crime of _____ explained in Instruction No. _____).

Authority

Iowa Code section [726.6\(1\)\(d\)](#)

Comment

Note: *Delete if felony child endangerment is not charged and supported by the evidence.

Rev.12/2017

2610.5 Child Endangerment - Deprivation Of Health Care. The defendant claims (a) [he] [she] was a [member] [believer] of (name of recognized religious denomination) and (b) the medical treatment was in conflict with the principles and practice of that religion. If the defendant proves both of these propositions by a preponderance of the evidence, [he] [she] is not guilty.

Authority

Iowa Code section [726.6\(1\)\(d\)](#)

Comment

Caveat: There are no Iowa appellate court decisions deciding whether Iowa Code section 726.6(1) (d) is (a) an affirmative defense provable by the defendant or (b) an issue to be raised by the defendant and disproved by the State.

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2610.6 Child Endangerment - Permitting Abuse. The State must prove the following elements of Child Endangerment:

1. On or about the _____ day of _____, 20____, the defendant was the [{parent} {guardian} {person having custody or control} of (name) {or a member of the household in which (name) resided}].
2. (Name) was [under the age of fourteen] [a mentally or physically handicapped minor under the age of eighteen].
3. The defendant knowingly permitted the continuing [physical] [sexual] abuse of (name).
4. Defendant's act resulted in serious injury to (name).*
5. The defendant's fear that any action to stop the continuing abuse would result in substantial bodily harm to [himself] [herself] or (name) was unreasonable.**

If the State has proved all of the elements, the defendant is guilty of Child Endangerment. If the State has failed to prove any one of the elements, the defendant is not guilty of Child Endangerment (and you will then consider the crime of _____ explained in Instruction No. _____).

Authority

Iowa Code section [726.6\(1\)\(e\)](#)

Comment

Note: *Delete if felony endangerment is not charged and supported by the evidence.

Note: **Use only when statutory affirmative defense is raised by the defendant and supported by the evidence.

Caveat: There are no Iowa appellate court decisions deciding whether Iowa Code section [726.6\(1\)\(e\)](#) is (a) an affirmative defense provable by the defendant or (b) an issue to be raised by the defendant and disproved by the State.

2610.7 Child Endangerment - Abandonment. The State must prove all of the following elements of Child Endangerment:

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1. On the _____ day of _____, 20____, the defendant was the [{parent} {guardian} {person having custody or control} of (name) {or a member of the household in which (name) resided}].
2. (Name) was [under the age of fourteen] [a mentally or physically handicapped minor under the age of eighteen].
3. The defendant abandoned (name) to fend for [himself] [herself].
4. The defendant knew (name) was unable to fend for [himself] [herself].
5. The defendant's act resulted in serious injury to (name).*

If the State has proved all of the elements, the defendant is guilty of Child Endangerment. If the State has failed to prove any one of the elements, the defendant is not guilty of Child Endangerment (and you will then consider the crime of _____ explained in Instruction No. _____).

Authority

Iowa Code section [726.6\(1\)\(f\)](#)

Comment

Note: *Delete if felony child endangerment is not charged and supported by the evidence.

7/88

2610.8 Unreasonable Force - Definition. A parent, guardian or person having control of a [child under the age of 14] [handicapped minor under the age of 18] may use reasonable and timely physical punishment to discipline the [child] [handicapped minor].

In determining the reasonableness of the force used, you may consider the age, physical condition and other characteristics of the [child] [handicapped minor]; the gravity of the misconduct; the amount and means of the force used; and whether the punishment was corrective rather than to satisfy the anger of the person inflicting it.

Authority

State v. Arnold, [543 N.W.2d 600](#) (Iowa 1996)

12/96

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2620.1 Neglect or Abandonment of a Dependent Person - Elements. The State must prove all of the following elements of Neglect or Abandonment of a Dependent Person:

1. On the ____ day of _____, 20____, the defendant was the [father] [mother] [person having custody] of (name).
2. (Name) was a [person under the age of fourteen years] [person who by reason of mental or physical disability was not able to care for (himself) (herself)].
3. a. The defendant knowingly or recklessly exposed (name) to a hazard or danger against which (name) could not reasonably be expected to protect [himself] [herself].

Or

b. The defendant [deserted] [abandoned] (name) knowing or having reason to believe that (name) would be exposed to a hazard or danger.

If the State has proved all of the elements, the defendant is guilty of Neglect or Abandonment of a Dependent Person. If the State has failed to prove any one or more of the elements, the defendant is not guilty.

Authority

Iowa Code section [726.3](#)

Comment

Note: If the defendant is charged in the alternative, use the alternative(s) charged and supported by the evidence.

Note: “Person having custody” is not limited to persons having legal custody. “Custody” is used in the ordinary sense of care and control. See State v. Johnson, [528 N.W.2d 638](#), 642 (Iowa 1995).

Note: Use Iowa Criminal Jury Instruction 200.3 (Knowledge).

Note: Use Iowa Criminal Jury Instruction 200.20 (Recklessness).

6/01

2620.2 Wanton Neglect of a Resident of a Health Care Facility Causing Serious Injury. The State must prove all of the following elements of Wanton Neglect of a Resident of a Health Care Facility Causing Serious Injury:

1. On the ____ day of _____, 20____, the defendant knowingly acted in a manner likely to cause injury to the [physical] [mental] welfare of (name).
2. (Name) was a resident of a health care facility. “Health care facility” is defined in Instruction No. ____.

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3. The defendant's act(s) resulted in serious injury to (name). "Serious injury" is defined in Instruction No. _____.

If the State has proved all of the elements, the defendant is guilty of Wanton Neglect of a Resident of a Health Care Facility Causing Serious Injury. If the State has proved elements 1 and 2 but has failed to prove element 3, the defendant is guilty of Wanton Neglect of a Resident of a Health Care Facility Causing Serious Injury. If the State has failed to prove element 1 or if the State has failed to prove element 2, the defendant is not guilty.

Authority

Iowa Code section [726.7](#)

Comment

Note: Use the alternative(s) charged and supported by the evidence.

Note: Use Iowa Criminal Jury Instruction 200.3 (Knowledge).

Note: Use Iowa Criminal Jury Instruction 2620.4 (Health Care Facility).

Note: Use Iowa Criminal Jury Instruction 200.22 (Serious Injury).

2620.3 Nonsupport of a Dependant Adult. The State must prove all of the following elements of Nonsupport of a Dependant Adult.

1. On the ____ day of _____, 20____, the defendant was legally responsible through (contract) (court order) for support of (name).
2. (Name) was a dependant adult. "Dependant Adult" is defined in Instruction No. _____.
3. The defendant failed or refused to provide support to (name).

