

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 13.58, 13.59, 13.60, 13.61, 13.62, and 16.09 to the Hawai'i Pattern Jury Instructions - Criminal,

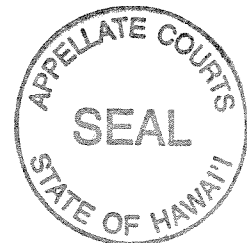
IT IS HEREBY ORDERED, that the attached criminal jury instructions 13.58, 13.59, 13.60, 13.61, 13.62, and 16.09 are approved for publication and distribution.

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, August 9, 2007.

FOR THE COURT:


Chief Justice



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

FILED

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EM. RIMANOC
CLERK APPELLATE COURTS
STATE OF HAWAII

**13.58 METHAMPHETAMINE TRAFFICKING IN THE FIRST DEGREE –
POSSESSION OF ONE OUNCE OR MORE: HRS §712-1240.7(1)(a)**

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

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

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

These three elements are:

1. That, on or about (date), in the [City and] County of
(name of county), the Defendant possessed one or more
preparations, compounds, mixtures, or substances of an aggregate
weight of one ounce or more; and

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

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

Notes

H.R.S. § 712-1240.7(1)(a)

For definition of state of mind, see instruction:

6.03 – “knowingly”

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

13.00– “ounce”

For definition of “possession,” see instruction 6.06.

**13.58 METHAMPHETAMINE TRAFFICKING IN THE FIRST DEGREE –
POSSESSION OF ONE OUNCE OR MORE: HRS §712-A(1)-(a)1240.7(1)(a)**

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

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

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

These three elements are:

1. That, on or about (date), in the [City and] County of
(name of county), the Defendant possessed one or more
preparations, compounds, mixtures, or substances of an aggregate
weight of one ounce or more; and

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

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

Notes

H.R.S. § 712-~~A(1)(a)~~ 1240.7(1)(a)

For definition of state of mind, see instruction:

6.03 – “knowingly”

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

13.00– “ounce”

For definition of “possession,” see instruction 6.06.

**13.59 METHAMPHETAMINE TRAFFICKING IN THE FIRST DEGREE –
DISTRIBUTION OF ONE-EIGHTH OUNCE OR MORE:**

HRS §712-A(1)(b) 1240.7(1)(b)

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

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

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

These three elements are:

1. That, on or about (date), in the [City and] County of
(name of county), the Defendant distributed one or more
preparations, compounds, mixtures, or substances of an aggregate
weight of one-eighth ounce or more; and

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

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

foregoing elements.

Notes

H.R.S. § 712-~~A(1)(a)~~ 1240.7(1)(b)

For definition of state of mind, see instruction:

6.03 – “knowingly”

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

13.00– “ounce”

13.00– “to distribute”

**13.59 METHAMPHETAMINE TRAFFICKING IN THE FIRST DEGREE -
DISTRIBUTION OF ONE-EIGHTH OUNCE OR MORE:**

HRS §712-1240.7(1)(b)

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

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

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

These three elements are:

1. That, on or about (date), in the [City and] County of
(name of county), the Defendant distributed one or more
preparations, compounds, mixtures, or substances of an aggregate
weight of one-eighth ounce or more; and

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

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

foregoing elements.

Notes

H.R.S. § 712-1240.7(1)(b)

For definition of state of mind, see instruction:

6.03 – “knowingly”

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

13.00– “ounce”

13.00– “to distribute”

**13.60 METHAMPHETAMINE TRAFFICKING IN THE FIRST DEGREE –
DISTRIBUTION TO A MINOR: HRS §712-1240.7(1)(c)**

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

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

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

These three elements are:

1. That, on or about (date), in the [City and] County of
(name of county), the Defendant distributed methamphetamine in
any amount to another person; and

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

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

Notes

H.R.S. § 712-1240.7(1)(c)

For definition of state of mind, see instruction:

6.03 – “knowingly”

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

instructions:

13.00- "minor"

13.00- "to distribute"

13.60 (proposed 7/18/07)

**13.60 METHAMPHETAMINE TRAFFICKING IN THE FIRST DEGREE –
DISTRIBUTION TO A MINOR: HRS §712-~~A(1)(a)~~ 1240.7(1)(c)**

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

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

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

These three elements are:

1. That, on or about (date), in the [City and] County of
(name of county), the Defendant distributed methamphetamine in
any amount to another person; and
2. That the other person was, at that time, a minor; and
3. That the Defendant acted knowingly as to each of the
foregoing elements.

Notes

H.R.S. § 712-~~A(1)(a)~~ 1240.7(1)(c)

For definition of state of mind, see instruction:

6.03 – “knowingly”

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

instructions:

13.00- "minor"

13.00- "to distribute"

**13.61 METHAMPHETAMINE TRAFFICKING IN THE FIRST DEGREE –
MANUFACTURE: HRS §712-1240.7(1)(d)**

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

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

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

These two elements are:

1. That, on or about (date), in the [City and] County of
(name of county), the Defendant manufactured methamphetamine in
any amount; and
2. That the Defendant did so knowingly.

Notes

H.R.S. § 712-1240.7(1)(d)

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

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

13.00– “manufacture”

**13.61 METHAMPHETAMINE TRAFFICKING IN THE FIRST DEGREE –
MANUFACTURE: HRS §712-A(1)(d) 1240.7(1)(d)**

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

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

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

These two elements are:

1. That, on or about (date), in the [City and] County of
(name of county), the Defendant manufactured methamphetamine in
any amount; and
2. That the Defendant did so knowingly.

Notes

H.R.S. § 712-A(1)(a) 1240.7(1)(d)

For definition of state of mind, see instruction:

6.03 – “knowingly”

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

13.00– “manufacture”

**13.62 METHAMPHETAMINE TRAFFICKING IN THE SECOND DEGREE –
DISTRIBUTION OF ANY AMOUNT: HRS §712-1240.8**

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

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

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

These two elements are:

1. That, on or about (date), in the [City and] County of
(name of county), the Defendant distributed methamphetamine in
any amount; and

2. That the Defendant did so knowingly.

Notes

H.R.S. § 712-1240.8

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

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

13.00 – “to distribute”

**13.62 METHAMPHETAMINE TRAFFICKING IN THE SECOND DEGREE -
DISTRIBUTION OF ANY AMOUNT: HRS §712-B 1240.8**

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

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

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

These two elements are:

1. That, on or about (date), in the [City and] County of
(name of county), the Defendant distributed methamphetamine in
any amount; and

2. That the Defendant did so knowingly.

Notes

H.R.S. § 712-~~A(1)(a)~~ 1240.8

For definition of state of mind, see instruction:
6.03 - "knowingly"

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

16.09

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

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

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

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

These four elements are:

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

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

3. That Defendant, at that time, was under the influence
of any drug that impaired Defendant's ability to operate a
vehicle in a careful and prudent manner; and

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)(B).

For definition of state of mind, see instructions:

6.02--"intentionally"

6.03--"knowingly"

6.04--"recklessly"

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

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

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

16.09

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

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

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

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

These four elements are:

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

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

3. That Defendant, at that time, was under the influence
of any drug that impaired Defendant's ability to operate a
vehicle in a careful and prudent manner; and

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

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

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

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

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

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

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

Notes

H.R.S. §§ 291E-61.5(a)(1) and (2)(B).

For definition of state of mind, see instructions:

6.02--"intentionally"

6.03--"knowingly"

6.04--"recklessly"

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

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

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