

IN THE SUPREME COURT OF THE STATE OF HAWAII

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

ORDER APPROVING PUBLICATION AND DISTRIBUTION
OF HAWAII 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 (1) the addition of Criminal Jury Instructions 9.20C and 9.30A and (2) revisions to Criminal Instructions 8.07B through 8.07E, 9.16, 9.16A, 9.17, 9.17A, 9.20, 9.20A, 9.20B, 9.31, and 9.31A to the Hawai'i Pattern Jury Instructions - Criminal,

IT IS HEREBY ORDERED that the attached criminal jury instructions 9.20C, 9.30A, 8.07B through 8.07E, 9.16, 9.16A, 9.17, 9.17A, 9.20, 9.20A, 9.20B, 9.31, and 9.31A 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

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

FILED
E.M. RIMANDO
CLERK, APPELLATE COURTS
STATE OF HAWAII

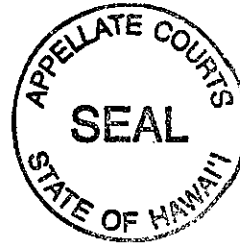
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concerning the validity or correctness of the substance of any
pattern instruction or notes.

DATED: Honolulu, Hawai'i, October 1, 2008.

FOR THE COURT:


Chief Justice



9.20C ASSAULT IN THE SECOND DEGREE -- EMERGENCY MEDICAL
SERVICES PERSONNEL:
H.R.S. § 707-711(1)(f)

(Applicable to offenses occurring on or after May 21, 2007)

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

A person commits the offense of Assault in the Second Degree
if he/she intentionally or knowingly causes bodily injury to any
emergency medical services personnel who is engaged in the
performance of duty.

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

These four elements are:

1. That, on or about (date) in the [City and] County of
(name of county), the Defendant caused bodily injury to any
emergency medical services personnel; and
2. That the Defendant did so intentionally or knowingly;
and
3. That the Defendant did so to an emergency medical
services personnel who was engaged in the performance of duty;
and
4. That the Defendant knew, at that time, that the person
was an emergency medical services personnel engaged in the
performance of duty.

"Emergency medical services personnel" means any mobile
intensive care technician or emergency medical technician who is
certified or licensed by the State of Hawai'i.

Notes

H.R.S. §§ 707-711(1)(f), 702-206(1) and (2), and 321-222.

For definition of states of mind, see instructions:

6.02 - "intentionally"

6.03 - "knowingly"

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

9.00 - "bodily injury"

9.20C **ASSAULT IN THE SECOND DEGREE -- EMERGENCY MEDICAL
SERVICES PERSONNEL:**
H.R.S. § 707-711(1)(f)

(Applicable to offenses occurring on or after May 21, 2007)

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

A person commits the offense of Assault in the Second Degree
if he/she intentionally or knowingly causes bodily injury to any
emergency medical services personnel who is engaged in the
performance of duty.

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

These four elements are:

1. That, on or about (date) in the [City and] County of
(name of county), the Defendant caused bodily injury to any
emergency medical services personnel; and

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

3. That the Defendant did so to an emergency medical
services personnel who was engaged in the performance of duty;
and

4. That the Defendant knew, at that time, that the person
was an emergency medical services personnel engaged in the
performance of duty.

"Emergency medical services personnel" means any mobile
intensive care technician or emergency medical technician who is
certified or licensed by the State of Hawai'i.

Notes

H.R.S. §§ 707-711(1)(f), 702-206(1) and (2), and 321-222.

For definition of states of mind, see instructions:

6.02 - "intentionally"

6.03 - "knowingly"

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

9.00 - "bodily injury"

9.30A TERRORISTIC THREATENING IN THE FIRST DEGREE --
 EMERGENCY MEDICAL SERVICES PERSONNEL:
 H.R.S. § 707-716(1)(d)

(Applicable to offenses occurring on or after May 21, 2007)

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

A person commits the offense of Terroristic Threatening in the First Degree if, [with the intent to terrorize] [in reckless disregard of the risk of terrorizing] any emergency medical services personnel, he/she threatens, by word or conduct, to [cause bodily injury to any emergency medical services personnel] [cause serious damage to the property of any emergency medical services personnel] [commit a felony against any emergency services personnel] who was engaged in the performance of the emergency medical services personnel's duty.