If the State has proved all of the elements, the defendant is guilty of Nonsupport of a Dependant Adult. If the State has failed to prove any one or more of the elements, the defendant is not guilty.

Authority

Iowa Code section [726.8\(2\)](#)

Comment

Note: Use the alternative(s) charged and supported by the evidence.

Note: Use Iowa Criminal Jury Instruction 2620.5 (Dependant Adult).

2620.4 Health Care Facility – Definition. "Health care facility" means a residential care facility, a nursing facility, or an intermediate care facility for persons with mental illness or mental retardation.

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Authority

Iowa Code section [135C.1\(6\)](#)

2620.5 Dependant Adult – Definition. “Dependant adult” means a person eighteen years of age or older who is unable to protect the person’s own interests or to provide adequately for, or obtain services necessary to meet, essential human needs because of a physical or mental condition which requires that the person receive assistance from another person.

Authority

Iowa Code section 235B.2(4)

2620.6 Nonsupport - Elements. The State must prove all of the following elements of Nonsupport:

1. On the ____ day of _____, 20____, (Name) was the [child] [ward] of the defendant.
2. (Name) was under the age of eighteen years.
3. The defendant failed or refused to provide support for (Name).
4. The defendant was able to provide support for (Name).
5. (Name) had not left the home of the [child’s parent] [person having legal custody of the child or ward] without the consent of the [parent] [person having legal custody].

If the State has proved all of the elements, the defendant is guilty of Nonsupport. If the State has failed to prove any one or more of the elements, the defendant is not guilty.

Authority

Iowa Code section [726.5](#)

Comment

Note: Consider whether element 5 should be treated as an affirmative defense. See State v. Lawler, [571 N.W.2d 486](#) (Iowa 1997).

Note: Use Iowa Criminal Jury Instruction 2620.7 (Support).

6/01

2620.7 Support - Definition. “Support” means any support which has been fixed by court order or, if there is no court order for support, the minimal requirements of food, clothing or shelter.

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Authority

Iowa Code section [726.5](#)

6/01

Authority

State V. Mensch, [574 N.W. 2d 10.14](#) (Iowa 1998) (must designate particular felony claimed and the elements of that felony)

Iowa Code section [708.3](#)

Iowa Code section [702.13](#)

2620.8 Caretaker – Definition. “Caretaker” means a related or nonrelated person who has the responsibility for the protection, care, or custody of a dependent adult as a result of assuming the responsibility voluntarily, by contract, through employment, or by order of the court.

Authority

Iowa Code section 235B.2(1)

2620.9 Recklessly – Definition. “Recklessly” means that a person acts or fails to act with respect to a material element of a public offense, when the person is aware of and consciously disregards a substantial and unjustifiable risk that the material element exists or will result from the act or omission. The risk must be of such a nature and degree that disregard of the risk constitutes a gross deviation from the standard conduct that a reasonable person would observe in the situation.

Authority

Iowa Code section 235B.2(12)

2620.10 Dependent Adult Abuse – Definition. “Dependent adult abuse” means:

1. Any of the following as a result of the [willful acts] [negligent acts] [omissions] of a caretaker:
 - a) Physical injury to, or injury which is at a variance with the history given of the injury, or unreasonable confinement, unreasonable punishment, or assault of a dependent adult.
 - b) The commission of a [sexual offense under chapter 709 or section 726.2] with or against a dependent adult.
 - c) The deprivation of the minimum food, shelter, clothing, supervision, physical or mental health care, or other care necessary to maintain a dependent adult’s life or health.
2. The deprivation of the minimum food, shelter, clothing, supervision, physical or mental health care, and other care necessary to maintain a dependent adult's life or health as a result of the acts or omissions of the dependent adult.
3. Sexual exploitation of a dependent adult by a caretaker.

Authority

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Iowa Code section 235B.2(5)(a)

Wyatt v. Iowa Dept. of Human Services, [744 N.W.2d 89](#) (Iowa 2008)

Comment

Note: Exploitation is excluded from this definition of dependent adult abuse because it is addressed in a separate instruction.

Note: Only those portions of the definition, and the level of intent (i.e., willful or negligent) appropriate for the underlying act or acts alleged, should be included.

2620.11 Exploitation – Definition. “Exploitation” means the act or process of taking unfair advantage of a dependent adult or the adult’s physical or financial resources for one’s own personal or pecuniary profit, without the informed consent of the dependent adult, including theft, by the use of undue influence, harassment, duress, deception, false representation, or false pretenses.

Authority

Iowa Code section 235B.2(5)(a)(1)(c)

2620.12 Sexual Exploitation – Definition. “Sexual Exploitation” means any consensual or nonconsensual sexual conduct with a dependent adult which includes but is not limited to kissing; touching of the clothed or unclothed inner thigh, breast, groin, buttock, anus, pubes, or genitals; or a sex act, as defined in Instruction No. _____. Sexual exploitation includes the transmission, display, taking of electronic images of the unclothed breast, groin, buttock, anus, pubes, or genitals of a dependent adult by a caretaker for a purpose not related to treatment or diagnosis or as part of an ongoing assessment, evaluation, or investigation. Sexual exploitation does not include touching which is a part of a necessary examination, treatment, or care by a caretaker acting within the scope of the practice or employment of the caretaker; the exchange of a brief touch or hug between the dependent adult and a caretaker for the purpose of reassurance, comfort, or casual friendship; or touching between spouses.

Authority

Iowa Code section 235B.2(5)(a)(3)(b)

Comment

Note: Use Iowa Criminal Jury Instruction Use 900.8 (Definition of a Sex Act).

2620.13 Wanton Neglect of a Dependent Adult - Elements. The State must prove all of the following elements of Wanton Neglect of a Dependent Adult:

1. On the _____ day of _____, 20____, the defendant was a caretaker of (name), as defined in Instruction No. _____.

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2. (Name) was a dependent adult, as defined in Instruction No. ____.
3. The defendant knowingly acted in a manner likely to be injurious to the physical, mental or emotional welfare of (name).

If the State has proved all of the elements, the defendant is guilty of Wanton Neglect of a Dependent Adult. If the State has failed to prove any one or more of the elements, the defendant is not guilty.

Authority

Iowa Code section [726.8\(1\)](#)

Comment

Note: Use Iowa Criminal Jury Instruction 200.3 (Knowledge).

Note: Use Iowa Criminal Jury Instruction 2620.5 (Dependent Adult).

Note: Use Iowa Criminal Jury Instruction 2620.8 (Caretaker).

