

IN THE SUPREME COURT OF THE STATE OF HAWAII

EMERSON  
APPELLATE COURTS  
STATE OF HAWAII

2008 SEP 19 AM 9:50

FILED

In the Matter of the Publication and Distribution of the  
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 court<sup>1</sup>)

Upon consideration of the Pattern Criminal Jury Instructions Standing Committee's request to publish and distribute (1) revisions to Criminal Instructions 10.00 through 10.04 and (2) the addition of Criminal Jury Instructions 10.03A through 10.03D and 10.04A to the Hawai'i Pattern Jury Instructions - Criminal,

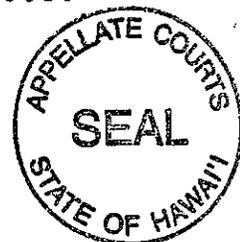
IT IS HEREBY ORDERED that the attached criminal jury instructions 10.00 through 10.04, 10.03A through 10.03D, and 10.04A are approved for publication and distribution.

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, September 19, 2008.

FOR THE COURT:

*[Signature]*  
Chief Justice



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



**DEFINITIONS OF TERMS USED IN CHAPTER 10,  
PATTERN JURY INSTRUCTIONS**

"building" includes any structure, and the term also includes any vehicle, railway car, aircraft, or watercraft used for lodging of persons therein; each unit of a building consisting of two or more units separately secured or occupied is a separate building.

"cable television service" means one-way transmission of programming provided by, or generally considered comparable to programming provided by, a television broadcast station or other information made available by a cable operator to all subscribers generally.

"cable television service device" means any mechanical or electronic instrument, apparatus, equipment or device which can be used to obtain cable television services without payment of applicable charges therefor. A "cable television service device" does not include any instrument, apparatus, equipment, device, facility or any component thereof furnished by a cable operator in the ordinary course of its business.

"cardholder" means the person or organization named on the face of a credit card to whom or for whose benefit the credit card is issued by an issuer.

"control over the property" means the exercise of dominion over the property and includes, but is not limited to, taking, carrying away, or possessing the property, or selling, conveying, or transferring title to or an interest in the property.

"credit card" means any instrument or device, whether known as a credit card, credit plate, debit card, electronic benefits transfer card, or by any other name, issued with or without fee by an issuer for the use of the cardholder in obtaining money, goods, services, or anything else of value.

"deception" occurs when a person knowingly:

(a) creates or confirms another's impression which is false and which the defendant does not believe to be true; or

(b) fails to correct a false impression which he previously has created or confirmed; or

(c) prevents another from acquiring information pertinent to the disposition of the property involved; or

(d) sells or otherwise transfers or encumbers property, failing to disclose a lien, adverse claim, or other legal impediment to the enjoyment of the property, whether that impediment is or is not valid, or is or is not a matter of official record; or

(e) promises performance which he/she does not intend to perform or knows will not be performed, but a person's intention not to perform a promise shall not be inferred from the fact alone that he/she did not subsequently perform the promise.

The term "deception" does not, however, include falsity as to matters having no pecuniary significance, or puffing by statements unlikely to deceive ordinary persons in the group addressed. "Puffing" means an exaggerated commendation of wares or services in communications addressed to the public or to a class or group.

"deprive" means:

(a) to withhold property or cause it to be withheld from a person permanently or for so extended a period or under such circumstance that a significant portion of its economic value, or of the use and benefit thereof, is lost to him; or

(b) to dispose of the property so as to make it unlikely that the owner will recover it; or

(c) to retain the property with intent to restore it to the owner only if the owner purchases or leases it back, or pays a reward or other compensation for its return; or

(d) to sell, give, pledge, or otherwise transfer any interest in the property; or

(e) to subject the property to the claim of a person other than the owner.

"distributes" means to sell, transfer, give or deliver to another, or to leave, barter, or exchange with another, or to offer or agree to do the same.

"dwelling" means a building which is used or usually used by a person for lodging.

"enter" means to have any intrusion into a motor vehicle with the whole physical body, with any part of the body, or with any instrument in contact with the body introduced for the purpose of committing a crime against a person or against property rights.