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

These five elements are:

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

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

3. That the person threatened was, at the time, an emergency medical services person; and

4. That, at that time, the Defendant knew or recklessly disregarded a substantial and unjustifiable risk, that the person was an emergency medical services person; and

5. That, at the time, the Defendant knew or recklessly

disregarded a substantial and unjustifiable risk that the emergency medical services person was engaged in the performance of duty.

"Emergency medical services personnel" means any mobile intensive care technician or emergency medical technician who is certified or licensed by the State of Hawai'i.

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

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

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

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

Notes

H.R.S. §§ 707-716(1)(c), 707-715(1), 702-206(1), (2) and (3), and 321-222.

For definition of states of mind, see instructions:

6.02 - "intentionally"

6.03 - "knowingly"

6.04 - "recklessly"

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

*The court should identify whether applicable or included

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

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

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

9.30A **TERRORISTIC THREATENING IN THE FIRST DEGREE --**
EMERGENCY MEDICAL SERVICES PERSONNEL:
H.R.S. § 707-716(1) (d)

(Applicable to offenses occurring on or after May 21, 2007)

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

A person commits the offense of Terroristic Threatening in
the First Degree if, [with the intent to terrorize] [in reckless
disregard of the risk of terrorizing] any emergency medical
services personnel, he/she threatens, by word or conduct, to
[cause bodily injury to any emergency medical services personnel]
[cause serious damage to the property of any emergency medical
services personnel] [commit a felony against any emergency
services personnel] who was engaged in the performance of the
emergency medical services personnel's duty.

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

These five elements are:

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

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

3. That the person threatened was, at the time, an emergency
medical services person; and

4. That, at that time, the Defendant knew or recklessly
disregarded a substantial and unjustifiable risk, that the person
was an emergency medical services person; and

5. That, at the time, the Defendant knew or recklessly

disregarded a substantial and unjustifiable risk that the emergency medical services person was engaged in the performance of duty.

"Emergency medical services personnel" means any mobile intensive care technician or emergency medical technician who is certified or licensed by the State of Hawai'i.

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

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

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

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

Notes

H.R.S. §§ 707-716(1)(c), 707-715(1), 702-206(1), (2) and (3), and 321-222.

For definition of states of mind, see instructions:

6.02 - "intentionally"

6.03 - "knowingly"

6.04 - "recklessly"

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

*The court should identify whether applicable or included

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

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

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

8.07B

OFFENDER AGAINST ELDERLY, HANDICAPPED OR A MINOR
UNDER THE AGE OF EIGHT:
H.R.S. § 706-662 (5)

(Applicable to offenses occurring on or after October 31, 2007)

If you find that the prosecution has proven beyond a reasonable doubt that the Defendant committed the offense of (name of felony offense), then you must also answer the following two questions on a special interrogatory which will be provided to you:

1. Has the prosecution proven beyond a reasonable doubt that the Defendant, in the course of committing [or attempting to commit] the offense of (name of felony offense), inflicted serious or substantial bodily injury upon a person who was [sixty years or older] [blind] [a paraplegic] [a quadriplegic] [eight years or younger]?

2. Has the prosecution proven beyond a reasonable doubt that the Defendant knew or reasonably should have known that said person was [sixty years or older] [blind] [a paraplegic] [a quadriplegic] [eight years or younger]?

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

8.70B (proposed 08/27/08)

Notes

H.R.S. § 706-662(5).

State v. Tafoya, 91 Hawai'i 261, 982 P.2d 890 (1999).