2620.14 Intentional Dependent Adult Abuse by a Caretaker Resulting in Serious Injury – Elements. The State must prove all of the following elements of Intentional Dependent Adult Abuse by a Caretaker Resulting in Serious Injury:

1. On the ____ day of _____, 20__, the defendant was a caretaker of (name), as defined in Instruction No. ____.
2. (Name) was a dependent adult, as defined in Instruction No. ____.
3. The defendant intentionally committed dependent adult abuse on (name), as defined in Instruction No. ____.
4. The dependent adult abuse resulted in a serious injury to (name), as defined in Instruction No. ____.

If the State has proved all of the elements, the defendant is guilty of Intentional Dependent Adult Abuse by a Caretaker Resulting in Serious Injury. If the State has failed to prove any one or more of the elements, the defendant is not guilty of Intentional Dependent Adult Abuse by a Caretaker Resulting in Serious Injury.

Authority

Iowa Code section [235B.20\(2\)](#)

Comment

Note: Use Iowa Criminal Jury Instruction 2620.5 (Dependent Adult).

Note: Use Iowa Criminal Jury Instruction 2620.8 (Caretaker).

Note: Use Iowa Criminal Jury Instruction 2620.10 (Dependent Adult Abuse).

Note: Use Iowa Criminal Jury Instruction 200.2 (Specific Intent).

Note: Use Iowa Criminal Jury Instruction 200.22 (Serious Injury).

2620.15 Intentional Dependent Adult Abuse by a Caretaker Resulting in Physical Injury – Elements. The State must prove all of the following elements of Intentional Dependent Adult Abuse Resulting in Physical Injury:

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1. On the _____ day of _____, 20__, the defendant was a caretaker of (name), as defined in Instruction No. ____.
2. (Name) was a dependent adult, as defined in Instruction No. ____.
3. The defendant intentionally committed dependent adult abuse on (name), as defined in Instruction No. ____.
4. The dependent adult abuse resulted in a physical injury to (name).

If the State has proved all of the elements, the defendant is guilty of Intentional Dependent Adult Abuse by a Caretaker Resulting in Physical Injury. If the State has failed to prove any one or more of the elements, the defendant is not guilty of Intentional Dependent Adult Abuse by a Caretaker Resulting in Physical Injury.

Authority

Iowa Code section [235B.20\(4\)](#)

Comment

Note: Use Iowa Criminal Jury Instruction 2620.5 (Dependent Adult).

Note: Use Iowa Criminal Jury Instruction 2620.8 (Caretaker).

Note: Use Iowa Criminal Jury Instruction 2620.10 (Dependent Adult Abuse).

Note: Use Iowa Criminal Jury Instruction 200.2 (Specific Intent).

2620.16 Reckless Dependent Adult Abuse by a Caretaker Resulting in Serious Injury – Elements. The State must prove all of the following elements of Reckless Dependent Adult Abuse by a Caretaker Resulting in Serious Injury:

1. On the _____ day of _____, 20__, the defendant was a caretaker of (name), as defined in Instruction No. ____.
2. (Name) was a dependent adult, as defined in Instruction No. ____.
3. The defendant recklessly committed dependent adult abuse on (name), as defined in Instruction No. ____.
4. The dependent adult abuse resulted in a serious injury to (name), as defined in Instruction No. ____.

If the State has proved all of the elements, the defendant is guilty of Reckless Dependent Adult Abuse by a Caretaker Resulting in Serious Injury. If the State has failed to prove any one or more of the elements, the defendant is not guilty of Reckless Dependent Adult Abuse by a Caretaker Resulting in Serious Injury.

Authority

Iowa Code section [235B.20\(3\)](#)

Comment

Note: Use Iowa Criminal Jury Instruction 2620.5 (Dependent Adult).

Note: Use Iowa Criminal Jury Instruction 2620.8 (Caretaker).

Note: Use Iowa Criminal Jury Instruction 2620.10 (Dependent Adult Abuse).

Note: Use Iowa Criminal Jury Instruction 2620.9 (Recklessly).

Note: Use Iowa Criminal Jury Instruction 200.22 (Serious Injury).

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2620.17 Reckless Dependent Adult Abuse by a Caretaker Resulting in Physical Injury – Elements. The State must prove all of the following elements of Reckless Dependent Adult Abuse by a Caretaker Resulting in Physical Injury:

1. On the _____ day of _____, 20__, the defendant was a caretaker of (name), as defined in Instruction No. ____.
2. (Name) was a dependent adult, as defined in Instruction No. ____.
3. The defendant recklessly committed dependent adult abuse on (name), as defined in Instruction No. ____.
4. The dependent adult abuse resulted in a physical injury to (name).

If the State has proved all of the elements, the defendant is guilty of Reckless Dependent Adult Abuse by a Caretaker Resulting in Physical Injury. If the State has failed to prove any one or more of the elements, the defendant is not guilty of Reckless Dependent Adult Abuse by a Caretaker Resulting in Physical Injury.

Authority

Iowa Code section [235B.20\(6\)](#)

Comment

Note: Use Iowa Criminal Jury Instruction 2620.5 (Dependent Adult).

Note: Use Iowa Criminal Jury Instruction 2620.8 (Caretaker).

Note: Use Iowa Criminal Jury Instruction 2620.10 (Dependent Adult Abuse).

Note: Use Iowa Criminal Jury Instruction 2620.9 (Recklessly).

2620.18 Dependent Adult Abuse by a Caretaker – Elements. The State must prove all of the following elements of Dependent Adult Abuse by a Caretaker:

1. On the _____ day of _____, 20__, the defendant was a caretaker of (name), as defined in Instruction No. ____.
2. (Name) was a dependent adult, as defined in Instruction No. ____.
3. The defendant intentionally or knowingly committed dependent adult abuse on (name), as defined in Instruction No. ____.

If the State has proved all of the elements, the defendant is guilty of Dependent Adult Abuse by a Caretaker. If the State has failed to prove any one or more of the elements, the defendant is not guilty of Dependent Adult Abuse by a Caretaker.

Authority

Iowa Code section [235B.20\(7\)](#)

Comment

Note: Use Iowa Criminal Jury Instruction 200.2 (Specific Intent)

Note: Use Iowa Criminal Jury Instruction 200.3 (Knowledge).

Note: Use Iowa Criminal Jury Instruction 2620.5 (Dependent Adult).

Note: Use Iowa Criminal Jury Instruction 2620.8 (Caretaker).

Note: Use Iowa Criminal Jury Instruction 2620.10 (Dependent Adult Abuse).