"enter or remain unlawfully" means a person "enters or remains unlawfully" in or upon premises when he/she is not licensed, invited, or otherwise privileged to do so. A person who, regardless of his/her intent, enters or remains in or upon premises which are at the time open to the public does so with license and privilege unless he/she defies a lawful order not to enter or remain, personally communicated to him/her by the owner of the premises or some other authorized person. A license or privilege to enter or remain in a building which is only partly open to the public is not a license or privilege to enter or remain in that part of the building which is not open to the public.

"expired credit card" means a credit card which is no longer valid because the term shown on the credit card has elapsed.

"government" means the United States, or any state, county, municipality, or other political unit within territory belonging to the United States, or any department, agency, or subdivision

of any of the foregoing, or any corporation or other association carrying out the functions of government, or any corporation or agency formed pursuant to interstate compact or international treaty. As used in this definition "state" includes any state, territory or possession of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

"intent to defraud" means:

(a) an intent to use deception to injure another's interest which has value; or

(b) knowledge by the defendant that he is facilitating an injury to another's interest which has value.

"issuer" means the business organization or financial institution which issues a credit card or its agent.

"obtain" means:

(a) when used in relation to property, to bring about a transfer of possession or other interest, whether to the obtainer or to another.

"owner" means a person, other than the defendant, who has possession of or any other interest in, the property involved, even though that possession or interest is unlawful; however, a secured party is not an owner in relation to a defendant who is a debtor with respect to property in which the secured party has only a security interest.

"premises" includes any building and any real property.

"property" means any money, personal property, real property, thing in action, evidence of debt or contract, or article of value of any kind. Commodities of a public utility nature such as gas, electricity, steam, and water constitute property, but the supplying of such a commodity to premises from an outside source by means of wires, pipes, conduits, or other equipment

shall be deemed a rendition of a service rather than a sale or delivery of property.

"property of another" means property which any person, other than the defendant, has possession of or any other interest in, even though that possession or interest is unlawful. (See H.R.S. § 701-118(7) for definition of "person" if applicable.)

"receives" or "receiving" includes but is not limited to acquiring possession, control, or title, and taking a security interest in the property.

"revoked credit card" means a credit card which is no longer valid because permission to use the credit card has been suspended or terminated by the issuer.

"services" includes but is not limited to labor, professional services, transportation, telephone or other public services, accommodation in hotels, restaurants or elsewhere, admission to exhibitions, and the supplying of equipment for use.

"stolen" means obtained by theft or robbery.

"unauthorized control over property" means control over property of another which is not authorized by the owner.

"widely dangerous means" includes explosion, flood, avalanche, collapse of building, poison gas, radioactive material, or any other material, substance, force, or means capable of causing potential widespread injury or damage.



10.00

DEFINITIONS OF TERMS USED IN CHAPTER 10,  
PATTERN JURY INSTRUCTIONS

"building" includes any structure, and the term also includes any vehicle, railway car, aircraft, or watercraft used for lodging of persons therein; each unit of a building consisting of two or more units separately secured or occupied is a separate building.

"cable television service" means one-way transmission of programming provided by, or generally considered comparable to programming provided by, a television broadcast station or other information made available by a cable operator to all subscribers generally.

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"cardholder" means the person or organization named on the face of a credit card to whom or for whose benefit the credit card is issued by an issuer.

"control over the property" means the exercise of dominion over the property and includes, but is not limited to, taking, carrying away, or possessing the property, or selling, conveying, or transferring title to or an interest in the property.

"credit card" means any instrument or device, whether known as a credit card, credit plate, debit card, electronic benefits transfer card, or by any other name, issued with or without fee by an issuer for the use of the cardholder in obtaining money, goods, services, or anything else of value, ~~on credit~~.