8.07B OFFENDER AGAINST ELDERLY, HANDICAPPED OR A MINOR
 UNDER THE AGE OF EIGHT:
 H.R.S. § 706-662 (5)

(Applicable to offenses occurring on or after October 31, 2007)

If you find that the prosecution has proven beyond a reasonable doubt that the Defendant committed the offense of (name of felony offense), then you must also answer the following two questions on a special interrogatory which will be provided to you:

1. Has the prosecution proven beyond a reasonable doubt that the Defendant, in the course of committing [or attempting to commit] the offense of (name of felony offense), inflicted serious or substantial bodily injury upon a person who was [sixty years or older] [blind] [a paraplegic] [a quadriplegic] [eight years or younger]?

2. Has the prosecution proven beyond a reasonable doubt that the Defendant knew or reasonably should have known that said person was [sixty years or older] [blind] [a paraplegic] [a quadriplegic] [eight years or younger]?

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

Notes

~~Section H.R.S. § 706-662(5) of the Hawaii Revised Statutes~~

State v. Tafoya, 91 Hawai`i 261, 982 P.2d 890 (1999).

8.07C

**SPECIAL INTERROGATORY: OFFENDER AGAINST ELDERLY,
HANDICAPPED OR A MINOR UNDER THE AGE OF EIGHT:
H.R.S. § 706-662 (5)**

(Applicable to offenses occurring on or after October 31, 2007)

1. Has the prosecution proven beyond a reasonable doubt that the Defendant, in the course of committing [or attempting to commit] the offense of (name of felony offense), inflicted serious or substantial bodily injury upon a person who was [sixty years or older] [blind] [a paraplegic] [a quadriplegic] [eight years or younger]?

_____ Yes

_____ No

2. Has the prosecution proven beyond a reasonable doubt that the Defendant knew or reasonably should have known that said person was [sixty years or older] [blind] [a paraplegic] [a quadriplegic] [eight years or younger]?

_____ Yes

_____ No

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

Notes

H.R.S. § 706-662(5).

State v. Tafoya, 91 Hawai'i 261, 982 P.2d 890 (1999).

8.07C

**SPECIAL INTERROGATORY: OFFENDER AGAINST ELDERLY,
HANDICAPPED OR A MINOR UNDER THE AGE OF EIGHT:
H.R.S. § 706-662 (5)**

(Applicable to offenses occurring on or after October 31, 2007)

1. Has the prosecution proven beyond a reasonable doubt that the Defendant, in the course of committing [or attempting to commit] the offense of (name of felony offense), inflicted serious or substantial bodily injury upon a person who was [sixty years or older] [blind] [a paraplegic] [a quadriplegic] [eight years or younger]?

_____ Yes

_____ No

2. Has the prosecution proven beyond a reasonable doubt that the Defendant knew or reasonably should have known that said person was [sixty years or older] [blind] [a paraplegic] [a quadriplegic] [eight years or younger]?

_____ Yes

_____ No

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

Notes

~~Section H.R.S. § 706-662(5), of the Hawaii Revised Statutes~~

State v. Tafoya, 91 Hawai'i 261, 982 P.2d 890 (1999).

8.07D

OFFENDER AGAINST ELDERLY, HANDICAPPED OR A MINOR
UNDER THE AGE OF EIGHT: H.R.S. § 706-662 (5)

(Applicable to offenses that occurred on or before
October 30, 2007)

If you find that the prosecution has proven beyond a reasonable doubt that the Defendant committed the offense of (name of felony offense), then you must also answer the following two questions on a special interrogatory which will be provided to you:

1. Has the prosecution proven beyond a reasonable doubt that the Defendant, in the course of committing [or attempting to commit] the offense of (name of felony offense), inflicted serious bodily injury upon a person who was [sixty years or older] [blind] [a paraplegic] [a quadriplegic] [eight years or younger]?

2. Has the prosecution proven beyond a reasonable doubt that the Defendant knew or reasonably should have known that said person was [sixty years or older] [blind] [a paraplegic] [a quadriplegic] [eight years or younger]?