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2620.19 Dependent Adult Abuse by a Caretaker by Exploitation – Elements. The State must prove the following elements of Dependent Adult Abuse by a Caretaker by Exploitation:

1. On the _____ day of _____, 20____, the defendant was a caretaker of (name), as defined in Instruction No. ____.
2. (Name) was a dependent adult, as defined in Instruction No. ____.
3. The defendant's [willful acts] [negligent acts] [omissions] were an exploitation of (name's) physical or financial resources, as defined in Instruction No. ____.

If the State has proved all of the elements, the defendant is guilty of Dependent Adult Abuse by a Caretaker by Exploitation. If the State has failed to prove either element 1, 2, or 3, defendant is not guilty.

Authority

Iowa Code section [235B.20\(5\), \(8\)](#)
Wyatt v. Iowa Dept. of Human Services, 744 N.W.2d 89 (Iowa 2008)

Comment

Note: Use Iowa Criminal Jury Instruction 2620.5 (Dependent Adult).
Note: Use Iowa Criminal Jury Instruction 2620.8 (Caretaker).
Note: Use Iowa Criminal Jury Instruction 2620.11 (Exploitation).
Note: Use the level of intent (i.e., willful or negligent) appropriate for the underlying act or acts alleged.

2620.20 Dependent Adult Abuse by a Caretaker by Exploitation – Value. If you find the defendant guilty of Dependent Adult Abuse by a Caretaker by Exploitation, you must then determine whether the value of the property, assets, or resources belonging to (name) which were exploited exceeds one hundred dollars (\$100). The State must prove this beyond a reasonable doubt. You shall answer the question about this issue which is attached to these instructions. Your answer, as with your verdict, must be unanimous.

Authority

Iowa Code section [235B.20\(5\), \(8\)](#)

Comment

Note: The following would appear on the verdict form:
"Does the value of (name's) property, assets, or resources that were exploited by defendant exceed one hundred dollars (\$100)?"
Yes _____ No _____
(Check the appropriate blank)

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CHAPTER 2700

WIRETAPPING

- [2700.1](#) Wiretapping - Intercepting Communication - Elements
- [2700.2](#) Wiretapping - Use Of Interception Device - Elements
- [2700.3](#) Wiretapping - Disclosing Or Using Intercepted Communications - Elements
- [2700.4](#) Wiretapping - Disclosing Or Using Communications Obtained By Device - Elements
- [2700.5](#) Wiretapping - Disclosure By Communications Workers - Elements
- [2700.6](#) Wiretapping - Definition Of Elements - Willful
- [2700.7](#) Wiretapping - Definition Of Elements - Electronic, Mechanical Or Other Device
- [2700.8](#) Wiretapping - Definition Of Elements - Intercept
- [2700.9](#) Wiretapping - Definition Of Elements - Oral Communication
- [2700.10](#) Wiretapping - Definition Of Elements - Wire Communication
- [2700.11](#) Wiretapping - Definition Of Elements - Know Or Should Know
- [2700.12](#) Wiretapping - Definition Of Elements - Contents

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2700.1 Wiretapping - Intercepting Communication - Elements. The State must prove the following elements of Wiretapping:

1. The defendant willfully [intercepted] [attempted to intercept] a [wire] [oral] communication.
2. The defendant willfully [induced another person to intercept] [induced another person to attempt to intercept] a [wire] [oral] communication.

If the State has proved both of the elements the defendant is guilty of Wiretapping. If the State has failed to prove either of the elements the defendant is not guilty.

Authority

Iowa Code section [808B.2\(1\)\(a\)](#)

Comment

Note: Certain persons are excepted from the operation of this statute under certain circumstances. Iowa Code sections 808B.2(2)(a), (b), (c). If there is evidence the defendant is within one of the exceptions, an additional element(s) will be required.

2700.2 Wiretapping - Use Of Interception Device - Elements. The State must prove both of the following elements of Wiretapping:

1. The defendant willfully [used] [attempted to use] [induced another person to use] [induced another person to attempt to use] an electronic, mechanical or other device to intercept an oral communication.
2. a. The device [was attached to] [transmitted a signal through] a wire, cable or like connection used in wire communication.

b. The device [transmitted communications by radio] [interfered with the transmission of radio communication].

If the State has proved both of the elements, the defendant is guilty of Wiretapping. If the State has failed to prove either of the elements, the defendant is not guilty.

Authority

Iowa Code section [808B.2\(1\)\(b\)](#)

Comment

Note: Certain persons are excepted from the operation of this statute under certain circumstances. Iowa Code sections [808B.2\(2\)\(a\)](#), [\(b\)](#), [\(c\)](#). If there is evidence the defendant is within one of the exceptions, an additional element(s) will be required.

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2700.3 Wiretapping - Disclosing Or Using Intercepted Communications Elements. The State must prove both of the following elements of Wiretapping:

1. a. The defendant willfully [disclosed] [attempted to disclose] the contents of [a wire] [an oral] communication to another person.
- b. The defendant willfully [used] [attempted to use] the contents of [a wire] [an oral] communication.
2. The defendant knew or had reason to know* this information was obtained by a person who willfully [intercepted] [attempted to intercept] [induced another person to intercept] [induced another person to attempt to intercept] [a wire] [an oral] communication.

If the State has proved both of the elements the defendant is guilty of Wiretapping. If the State has failed to prove either of the elements the defendant is not guilty.

Authority

Iowa Code sections [808B.2\(1\)\(c\), \(d\)](#)

Comment

Note: Certain persons are excepted from the operation of this statute under certain circumstances. Iowa Code sections 808B.2(2)(a), (b), (c). If there is evidence the defendant is within one of the exceptions, an additional element(s) will be required.

Caveat: *In State v. Hutt, 330 N.W.2d 778 (Iowa 1985) and State v. Ogle, [367 N.W.2d 289](#) (Iowa App. 1985) the appellate court rejected the reasonable man standard of Iowa Code section [714.1\(4\)](#) (1981). Iowa Code section [808B.2\(1\)\(c\), \(d\)](#) (1989) may be subject to the same infirmity.

2700.4 Wiretapping - Disclosing Or Using Communication Obtained By Device - Elements. The State must prove all of the following elements of Wiretapping:

1. a. The defendant willfully [disclosed] [attempted to disclose] the contents of [a wire] [an oral] communication to another person.
- b. The defendant willfully [used] [attempted to use] the contents of [a wire] [an oral] communication.
2. The defendant knew or had reason to know* this information was obtained by a person who willfully [used] [attempted to use] [induced another person to use] [induced another person to attempt to use] an electronic, mechanical or other device to intercept an oral communication.
3. a. The device [was attached to] [transmitted a signal through] a wire, cable or like connection used in wire communications.

