

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

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

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

Upon consideration of the Pattern Criminal Jury Instructions Standing Committee's request to publish and distribute revisions and corrections to Criminal Instructions 16.08, 16.10, and 16.11 to the Hawai'i Pattern Jury Instructions - Criminal,

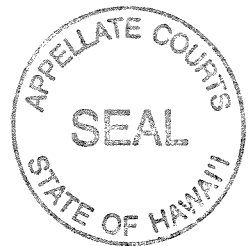
IT IS HEREBY ORDERED, that the attached criminal jury instructions 16.08, 16.10, and 16.11 are approved for publication and distribution.

IT IS FURTHER ORDERED that this approval for publication and distribution is not and shall not be considered by this court or any other court to be an approval or judgment as to the validity or correctness of the substance of any instruction.

DATED: Honolulu, Hawai'i, February 21, 2008.

FOR THE COURT:


Chief Justice



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

16.08

**HABITUALLY OPERATING A VEHICLE
UNDER THE INFLUENCE OF AN INTOXICANT --
Alcohol Impairment:**

H.R.S. § 291E-61.5(a)(1)and(2)(A) ~~--Alcohol Impairment~~

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

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

There are four material elements of the offense of
Habitually Operating a Vehicle under the Influence of an
Intoxicant, each of which the prosecution must prove beyond a
reasonable doubt.

These four elements are:

1. That, on or about (date) in the [City and] County of
(name of county), the Defendant was a habitual operator of a
vehicle while under the influence of an intoxicant; and

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

3. That Defendant, at that time, was under the influence of alcohol in an amount sufficient to impair Defendant's normal mental faculties or ability to care for Defendant and guard against casualty; and

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

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

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

(1) A judgment on a verdict or a finding of guilty, or a plea of guilty or nolo contendere, for a violation of [Habitually Operating a Vehicle under the Influence of an

Intoxicant] [Driving under the Influence of Intoxicating Liquor] [Habitually Driving under the Influence of Intoxicating Liquor or Drugs] [Driving Under the Influence of Drugs];

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

(3) An adjudication of a minor for a law or probation violation that, if committed by an adult, would constitute a violation of [Habitually Operating a Vehicle under the Influence of an Intoxicant] [Driving under the Influence of Intoxicating Liquor] [Habitually Driving under the Influence of Intoxicating Liquor or Drugs] [Driving Under the Influence of Drugs] [Operating a Vehicle Under the Influence of an Intoxicant] [Negligent Homicide in the First Degree]; that, at the time of the instant offense, had not been expunged

by pardon, reversed, or set aside. All convictions that have been expunged by pardon, reversed, or set aside prior to the instant offense shall not be deemed prior convictions for the purposes of proving the person's status as a habitual operator of a vehicle while under the influence of an intoxicant.

Notes

H.R.S. §§ 291E-61.5(a)(1) and (2)(A).

For definition of state of mind, see instructions:

6.02--"intentionally"

6.03--"knowingly"

6.04--"recklessly"

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

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

16.00--"alcohol"

16.00--"impair"

16.00--"intoxicant"

16.00--"operate"

16.00--"under the influence"

16.00--"vehicle"

16.08

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

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

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

There are four material elements of the offense of
Habitually Operating a Vehicle under the Influence of an
Intoxicant, each of which the prosecution must prove beyond a
reasonable doubt.

These four elements are:

1. That, on or about (date) in the [City and] County of
(name of county), the Defendant was a habitual operator of a
vehicle while under the influence of an intoxicant; and

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

3. That Defendant, at that time, was under the influence of alcohol in an amount sufficient to impair Defendant's normal mental faculties or ability to care for Defendant and guard against casualty; and

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

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

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

(1) A judgment on a verdict or a finding of guilty, or a plea of guilty or nolo contendere, for a violation of [Habitually Operating a Vehicle under the Influence of an

Intoxicant] [Driving under the Influence of Intoxicating Liquor] [Habitually Driving under the Influence of Intoxicating Liquor or Drugs] [Driving Under the Influence of Drugs];

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

(3) An adjudication of a minor for a law or probation violation that, if committed by an adult, would constitute a violation of [Habitually Operating a Vehicle under the Influence of an Intoxicant] [Driving under the Influence of Intoxicating Liquor] [Habitually Driving under the Influence of Intoxicating Liquor or Drugs] [Driving Under the Influence of Drugs] [Operating a Vehicle Under the Influence of an Intoxicant] [Negligent Homicide in the First Degree]; that, at the time of the instant offense, had not been expunged

by pardon, reversed, or set aside. All convictions that have been expunged by pardon, reversed, or set aside prior to the instant offense shall not be deemed prior convictions for the purposes of proving the person's status as a habitual operator of a vehicle while under the influence of an intoxicant.