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

Notes

H.R.S. § 706-662(5).

State v. Tafoya, 91 Hawai`i 261, 982 P.2d 890 (1999).

8.07BD

**OFFENDER AGAINST ELDERLY, HANDICAPPED OR A MINOR
UNDER THE AGE OF EIGHT: H.R.S. § 706-662 (5)**

(Applicable to offenses that occurred on or before
October 30, 2007)

If you find that the prosecution has proven beyond a reasonable doubt that the Defendant committed the offense of (name of felony offense), then you must also answer the following two questions on a special interrogatory which will be provided to you:

1. Has the prosecution proven beyond a reasonable doubt that the Defendant, in the course of committing [or attempting to commit] the offense of (name of felony offense), inflicted serious bodily injury upon a person who was [sixty years or older] [blind] [a paraplegic] [a quadriplegic] [eight years or younger]?

2. Has the prosecution proven beyond a reasonable doubt that the Defendant knew or reasonably should have known that said person was [sixty years or older] [blind] [a paraplegic] [a quadriplegic] [eight years or younger]?

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

Notes

~~Section H.R.S. § 706-662(5) of the Hawaii Revised Statutes.~~

State v. Tafoya, 91 Hawai'i 261, 982 P.2d 890 (1999).

8.07E

**SPECIAL INTERROGATORY: OFFENDER AGAINST ELDERLY,
HANDICAPPED OR A MINOR UNDER THE AGE OF EIGHT:
H.R.S. § 706-662 (5)**

(Applicable to offenses that occurred on or before
October 30, 2007)

1. Has the prosecution proven beyond a reasonable doubt that the Defendant, in the course of committing [or attempting to commit] the offense of (name of felony offense), inflicted serious bodily injury upon a person who was [sixty years or older] [blind] [a paraplegic] [a quadriplegic] [eight years or younger]?

_____ Yes

_____ No

2. Has the prosecution proven beyond a reasonable doubt that the Defendant knew or reasonably should have known that said person was [sixty years or older] [blind] [a paraplegic] [a quadriplegic] [eight years or younger]?

_____ Yes

_____ No

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

Notes

H.R.S. § 706-662(5).

State v. Tafoya, 91 Hawai'i 261, 982 P.2d 890 (1999).

8.07E (proposed 08/27/08)

8.07EE

**SPECIAL INTERROGATORY: OFFENDER AGAINST ELDERLY,
HANDICAPPED OR A MINOR UNDER THE AGE OF EIGHT:
H.R.S. § 706-662 (5)**

(Applicable to offenses that occurred on or before
October 30, 2007)

1. Has the prosecution proven beyond a reasonable doubt that the Defendant, in the course of committing [or attempting to commit] the offense of (name of felony offense), inflicted serious bodily injury upon a person who was [sixty years or older] [blind] [a paraplegic] [a quadriplegic] [eight years or younger]?

_____ Yes

_____ No

2. Has the prosecution proven beyond a reasonable doubt that the Defendant knew or reasonably should have known that said person was [sixty years or older] [blind] [a paraplegic] [a quadriplegic] [eight years or younger]?

_____ Yes

_____ No

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

Notes

~~Section H.R.S. § 706-662(5) of the Hawaii Revised Statutes.~~

State v. Tafoya, 91 Hawai'i 261, 982 P.2d 890 (1999).

8.07E (proposed 08/27/08)

(Applicable to offenses occurring on or after April 9, 2007)

A person commits the offense of Assault in the Second Degree if he/she intentionally, knowingly, or recklessly causes substantial bodily injury to another person.

These two elements are:

2. That the Defendant did so intentionally, knowingly, or recklessly.

H.R.S. §§ 707-711(1)(a), (b), 702-206(1) and (2).