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b. The device [transmitted communications by radio] [interfered with the transmission of radio communication].

If the State has proved all of the elements the defendant is guilty of Wiretapping. If the State has failed to prove any one of the elements the defendant is not guilty.

Authority

Iowa Code sections [808B.2\(1\)\(c\)](#), [\(d\)](#)

Comment

Note: Certain persons are excepted from the operation of this statute under certain circumstances. Iowa Code sections [808B.2\(2\)\(a\)](#), [\(b\)](#), [\(c\)](#). If there is evidence the defendant is within one of the exceptions, an additional element(s) will be required.

Caveat: *See Caveat under 2700.3.

2700.5 Wiretapping - Disclosure By Communications Workers - Elements. The State must prove all of the following elements of Wiretapping:

1. The defendant was [an operator of a switchboard] [an officer, employee or agent of a communication common carrier].
2. The [switchboard] [carrier] facilities were used in the transmission or interception of wire or oral communications.
3. The defendant disclosed the existence of [a transmission or interception] [a device used to accomplish a transmission or interception] which was subject to a court order.

If the State has proved all of the elements the defendant is guilty of Wiretapping. If the State has failed to prove any one of the elements the defendant is not guilty.

Authority

Iowa Code section [808B.2\(3\)](#)

Comment

Note: There is an exception for disclosures required by legal process or court orders. If the evidence suggests the exception is applicable an additional element will be required.

2700.6 Wiretapping - Definition Of Elements - Willful. "Willful" means intentional or by fixed design or purpose and not accidental.

Authority

State v. Hofer, [238 Iowa 820](#), [28 N.W.2d 475](#) (1947)

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2700.7 Wiretapping - Definition Of Elements - Electronic, Mechanical Or Other Device.

"Electronic, mechanical, or other device" means a device or apparatus which can be used to intercept a wire communication or oral communication.

Such a device does not include: (insert 1 or 2 below as appropriate).

1. A telephone or telegraph instrument, equipment, or facility, or any component of it, which is (insert a, b, or c below as appropriate).

a. Furnished to the subscriber or user by a communications common carrier in the ordinary course of its business and being used by the subscriber or user in the ordinary course of the subscriber's or user's business.

b. Being used by a communications common carrier in the ordinary course of its business.

c. Being used by an investigative or law enforcement officer in the ordinary course of the officer's duties.

2. A hearing aid or similar device being used to correct subnormal hearing to not better than normal hearing.

Authority

Iowa Code section [808B.1\(4\)](#)

2700.8 Wiretapping - Definition Of Elements - Intercept. "Intercept" or "interception" means to hear the contents of a wire communication or oral communication through the use of an electronic, mechanical or other device.

Authority

Iowa Code section [808B.1\(5\)](#)

2700.9 Wiretapping - Definition Of Elements - Oral Communication. "Oral communication" means a spoken communication by a person who reasonably expected that the communication would not be intercepted.

Authority

Iowa Code section [808B.1\(7\)](#)

2700.10 Wiretapping - Definition Of Elements - Wire Communication. "Wire communication" means a communication made in whole or in part through the use of facilities for the transmission of communications by the aid of wire, cable, or other like connection between

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the point of origin and the point of reception, furnished or operated by a person engaged as a common carrier in providing or operating the facilities for the transmission of communications.

Authority

Iowa Code section [808B.1\(9\)](#)

2700.11 Wiretapping - Definition Of Elements - Know Or Should Know. In connection with element number 2 of Instruction No. _____, to know or have reason to know something requires more than suspicion, speculation or conjecture.

For the defendant to know something means [he] [she] has a conscious awareness of it.

For the defendant to have reason to know something means a reasonable person, under the facts and circumstances which existed at that time, would know it.

Knowledge refers to a state of mind which is seldom capable of direct proof. It must be determined from all of the facts and circumstances.

2700.12 Wiretapping - Definition Of Elements - Contents. "Contents," when used with respect to a wire communication or oral communication, includes any information concerning the identity of the parties to the communication or the existence, substance, purpose, or meaning of that communication.

Authority

Iowa Code section [808B.1\(2\)](#)

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CHAPTER 2800

CRIMINAL STREET GANGS

[2800.1](#) Criminal Street Gang Participation - Elements

[2800.2](#) Criminal Street Gang - Definition

[2800.3](#) Willfully - Definition

[2800.4](#) Criminal Acts - Definition

[2800.5](#) Pattern Of Criminal Gang Activity - Definition

[2800.6](#) Criminal Gang Recruitment - Elements

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2800.1 Criminal Street Gang Participation - Elements. The State must prove all of the following elements of Criminal Gang Participation:

1. On or about the _____ day of _____, 20____, the defendant actively participated in or was a member of a criminal street gang as defined in Instruction No. ____.
2. On that date, the defendant willfully aided and abetted a criminal act, that is, (name of crime alleged).
3. The criminal act was committed [at the direction of] [for the benefit of] [in association with] the criminal street gang.

If the State has proved each of these elements, the defendant is guilty of Criminal Gang Participation. If the State has failed to prove any one of the elements, the defendant is not guilty of Criminal Gang Participation.

Authority

Iowa Code section [723A.2](#)
State v. Lewis, [514 N.W.2d 63](#) (Iowa 1994)

Comment

Note: In Element 3, omit that portion of the instruction which is not charged and supported by the evidence.

Iowa Criminal Jury Instruction 200.8 (Aiding and Abetting)

2800.2 Criminal Street Gang - Definition. "A criminal street gang" is any ongoing organization, association or group of three or more persons, whether formal or informal, having as one of its primary activities the commission of one or more criminal acts, which has an identifiable name or identifying sign or symbol, and whose members individually or collectively engage in or have engaged in a pattern of criminal gang activity, as defined in Instruction No. ____.

Authority

Iowa Code section [723A.1\(2\)](#)
State v. Lewis, [514 N.W.2d 63](#) (Iowa 1994)

2800.3 Willfully - Definition. "Willfully" means intentionally or by fixed design or purpose and not accidentally.

Authority

State v. Hofer, [28 N.W.2d 475](#) (Iowa 1947)

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2800.4 Criminal Acts - Definition. "Criminal acts" are defined as any single or combination of offenses.

a. constituting (specify violation of Section 124.401 of the Code involving a controlled substance, a counterfeit substance, or a simulated controlled substance), as defined in Instruction No. ____.

b. constituting (specify violation of Chapter 711 of the Code involving robbery or extortion), as defined in Instruction No. ____.

c. constituting (specify violation of Section 708.6 of the Code involving an act of terrorism), as defined in Instruction No. ____.

d. constituting (specify violation of Section 708.8 of the Code involving going armed with intent), as defined in Instruction No. ____.

e. constituting (specify violation of Section 720.4 involving tampering with witnesses or jurors), as defined in Instruction No. ____.

f. constituting (specify forcible felony as defined in Section 702.11 of the Code), as defined in Instruction No. ____.