"deception" occurs when a person knowingly:

(a) creates or confirms another's impression which is false and which the defendant does not believe to be true; or

(b) fails to correct a false impression which he previously has created or confirmed; or

(c) prevents another from acquiring information pertinent to the disposition of the property involved; or

(d) sells or otherwise transfers or encumbers property, failing to disclose a lien, adverse claim, or other legal impediment to the enjoyment of the property, whether that impediment is or is not valid, or is or is not a matter of official record; or

(e) promises performance which he/she does not intend to perform or knows will not be performed, but a person's intention not to perform a promise shall not be inferred from the fact alone that he/she did not subsequently perform the promise.

The term "deception" does not, however, include falsity as to matters having no pecuniary significance, or puffing by statements unlikely to deceive ordinary persons in the group addressed. "Puffing" means an exaggerated commendation of wares or services in communications addressed to the public or to a class or group.

"deprive" means:

(a) to withhold property or cause it to be withheld from a person permanently or for so extended a period or under such circumstance that a significant portion of its economic value, or of the use and benefit thereof, is lost to him; or

(b) to dispose of the property so as to make it unlikely that the owner will recover it; or

(c) to retain the property with intent to restore it to the owner only if the owner purchases or leases it back, or pays a reward or other compensation for its return; or

(d) to sell, give, pledge, or otherwise transfer any interest in the property; or

(e) to subject the property to the claim of a person other than the owner.

"distributes" means to sell, transfer, give or deliver to another, or to leave, barter, or exchange with another, or to offer or agree to do the same.

"dwelling" means a building which is used or usually used by a person for lodging.

"enter" means to have any intrusion into a motor vehicle with the whole physical body, with any part of the body, or with any instrument in contact with the body introduced for the purpose of committing a crime against a person or against property rights.

"enter or remain unlawfully" means a person "enters or remains unlawfully" in or upon premises when he/she is not licensed, invited, or otherwise privileged to do so. A person who, regardless of his/her intent, enters or remains in or upon premises which are at the time open to the public does so with license and privilege unless he/she defies a lawful order not to enter or remain, personally communicated to him/her by the owner of the premises or some other authorized person. A license or privilege to enter or remain in a building which is only partly open to the public is not a license or privilege to enter or remain in that part of the building which is not open to the public.

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of any of the foregoing, or any corporation or other association carrying out the functions of government, or any corporation or agency formed pursuant to interstate compact or international treaty. As used in this definition "state" includes any state, territory or possession of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

"intent to defraud" means:

(a) an intent to use deception to injure another's interest which has value; or

(b) knowledge by the defendant that he is facilitating an injury to another's interest which has value.

"issuer" means the business organization or financial institution which issues a credit card or its agent.

"obtain" means:

(a) when used in relation to property, to bring about a transfer of possession or other interest, whether to the obtainer or to another.

"owner" means a person, other than the defendant, who has possession of or any other interest in, the property involved, even though that possession or interest is unlawful; however, a secured party is not an owner in relation to a defendant who is a debtor with respect to property in which the secured party has only a security interest.

"premises" includes any building and any real property.

"property" means any money, personal property, real property, thing in action, evidence of debt or contract, or article of value of any kind. Commodities of a public utility nature such as gas, electricity, steam, and water constitute property, but the supplying of such a commodity to premises from an outside source by means of wires, pipes, conduits, or other equipment

shall be deemed a rendition of a service rather than a sale or delivery of property.

"property of another" means property which any person, other than the defendant, has possession of or any other interest in, even though that possession or interest is unlawful. (See H.R.S. § 701-118(7) for definition of "person" if applicable.)

"receives" or "receiving" includes but is not limited to acquiring possession, control, or title, and taking a security interest in the property.

"revoked credit card" means a credit card which is no longer valid because permission to use the credit card has been suspended or terminated by the issuer.

"services" includes but is not limited to labor, professional services, transportation, telephone or other public services, accommodation in hotels, restaurants or elsewhere, admission to exhibitions, and the supplying of equipment for use.

"stolen" means obtained by theft or robbery.

"unauthorized control over property" means control over property of another which is not authorized by the owner.

"widely dangerous means" includes explosion, flood, avalanche, collapse of building, poison gas, radioactive material, or any other material, substance, force, or means capable of causing potential widespread injury or damage.