For definition of states of mind, see instructions:

- 9.16 (proposed 08/27/08)

6.04 - "recklessly"

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

9.00 - "substantial bodily injury"

H.R.S. § 707-711(1) (a), (b)

6.04 - "recklessly"

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

9.00 - "substantial bodily injury"

9.16A ASSAULT IN THE SECOND DEGREE -- INTENTIONAL OR KNOWING:
 H.R.S. § 707-711(1) (a)

(Applicable to offenses that occurred on or before April 8, 2007)

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

A person commits the offense of Assault in the Second Degree
if he/she intentionally or knowingly causes substantial bodily
injury to another person.

There are two material elements of the offense of Assault 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 caused substantial bodily injury
to another person; and
2. That the Defendant did so intentionally or knowingly.

Notes

H.R.S. §§ 707-711(1) (a), 702-206(1) and (2).

For definition of states of mind, see instructions:

6.02 - "intentionally"

6.03 - "knowingly"

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

9.00 - "substantial bodily injury"

9.16A ASSAULT IN THE SECOND DEGREE -- INTENTIONAL OR KNOWING:
 H.R.S. § 707-711(1) (a)

(Applicable to offenses that occurred on or before April 8, 2007)

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

A person commits the offense of Assault in the Second Degree
if he/she intentionally or knowingly causes substantial bodily
injury to another person.

There are two material elements of the offense of Assault 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 caused substantial bodily injury
to another person; and
2. That the Defendant did so intentionally or knowingly.

Notes

H.R.S. §§ 707-711(1) (a), 702-206(1) and (2).

For definition of states of mind, see instructions:

6.02 - "intentionally"

6.03 - "knowingly"

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

9.00 - "substantial bodily injury"

9.17 ASSAULT IN THE SECOND DEGREE -- RECKLESS:
 H.R.S. § 707-711(1)(b)

(Applicable to offenses occurring on or after June 22, 2006)

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

A person commits the offense of Assault in the Second Degree
if he/she recklessly causes [serious][substantial] bodily injury
to another person.

There are two material elements of the offense of Assault 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 caused [serious][substantial]
bodily injury to another person; and
2. That the Defendant did so recklessly.

Notes

H.R.S. §§ 707-711(1)(b), 702-206(3).

For definition of states of mind, see instruction:
6.04 - "recklessly"

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

9.00 - "serious bodily injury"

9.00 - "substantial bodily injury"

9.17 ASSAULT IN THE SECOND DEGREE -- RECKLESS:
 H.R.S. § 707-711(1) (b)

(Applicable to offenses occurring on or after June 22, 2006)

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

A person commits the offense of Assault in the Second Degree
if he/she recklessly causes [serious][substantial] bodily injury
to another person.

There are two material elements of the offense of Assault 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 caused [serious][substantial]
bodily injury to another person; and
2. That the Defendant did so recklessly.

Notes

H.R.S. §§ 707-711(1) (b), 702-206(3).

For definition of states of mind, see instruction:
6.04 - "recklessly"

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

9.00 - "serious bodily injury"

9.00 - "substantial bodily injury"

9.17A ASSAULT IN THE SECOND DEGREE -- RECKLESS:
 H.R.S. § 707-711(1) (b)

(Applicable to offenses that occurred on or before June 21, 2006)

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

A person commits the offense of Assault in the Second Degree
if he/she recklessly causes serious bodily injury to another
person.

There are two material elements of the offense of Assault 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 caused serious bodily injury to
another person; and
2. That the Defendant did so recklessly.

Notes

H.R.S. §§ 707-711(1) (b), 702-206(3).

For definition of states of mind, see instruction:
6.04 - "recklessly"

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

9.00 - "serious bodily injury"

9.17A ASSAULT IN THE SECOND DEGREE -- RECKLESS:
 H.R.S. § 707-711(1) (b)

(Applicable to offenses that occurred on or before June 21, 2006)

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

A person commits the offense of Assault in the Second Degree
if he/she recklessly causes serious bodily injury to another
person.