Authority

Iowa Code section [723.A.1\(1\)](#)
State v. Lewis, [514 N.W.2d 63](#) (Iowa 1994)

Comment

Note: Use those acts that are charged and supported by the evidence. Appropriate instructions defining each offense must be given.

2800.5 Pattern Of Criminal Gang Activity - Definition. "Pattern of criminal gang activity" means the [commission of] [attempt to commit] [conspiring to commit] [soliciting the commission of] two or more criminal acts as defined in Instruction No. _____. The criminal acts must have been committed either on separate dates or by two or more persons who are members of or belong to the same criminal street gang.

Authority

Iowa Code section [723A.1\(3\)](#)
State v. Lewis, [514 N.W.2d 63](#) (Iowa 1994)

2800.6 Criminal Gang Recruitment - Elements. The State must prove all of the following elements of Gang Recruitment:

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1. On or about _____, 20____, the defendant [solicited] [recruited] [enticed] [intimidated] (name of minor) to join (name of criminal street gang).
2. At that time (name of minor) was under the age of eighteen.
3. At that time (name of criminal street gang) was a criminal street gang as defined in Instruction No. _____.

If the State has proved each of these elements, the defendant is guilty of Criminal Gang Recruitment. If the State has failed to prove any one of the elements, the defendant is not guilty of Criminal Gang Recruitment.

Authority

Iowa Code section [732A.3\(1\)](#) (added by H.F. 528, Acts of the 76th G.A., Section 52).

Comment

Note: If a conspiracy is alleged under Section [723A.3\(2\)](#), see Chapter 600, Conspiracy. Iowa Criminal Jury Instruction 2800.2 (Criminal Street Gang - Definition).

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CHAPTER 2900

HATE CRIMES

[2900.1](#) Hate Crime - Definition And Interrogatory

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2900.1 Hate Crime - Definition And Interrogatory. If you find the defendant guilty of (name of Crime) [or the lesser included offense of (name of crime)], you must then determine whether the offense was a hate crime.

A "hate crime" is an offense committed against a person or a person's property because of the person's race, color, religion, ancestry, national origin, political affiliation, sex, sexual orientation, age or disability, or because of the person's association with a person of a certain race, color, religion, ancestry, national origin, political affiliation, sex, sexual orientation, age or disability.

I have attached a question which must be answered, and by answering it, you will determine whether the defendant committed a hate crime. You will check the blank next to the appropriate answer. Your answer must be unanimous.

Authority

Iowa Code section 729A.32

Comment

Note: The following would appear on the verdict form: "Did the State prove beyond a reasonable doubt that the defendant committed the offense against [(name of victim)] [(name of victim)'s property] because of (name of victim)'s [association with a person of a certain] (specify characteristic)?"

_____ Yes

_____ No

(Check the appropriate blank)

Note: Use only the victim characteristic charged and supported by the evidence.

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CHAPTER 3000

ANIMAL TORTURE STATUTE

[3000.1](#) Animal Torture – Elements.

[3000.2](#) Definition – Wild Animal.

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3000.1 Animal Torture – Elements. The State must prove the following elements of Animal Torture:

1. On or about the ____ day of _____, 20____, the defendant inflicted severe physical pain on an animal.
2. The defendant did so with depraved or sadistic intent to cause the animal prolonged suffering or death.
3. The defendant was not [acting to carry out an order issued by a court][a licensed veterinarian practicing veterinary medicine][carrying out a practice that was consistent with animal husbandry practices][acting in order to carry out another provision of law that allows such practice, specifically _____][taking, hunting, trapping or fishing for wild game][acting to protect [his] [her] property from a wild animal][acting to protect a person from injury or death caused by a wild animal][reasonably acting to protect [his] [her] property from damage caused by an unconfined animal][reasonably acting to protect a person from injury or death caused by an unconfined animal][a local authority reasonably acting to destroy an animal permanently distressed by disease or injury to a degree that would result in severe and prolonged suffering and abandoned or ignored by its owner][an institution or research facility performing functions within the scope of accepted practices and disciplines associated with the institution or research facility]. (Use this paragraph only if the affirmative defense is raised by the defendant and supported by the evidence.)

If the State has proved all of the elements, the defendant is guilty of Animal Torture.
If the State has failed to prove any one of the elements, the defendant is not guilty.

Authority

Iowa Code section [717B.3A](#)

6/01

3000.2 Definition – Wild Animal. Wild Animal. As used in these instructions, a “wild animal” is any wild mammal, bird, fish, amphibian reptile, or other wildlife found in this state, whether game or nongame, migratory or nonmigratory, the ownership and title to which is claimed by this state.

Authority

Iowa Code sections [481A.1\(34\)](#) and [717B.3A\(f\) and \(g\)](#)

6/01

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Chapter 3100

[3100.1](#) Securities Fraud – Elements

[3100.2](#) Unregistered Security –Elements

[3100.3](#) Unregistered Agent – Elements

[3100.4](#) Exemption from Registration of Securities Defense

[3100.5](#) Exemption from Registration Defense

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3100.1 Securities Fraud—Elements. The State must prove all of the following elements of Securities Fraud:

1. On or about the _____ day of _____, 20__, the defendant [offered to sell] [sold] [purchased] a security in the state of Iowa.
2. In connection with the [offer to sell] [sale] [purchase] of the security, the defendant directly or indirectly:
 - a. employed a [device] [scheme] [artifice to defraud];
 - b. made an untrue statement of a material fact or omitted to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or
 - c. engaged in an act, practice, or course of business that operates or would operate as a fraud or deceit upon another person.
3. The defendant acted willfully.

If the State has proved each of the elements, the defendant is guilty of Securities Fraud. If the State has failed to prove each of these elements, the defendant is not guilty.

Authority

Iowa Code sections [502.501](#), [502.508](#) and [502.610](#)

Comments

Note: Section 502.102(28) defines “security” and includes a number of instruments. In defining the term security, the jury should be instructed on only those specific instruments applicable to the facts of the case.

Note: An “investment contract” is a common type of security. The term investment contract is defined in Iowa Administrative Code section 191—50.1 (2011).

Note: The United States Supreme Court has determined that a “note” is presumed to be a type of security and it is a defendant’s burden to rebut that presumption, considering the test set out in *Reves v. Ernst & Young*, [494 U.S. 56](#), 66-67, [110 S.Ct. 945](#), 951-52, [108 L.Ed.2d 47](#) (1990).