10.01

BURGLARY IN THE FIRST DEGREE --  
DANGEROUS INSTRUMENT:  
H.R.S. § 708-810(1)(a)

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

A person commits the offense of Burglary in the First Degree if he/she intentionally [enters a building unlawfully] [remains unlawfully in a building], with intent to commit therein a crime against a person or against property rights, and he/she is armed with a dangerous instrument in the course of committing the offense.

There are three material elements of the offense of Burglary 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 intentionally [entered a building unlawfully] [remained unlawfully in a building]; and
2. That, the Defendant, had the intent to commit therein a crime against a person or against property rights; and
3. That the Defendant was intentionally armed with a

dangerous instrument in the course of committing the offense.

An act occurs "in the course of committing the offense" if it occurs in effecting entry or while in the building, or in immediate flight therefrom.

#### Notes

H.R.S. §§ 708-810(1)(a) and (2), 708-840(2), 702-206(1);  
*State v. Mahoe*, 89 Hawai`i 284, 972 P.2d 287 (1998).

For definition of states of mind, see instruction:

6.02 - "intentionally"

For definition of terms defined by H.R.S. Chapter 708, see instructions:

10.00 - "building"

10.00 - "enter or remain unlawfully"

10.00 - "premises"

For definition of terms not defined by H.R.S. Chapter 708, see instruction 9.00 - "dangerous instrument." See also instruction 10.27 for definition of "dangerous instrument" as defined by H.R.S. § 708-840.

For statutory parameters of a "crime," see H.R.S. § 701-107.

10.01

BURGLARY IN THE FIRST DEGREE --  
DANGEROUS INSTRUMENT:  
H.R.S. § 708-810(1)(a)

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

A person commits the offense of Burglary in the First Degree  
if he/she intentionally [enters a building unlawfully] [remains  
unlawfully in a building], with intent to commit therein a crime  
against a person or against property rights, and he/she is armed  
with a dangerous instrument in the course of committing the  
offense.

There are three material elements of the offense of Burglary  
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 intentionally [entered a building  
unlawfully] [remained unlawfully in a building]; and

2. That, ~~when the [Defendant unlawfully entered the  
building,] [Defendant's remaining in the building became  
unlawful,]~~ the Defendant, ~~at that time,~~ had the intent to commit

therein a crime against a person or against property rights; and

3. That the Defendant was intentionally armed with a dangerous instrument in the course of committing the offense.

An act occurs "in the course of committing the offense" if it occurs in effecting entry or while in the building, or in immediate flight therefrom.

#### Notes

H.R.S. §§ 708-810(1)(a) and (2), 708-840(2), 702-206(1);  
*State v. Mahoe*, 89 Hawai'i 284, 972 P.2d 287 (1998).

~~The bracketed alternatives in element one of the instruction corresponds respectively to the bracketed alternatives in element two.~~

For definition of states of mind, see instruction:  
6.02 - "intentionally"

For definition of terms defined by H.R.S. Chapter 708, see instructions:

- 10.00 - "building"
- 10.00 - "enter or remain unlawfully"
- 10.00 - "premises"

For definition of terms *not* defined by H.R.S. Chapter 708, see instruction 9.00 - "dangerous instrument." See also instruction 10.27 for definition of "dangerous instrument" as defined by H.R.S. § 708-840.

For statutory parameters of a "crime," see H.R.S. § 701-107.

10.02

BURGLARY IN THE FIRST DEGREE --  
BODILY INJURY:  
H.R.S. § 708-810(1)(b)

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

A person commits the offense of Burglary in the First Degree if he/she intentionally [enters a building unlawfully] [remains unlawfully in a building], with intent to commit therein a crime against a person or against property rights, and he/she intentionally inflicts or attempts to inflict bodily injury on anyone in the course of committing the offense.

There are three material elements of the offense of Burglary 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 intentionally [entered a building unlawfully] [remained unlawfully in a building]; and

2. That, the Defendant, had the intent to commit therein a crime against a person or against property rights; and

3. That the Defendant intentionally inflicted or attempted to inflict bodily injury on anyone in the course of committing

the offense.