There are two material elements of the offense of Assault 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 caused serious bodily injury to
another person; and
2. That the Defendant did so recklessly.

Notes

H.R.S. §§ 707-711(1) (b), 702-206(3).

For definition of states of mind, see instruction:
6.04 - "recklessly"

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

9.00 - "serious bodily injury"

9.20 ASSAULT IN THE SECOND DEGREE -- EDUCATIONAL WORKER:
 H.R.S. § 707-711(1)(e)

(Applicable to offenses occurring on or after May 21, 2007)

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

A person commits the offense of Assault in the Second Degree
if he/she intentionally or knowingly causes bodily injury to an
educational worker [who is engaged in the performance of duty]
[who is within an educational facility].

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

These four elements are:

1. That, on or about (date) in the [City and] County of
(name of county), the Defendant caused bodily injury to an
educational worker; and
2. That the Defendant did so intentionally or knowingly;
and
3. That the Defendant did so to an educational worker who
was [engaged in the performance of duty] [within an educational
facility]; and
4. That the Defendant knew, at that time, that the person
was an educational worker [engaged in the performance of duty]
[within an educational facility].

"Educational worker" means any administrator, specialist,
counselor, teacher, or employee of the department of education;
an employee of a charter school, a person who is a volunteer in a
school program, activity, or function that is established,
sanctioned, or approved by the department of education; or a
person hired by the department of education on a contractual
basis and engaged in carrying out an educational function.

["Volunteer" means any person who of the person's own free will provides goods or services to an agency with no monetary or material gain and includes material donors, occasional-service, regular-service, and stipended volunteers [and includes any health care provider accepted in writing by the State of Hawai'i department of health as a "volunteer" who provides free medical or dental treatment, diagnosis, or advice to indigent and medically underserved patients, whether acting individually or in cooperation with a nonprofit organization]. ["Occasional-service volunteer" means any person who offers to provide a one-time, on call or single task service to an agency without receipt of any compensation.] ["Regular-service volunteer" means any person engaged in specific voluntary service activities on an on-going or continuous basis to an agency without receipt of any compensation.] ["Stipended volunteer" means any person who by receiving a support allowance is then able to provide voluntary service to an agency. The allowance may be for food, lodging, or other personal living expenses and does not reflect compensation for work performed.] ["Agency" means any state agency within the executive, legislative, and judicial branches, the Office of Hawaiian Affairs, and any agency within the executive and legislative branches of the several counties.]

Notes

H.R.S. §§ 707-711(1)(e), 702-206(1) and (2), and 90-1.

For definition of states of mind, see instructions:

6.02 - "intentionally"

6.03 - "knowingly"

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

9.00 - "bodily injury"

For definition of volunteer, see H.R.S. § 90-1.

9.20 ASSAULT IN THE SECOND DEGREE -- EDUCATIONAL WORKER:
 H.R.S. § 707-711(1)(e)

(Applicable to offenses occurring on or after May 21, 2007)

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

A person commits the offense of Assault in the Second Degree
if he/she intentionally or knowingly causes bodily injury to an
educational worker [who is engaged in the performance of duty]
[who is within an educational facility].

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

These four elements are:

1. That, on or about (date) in the [City and] County of
(name of county), the Defendant caused bodily injury to an
educational worker; and

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

3. That the Defendant did so to an educational worker who
was [engaged in the performance of duty] [within an educational
facility]; and

4. That the Defendant knew, at that time, that the person
was an educational worker [engaged in the performance of duty]
[within an educational facility].

"Educational worker" means any administrator, specialist,
counselor, teacher, or employee of the department of education,
~~or~~ ; an employee of a charter school, a person who is a volunteer
in a school program, activity, or function that is established,
sanctioned, or approved by the department of education; or a
person hired by the department of education on a contractual
basis and engaged in carrying out an educational function.