New 12/12

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3100.2 Unregistered Security –Elements. The State must prove both of the following elements of a Sale of Unregistered Securities:

1. On or about the ____ day of _____, 20__, the defendant willfully [offered to sell] [sold] a security in the state of Iowa.
2. The security was not registered.

If the State has proved the elements, the defendant is guilty of a Sale of Unregistered Securities. If the State has failed to prove both of these elements, the defendant is not guilty.

Authority

Iowa Code sections [502.301](#), [502.508](#) and [502.610](#)

Note: See Iowa Code section [502.102](#) for relevant definitions.

New 12/12

3100.3 Unregistered Agent –Elements. The State must prove both of the following elements of Transacting Business as an Unregistered Agent:

1. On or about the ____ day of _____, 20__, the defendant willfully transacted business in the state of Iowa as an agent.
2. Defendant was not registered as an agent.

If the State has proved the elements, the defendant is guilty of Transacting Business as an Unregistered Agent. If the State has failed to prove both of these elements, the defendant is not guilty.

Authority

Iowa Code sections [502.402](#), [502.508](#) and [502.610](#)

Comment

Note: This instruction may be modified for the crimes of unregistered broker-dealer, section 502.401; unregistered investment advisor, section 502.403; and unregistered investment adviser representative, section 502.404.

Note: See Iowa Code section [502.102](#) for relevant definitions.

New 12/12

3100.4 Exemption from Registration of Securities Defense. Evidence has been presented that [the security that was offered for sale or sold was an exempt security] [the offer for sale or sale of the security was an exempt transaction] and was not legally required to be registered. A [security

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which is (insert relevant provision) is an exempt security] [transaction which is (insert relevant provision) is an exempt transaction] and is not required to be registered.

If you find that the [security] [transaction] was exempt from registration, you must find the defendant not guilty.

The burden is on the State to prove beyond a reasonable doubt that the [security] [transaction] was not an exempt [security] [transaction].

Authority

Iowa Code sections [502.201](#), [.202](#), [.203](#), and [.503\(2\)](#).

Comment

Note: Section [502.503\(2\)](#) provides that a defendant claiming an exemption has the burden of going forward with evidence of the claim. It is the Committee's opinion that defendant in meeting that burden is entitled to the Exempt Securities instruction.

Note: This instruction is inapplicable to a charge of securities fraud.

New 12/12

3100.5 Exemption from Registration Defense. Evidence has been presented that the defendant was exempt from registration as a [broker-dealer] [agent] [investment adviser] [investment adviser representative] and was not legally required to be registered. A person who [insert relevant provision] is exempt from registration and is not required to be registered.

If you find that the defendant was exempt from registration, you must find the defendant not guilty.

The burden is on the State to prove beyond a reasonable doubt that the defendant was not exempt from registration as a [broker-dealer] [agent] [investment adviser] [investment adviser representative].

Authority

Iowa Code sections [502.401](#), [.402](#), [.403](#), [.404](#), and [.503\(2\)](#).

Comment

Note: Section [502.503\(2\)](#) provides that a defendant claiming an exemption has the burden of going forward with evidence of the claim. It is the Committee's opinion that defendant in meeting that burden is entitled to the Exempt Securities instruction.

New 12/12

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MODEL JURY INSTRUCTIONS

Facts

On May 1, 1988, Jane Doe parked her 1980 Chevrolet automobile outside her place of employment. At the end of the workday, she discovered the car missing. Several hours later police officers found John Smith driving Ms. Doe's car and arrested him. The 1980 Chevrolet was worth \$2,500 on May 1, 1988.

The State has charged Mr. Smith with Theft in the Second Degree, in violation of Iowa Code sections [714.1\(1\)](#) and [714.2\(2\)](#). This includes the lesser crime of Operating Without the Owner's Consent, in violation of section [714.7](#). The defendant has pled not guilty.

MODEL INSTRUCTION NO. 1

The Trial Information charges the defendant, John Smith, with the crime of Theft in the Second Degree.

The Trial Information includes the lesser crime of Operating Without the Owner's Consent.

(Iowa Criminal Jury Instruction 100.1)

MODEL INSTRUCTION NO. 2

The Trial Information is the document that formally charges the defendant with a crime. It is merely the method by which the defendant is brought into court for trial. It is not evidence.

(Iowa Criminal Jury Instruction 100.3)

MODEL INSTRUCTION NO. 3

The defendant has entered a plea of not guilty. The plea of not guilty is a complete denial of the charge and places the burden on the State to prove guilt beyond a reasonable doubt. Whenever I instruct you the State must prove something, it must be by evidence beyond a reasonable doubt. If the State does not prove the defendant guilty beyond a reasonable doubt, your verdict must be not guilty.

(Iowa Criminal Jury Instruction 100.2)

MODEL INSTRUCTION NO. 4

The defendant is presumed innocent and not guilty. This presumption of innocence requires you to put aside all suspicion which might arise from the arrest, charge or the present situation of the defendant. The presumption of innocence remains with the defendant throughout the trial unless the evidence establishes guilt beyond a reasonable doubt.

(Iowa Criminal Jury Instruction 100.4)

MODEL INSTRUCTION NO. 5

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You must determine the defendant's guilt or innocence from the evidence and the law in these instructions.

You must consider all the instructions together. No one instruction includes all of the applicable law.

(Iowa Criminal Jury Instruction 100.8)

MODEL INSTRUCTION NO. 6

The duty of the jury is to determine if the defendant is guilty or not guilty.

In the event of a guilty verdict, you have nothing to do with punishment.

(Iowa Criminal Jury Instruction 100.13)

MODEL INSTRUCTION NO. 7

Nothing I have said or done during the trial was intended to give any opinion as to the facts, proof, or what your verdict should be.

(Iowa Criminal Jury Instruction 100.9)

MODEL INSTRUCTION NO. 8

The burden is on the State to prove the defendant guilty beyond a reasonable doubt.

A reasonable doubt is one that fairly and naturally arises from the evidence or lack of evidence produced by the State.

If, after a full and fair consideration of all the evidence, you are firmly convinced of the defendant's guilt, then you have no reasonable doubt and you should find the defendant guilty.

But if, after a full and fair consideration of all the evidence or lack of evidence produced by the State, you are not firmly convinced of the defendant's guilt, then you have a reasonable doubt and you should find the defendant not guilty.

(Iowa Criminal Jury Instruction 100.10)

MODEL INSTRUCTION NO. 9

If there is a reasonable doubt as to any crime, the defendant shall only be convicted of the crime for which there is no reasonable doubt.