Notes

H.R.S. §§ 291E-61.5(a)(1) and (2)(A).

For definition of state of mind, see instructions:

6.02--"intentionally"

6.03--"knowingly"

6.04--"recklessly"

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

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

16.00--"alcohol"

16.00--"impair"

16.00--"intoxicant"

16.00--"operate"

16.00--"under the influence"

16.00--"vehicle"

16.10

**HABITUALLY OPERATING A VEHICLE
UNDER THE INFLUENCE OF AN INTOXICANT --
.08 Breath Alcohol:**

H.R.S. § 291E-61.5(a)(1) and (2)(C) -- ~~.08 Breath Alcohol~~

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

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

There are three material elements of the offense of
Habitually Operating a Vehicle under the Influence of an
Intoxicant, each of which the prosecution must prove beyond a
reasonable doubt.

These three elements are:

1. That, on or about (date) in the [City and] County of
(name of county), the Defendant intentionally, knowingly, or
recklessly was a habitual operator of a vehicle while under the
influence of an intoxicant; and

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

3. That Defendant, at that time, had .08 or more grams of alcohol per two hundred ten (210) liters of breath.

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

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

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

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

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

a vehicle while under the influence of an intoxicant.

Notes

H.R.S. §§ 291E-61.5(a)(1) and (2)(C).

For definition of state of mind, see instructions:

6.02--"intentionally"

6.03--"knowingly"

6.04--"recklessly"

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

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

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

16.00--"alcohol"

16.00--"intoxicant"

16.00--"operate"

16.00--"under the influence"

16.00--"vehicle"

For "margin of error," see Instruction 16.06

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

16.10

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

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

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

There are three material elements of the offense of
Habitually Operating a Vehicle under the Influence of an
Intoxicant, each of which the prosecution must prove beyond a
reasonable doubt.

These three elements are:

1. That, on or about (date) in the [City and] County of
(name of county), the Defendant intentionally, knowingly, or
recklessly was a habitual operator of a vehicle while under the
influence of an intoxicant; and

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

3. That Defendant, at that time, had .08 or more grams of alcohol per two hundred ten (210) liters of breath.

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

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

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

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

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

a vehicle while under the influence of an intoxicant.

Notes

H.R.S. §§ 291E-61.5(a)(1) and (2)(C).

For definition of state of mind, see instructions:

6.02--"intentionally"

6.03--"knowingly"

6.04--"recklessly"

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

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

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

16.00--"alcohol"

16.00--"intoxicant"

16.00--"operate"

16.00--"under the influence"

16.00--"vehicle"

For "margin of error," see Instruction 16.06

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

16.11

**HABITUALLY OPERATING A VEHICLE
UNDER THE INFLUENCE OF AN INTOXICANT --
.08 Blood Alcohol:**

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

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

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

There are three material elements of the offense of
Habitually Operating a Vehicle under the Influence of an
Intoxicant, each of which the prosecution must prove beyond a
reasonable doubt.

These three elements are:

1. That, on or about (date) in the [City and] County of
(name of county), the Defendant intentionally, knowingly, or
recklessly was a habitual operator of a vehicle while under the
influence of an intoxicant; and

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

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

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

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

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

of Drugs];

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

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

purposes of proving the person's status as a habitual operator of a vehicle while under the influence of an intoxicant.

Notes

H.R.S. §§ 291E-61.5(a)(1) and (2)(D).

For definition of state of mind, see instructions:

6.02--"intentionally"

6.03--"knowingly"

6.04--"recklessly"

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

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

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

16.00--"alcohol"

16.00--"intoxicant"

16.00--"operate"

16.00--"under the influence"

16.00--"vehicle"

For "margin of error," see Instruction 16.06

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

16.11

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

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

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

There are three material elements of the offense of
Habitually Operating a Vehicle under the Influence of an
Intoxicant, each of which the prosecution must prove beyond a
reasonable doubt.

These three elements are:

1. That, on or about (date) in the [City and] County of
(name of county), the Defendant intentionally, knowingly, or
recklessly was a habitual operator of a vehicle while under the
influence of an intoxicant; and

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

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

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

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

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

of Drugs];

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

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

purposes of proving the person's status as a habitual operator of a vehicle while under the influence of an intoxicant.

Notes

H.R.S. §§ 291E-61.5(a)(1) and (2)(D).

For definition of state of mind, see instructions:

6.02--"intentionally"

6.03--"knowingly"

6.04--"recklessly"

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

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

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

16.00--"alcohol"

16.00--"intoxicant"

16.00--"operate"

16.00--"under the influence"

16.00--"vehicle"

For "margin of error," see Instruction 16.06

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