["Volunteer" means any person who of the person's own free will provides goods or services to an agency with no monetary or material gain and includes material donors, occasional-service, regular-service, and stipended volunteers [and includes any health care provider accepted in writing by the State of Hawai'i department of health as a "volunteer" who provides free medical or dental treatment, diagnosis, or advice to indigent and medically underserved patients, whether acting individually or in cooperation with a nonprofit organization]. ["Occasional-service volunteer" means any person who offers to provide a one-time, on call or single task service to an agency without receipt of any compensation.] ["Regular-service volunteer" means any person engaged in specific voluntary service activities on an on-going or continuous basis to an agency without receipt of any compensation.] ["Stipended volunteer" means any person who by receiving a support allowance is then able to provide voluntary service to an agency. The allowance may be for food, lodging, or other personal living expenses and does not reflect compensation for work performed.] ["Agency" means any state agency within the executive, legislative, and judicial branches, the Office of Hawaiian Affairs, and any agency within the executive and legislative branches of the several counties.]

Notes

H.R.S. §§ 707-711(1)(e), 702-206(1) and (2), and 90-1.

For definition of states of mind, see instructions:

6.02 - "intentionally"

6.03 - "knowingly"

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

9.00 - "bodily injury"

For definition of volunteer, see H.R.S. § 90-1.

9.20A ASSAULT IN THE SECOND DEGREE -- EDUCATIONAL WORKER:
H.R.S. § 707-711(1) (e)

(Applicable to offenses that occurred on or after July 12, 2006,
up to and including May 20, 2007)

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

A person commits the offense of Assault in the Second Degree
if he/she intentionally or knowingly causes bodily injury to an
educational worker [who is engaged in the performance of duty]
[who is within an educational facility].

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

These four elements are:

1. That, on or about (date) in the [City and] County of
(name of county), the Defendant caused bodily injury to an
educational worker; and

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

3. That the Defendant did so to an educational worker who
was [engaged in the performance of duty] [within an educational
facility]; and

4. That the Defendant knew, at that time, that the person was an educational worker [engaged in the performance of duty] [within an educational facility].

"Educational worker" means any administrator, specialist, counselor, teacher, or employee of the department of education; an employee of a charter school, a person who is a volunteer in a school program, activity, or function that is established, sanctioned, or approved by the department of education or a person hired by the department of education on a contractual basis and engaged in carrying out an educational function.

Notes

H.R.S. §§ 707-711(1)(e), 702-206(1) and (2).

For definition of states of mind, see instructions:

6.02 - "intentionally"

6.03 - "knowingly"

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

9.00 - "bodily injury"

9.20A ASSAULT IN THE SECOND DEGREE -- EDUCATIONAL WORKER:
H.R.S. § 707-711(1)(e)

(Applicable to offenses that occurred on or after July 12, 2006,
up to and including May 20, 2007)

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

A person commits the offense of Assault in the Second Degree
if he/she intentionally or knowingly causes bodily injury to an
educational worker [who is engaged in the performance of duty]
[who is within an educational facility].

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

These four elements are:

1. That, on or about (date) in the [City and] County of
(name of county), the Defendant caused bodily injury to an
educational worker; and

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

3. That the Defendant did so to an educational worker who
was [engaged in the performance of duty] [within an educational
facility]; and

4. That the Defendant knew, at that time, that the person was an educational worker [engaged in the performance of duty] [within an educational facility].

"Educational worker" means any administrator, specialist, counselor, teacher, or employee of the department of education, ~~or; an employee of a charter school,~~ a person who is a volunteer in a school program, activity, or function that is established, sanctioned, or approved by the department of education or a person hired by the department of education on a contractual basis and engaged in carrying out an educational function.

Notes

H.R.S. §§ 707-711(1)(e), 702-206(1) and (2).