(Iowa Criminal Jury Instruction 100.11)

MODEL INSTRUCTION NO. 10

You must base your verdict only upon the evidence and these instructions.

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Evidence is:

1. Testimony in person or by deposition.
2. Exhibits received by the Court. You may examine the exhibits closely, but be careful not to alter or destroy them.
3. Stipulations, which are agreements between the attorneys.

Facts may be proved by direct evidence, circumstantial evidence, or a combination of both.

The following are not evidence:

1. Statements, arguments, questions and comments by the lawyers.
2. Objections and rulings on objections.
3. Testimony I told you to disregard.
4. Anything you saw or heard about this case outside the courtroom.

(Iowa Criminal Jury Instruction 100.5)

MODEL INSTRUCTION NO. 11

In deciding the facts, consider the evidence using your observations, common sense and experience. You must try to reconcile any conflicts in the evidence; but if you cannot, you will accept the evidence you find more believable.

In determining the facts, you may have to decide what testimony you believe. You may believe all, part or none of any witness's testimony.

There are many factors which you may consider in deciding what testimony to believe. For example:

1. Whether the testimony is reasonable and consistent with other evidence you believe;
2. Whether a witness has made inconsistent statements;
3. The witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and
4. The witness's interest in the trial, their motive, candor, bias and prejudice.

(Iowa Criminal Jury Instruction 100.7)

MODEL INSTRUCTION NO. 12

In considering the evidence, you may make deductions and reach conclusions which reason and common sense lead you to make. You should not be concerned about whether the evidence is

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direct or circumstantial. "Direct evidence" is the testimony of one who claims actual knowledge of a fact, such as an eyewitness. "Circumstantial evidence" is proof of a chain of facts and circumstances indicating that the defendant is either guilty or not guilty. The law makes no distinctions between the weight you may give to either direct or circumstantial evidence.

(Iowa Criminal Jury Instruction 100.6)

MODEL INSTRUCTION NO. 13

The State must prove all of the following elements of Theft in the Second Degree:

1. On or about the 1st day of May, 1988, the defendant took possession or control of a 1980 Chevrolet automobile.
2. The defendant did so with the specific intent to deprive Jane Doe of the automobile.
3. At the time of the taking, the automobile belonged to Jane Doe.

If the State has proved all of the elements, the defendant is guilty of Theft in the Second Degree. If the State has failed to prove any one of the elements, the defendant is not guilty of that charge and you will then consider the charge of Operating Without the Owner's Consent explained in Instruction No. 15.

(Iowa Criminal Jury Instruction 1400.23)

MODEL INSTRUCTION NO. 14

Concerning element no. 2 of Instruction No. 13, "specific intent" means not only being aware of doing an act and doing it voluntarily, but in addition, doing it with a specific purpose in mind.

Because determining the defendant's specific intent requires you to decide what he or she was thinking when an act was done, it is seldom capable of direct proof. Therefore, you should consider the facts and circumstances surrounding the act to determine the defendant's specific intent. You may, but are not required to, conclude a person intends the natural results of his or her acts.

(Iowa Criminal Jury Instruction 200.2)

MODEL INSTRUCTION NO. 15

The State must prove both of the following elements of Operating Without the Owner's Consent:

1. On or about the 1st day of May, 1988, the defendant intentionally took possession or control of a 1980 Chevrolet automobile belonging to Jane Doe.
2. The possession or control was without the consent of Jane Doe.

If the State has proved both of the elements, the defendant is guilty of Operating Without the Owner's Consent. If the State has failed to prove either of the elements, the defendant is not guilty.

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(Iowa Criminal Jury Instruction 1400.24)

MODEL INSTRUCTION NO. 16

Concerning element no. 1 of Instruction No. 15, to commit a crime a person must intend to do an act which is against the law. While it is not necessary that a person knows that act is against the law, it is necessary that the person was aware he or she was doing the act and he or she did it voluntarily, not by mistake or accident. You may, but are not required to, conclude a person intends the natural results of his or her acts.

(Iowa Criminal Jury Instruction 200.1)

MODEL INSTRUCTION NO. 17

Concerning element no. 1 of Instructions Nos. 13 and 15, a person who has direct physical control of something is in possession of it.

(Iowa Criminal Jury Instruction 200.47 as modified to fit the facts of the case.)

MODEL INSTRUCTION NO. 18

During the trial you have been allowed to take notes. You may take these with you to the jury room to use in your deliberations. Remember, these are notes and not evidence. Generally, they reflect the recollection or impressions of the evidence as viewed by the person taking them and may be inaccurate or incomplete.

Upon reaching a verdict, leave the notes in the jury room and they will be destroyed.

(Iowa Criminal Jury Instruction 100.17)

MODEL INSTRUCTION NO. 19

When you begin your deliberations, you should select a foreman or forewoman. He or she shall see that your deliberations are carried on in an orderly manner, that the issues are fully and freely discussed, and that every juror is given an opportunity to express their views.

In order to return a verdict, each juror must agree to it. Your verdict must be unanimous.

It is your duty as jurors to consult with one another and reach an agreement, if you can do so without compromising your individual judgment. Each of you must decide the case for yourself, but do so only after an impartial consideration of the evidence with the other jurors.

During the deliberations, do not hesitate to re-examine your view and change your opinion if convinced it is wrong. But do not change your opinion as to the weight or effect of the evidence just because it is the opinion of the other jurors, or for the mere purpose of returning a verdict.

Remember, you are the judges of facts. Your sole duty is to find the truth and do justice.

(Iowa Criminal Jury Instruction 100.18)

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MODEL INSTRUCTION NO 20

I am giving you three verdict forms. You will use only one of them.

When you have agreed upon a verdict and the foreman or forewoman has signed the verdict form, please notify the Court Attendant.

Dated this 15th day of July, 1988.

Judge of the Iowa District Court

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IN THE IOWA DISTRICT COURT FOR POLK COUNTY

STATE OF IOWA, :
Plaintiff, : Case No. 1100
vs. : FORMS OF VERDICT
JOHN SMITH, :
Defendant. :

FORM OF VERDICT NO. 1

We find the defendant guilty of Theft in the Second Degree.

FOREMAN or FOREWOMAN

FORM OF VERDICT NO. 2

We find the defendant guilty of Operating Without the Owner's Consent.

FOREMAN or FOREWOMAN

FORM OF VERDICT NO. 3

We find the defendant not guilty.

FOREMAN or FOREWOMAN

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Wiretapping

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IOWA CRIMINAL JURY INSTRUCTIONS

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