For definition of states of mind, see instructions:

6.02 - "intentionally"

6.03 - "knowingly"

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

9.00 - "bodily injury"

9.20B ASSAULT IN THE SECOND DEGREE -- EDUCATIONAL WORKER:
H.R.S. § 707-711(1)(e)

(Applicable to offenses that occurred on or before July 11, 2006)

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

A person commits the offense of Assault in the Second Degree
if he/she intentionally or knowingly causes bodily injury to an
educational worker [who is engaged in the performance of duty]
[who is within an educational facility].

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

These four elements are:

1. That, on or about (date) in the [City and] County of
(name of county), the Defendant caused bodily injury to an
educational worker; and
2. That the Defendant did so intentionally or knowingly;
and
3. That the Defendant did so to an educational worker who
was [engaged in the performance of duty] [within an educational
facility]; and

4. That the Defendant knew, at that time, that the person was an educational worker [engaged in the performance of duty] [within an educational facility].

"Educational worker" means any administrator, specialist, counselor, teacher, or employee of the department of education, or a person who is a volunteer in a school program, activity, or function that is established, sanctioned, or approved by the department of education or a person hired by the department of education on a contractual basis and engaged in carrying out an educational function.

Notes

H.R.S. §§ 707-711(1)(e), 702-206(1) and (2).

For definition of states of mind, see instructions:

6.02 - "intentionally"

6.03 - "knowingly"

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

9.00 - "bodily injury"

9.20B ASSAULT IN THE SECOND DEGREE -- EDUCATIONAL WORKER:
H.R.S. § 707-711(1) (e)

(Applicable to offenses that occurred on or before July 11, 2006)

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

A person commits the offense of Assault in the Second Degree
if he/she intentionally or knowingly causes bodily injury to an
educational worker [who is engaged in the performance of duty]
[who is within an educational facility].

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

These four elements are:

1. That, on or about (date) in the [City and] County of
(name of county), the Defendant caused bodily injury to an
educational worker; and
2. That the Defendant did so intentionally or knowingly;
and
3. That the Defendant did so to an educational worker who
was [engaged in the performance of duty] [within an educational
facility]; and

4. That the Defendant knew, at that time, that the person was an educational worker [engaged in the performance of duty] [within an educational facility].

"Educational worker" means any administrator, specialist, counselor, teacher, or employee of the department of education, or a person who is a volunteer in a school program, activity, or function that is established, sanctioned, or approved by the department of education or a person hired by the department of education on a contractual basis and engaged in carrying out an educational function.

Notes

H.R.S. §§ 707-711(1)(e), 702-206(1) and (2).

For definition of states of mind, see instructions:

6.02 - "intentionally"

6.03 - "knowingly"

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

9.00 - "bodily injury"

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

(Applicable to offenses occurring on or after May 21, 2007)

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

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

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

These three elements are:

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

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

instrument; and

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

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

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

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

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

Notes

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

For definition of states of mind, see instructions:

6.02 - "intentionally"

6.04 - "recklessly"

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

9.00 - "bodily injury"

9.00 - "dangerous instrument"

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

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

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

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

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

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

(Applicable to offenses occurring on or after May 21, 2007)

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

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

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

These three elements are:

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

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

instrument; and

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

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

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

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

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

Notes

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

For definition of states of mind, see instructions:

6.02 - "intentionally"

6.04 - "recklessly"

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

9.00 - "bodily injury"

9.00 - "dangerous instrument"

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

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

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

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

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

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

(Applicable to offenses that occurred on or before May 20, 2007)

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

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

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

These three elements are:

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

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

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

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

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

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

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

Notes

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

For definition of states of mind, see instructions:

6.02 - "intentionally"

6.04 - "recklessly"

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

9.00 - "bodily injury"

9.00 - "dangerous instrument"

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

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

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

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

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

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

(Applicable to offenses that occurred on or before May 20, 2007)

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

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

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

These three elements are:

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

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

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

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

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

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

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

Notes

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

For definition of states of mind, see instructions:

6.02 - "intentionally"

6.04 - "recklessly"

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

9.00 - "bodily injury"

9.00 - "dangerous instrument"

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

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

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

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

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