An act occurs "in the course of committing the offense" if it occurs in effecting entry or while in the building, or in immediate flight therefrom.

#### Notes

H.R.S. §§ 708-810(1)(b) and (2), 702-206(1); *State v. Mahoe*, 89 Hawai'i 284, 972 P.2d 287 (1998).

For definition of states of mind, see instruction:

6.02 - "intentionally"

For definition of terms defined by H.R.S. Chapter 708, see instructions:

10.00 - "building"

10.00 - "enter or remain unlawfully"

10.00 - "premises"

For definition of terms not defined by H.R.S. Chapter 708, see instruction:

9.00 - "bodily injury"

For statutory parameters of a "crime," see H.R.S. § 701-107.

For instructions regarding Attempt, see H.R.S. Chapter 14.

10.02

BURGLARY IN THE FIRST DEGREE --

BODILY INJURY:

H.R.S. § 708-810(1)(b)

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

A person commits the offense of Burglary in the First Degree if he/she intentionally [enters a building unlawfully] [remains unlawfully in a building], with intent to commit therein a crime against a person or against property rights, and he/she intentionally inflicts or attempts to inflict bodily injury on anyone in the course of committing the offense.

There are three material elements of the offense of Burglary 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 intentionally [entered a building unlawfully] [remained unlawfully in a building]; and

2. That, ~~when the [Defendant unlawfully entered the building,]~~ ~~[Defendant's remaining in the building became unlawful,]~~ the Defendant, ~~at that time,~~ had the intent to commit therein a crime against a person or against property rights; and

3. That the Defendant intentionally inflicted or attempted to inflict bodily injury on anyone in the course of committing the offense.

An act occurs "in the course of committing the offense" if it occurs in effecting entry or while in the building, or in immediate flight therefrom.

#### Notes

H.R.S. §§ 708-810(1)(b) and (2), 702-206(1); *State v. Mahoe*, 89 Hawai'i 284, 972 P.2d 287 (1998).

~~The bracketed alternatives in element one of the instruction correspond respectively to the bracketed alternatives in element two.~~

For definition of states of mind, see instruction:  
6.02 - "intentionally"

For definition of terms defined by H.R.S. Chapter 708, see instructions:

10.00 - "building"  
10.00 - "enter or remain unlawfully"  
10.00 - "premises"

For definition of terms *not* defined by H.R.S. Chapter 708, see instruction:

9.00 - "bodily injury"

For statutory parameters of a "crime," see H.R.S. § 701-107.

For instructions regarding Attempt, see H.R.S. Chapter 14.

10.03

BURGLARY IN THE FIRST DEGREE -- DWELLING:  
H.R.S. § 708-810(1)(c)

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

A person commits the offense of Burglary in the First Degree if he/she intentionally [enters a building unlawfully] [remains unlawfully in a building], with intent to commit therein a crime against a person or against property rights, and he/she recklessly disregards a risk that the building is the dwelling of another, and the building is such a dwelling.

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

These four elements are:

1. That, on or about (date) in the [City and] County of (name of county), the Defendant intentionally [entered a building unlawfully] [remained unlawfully in a building]; and
2. That, the Defendant, had the intent to commit therein a crime against a person or against property rights; and
3. That the Defendant recklessly disregarded the risk that the building was the dwelling of another; and

4. That the building was a dwelling of another.

**Notes**

H.R.S. §§ 708-810(1)(c), 702-206(1); *State v. Mahoe*, 89 Hawai'i 284, 972 P.2d 287 (1998).

For definition of states of mind, see instruction:

6.02 - "intentionally"

For definition of terms defined by H.R.S. Chapter 708, see instructions:

10.00 - "building"

10.00 - "dwelling"

10.00 - "enter or remain unlawfully"

10.00 - "premises"

For statutory parameters of a "crime," see H.R.S. § 701-107.

10.03

BURGLARY IN THE FIRST DEGREE -- DWELLING:  
H.R.S. § 708-810(1)(c)

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

A person commits the offense of Burglary in the First Degree if he/she intentionally [enters a building unlawfully] [remains unlawfully in a building], with intent to commit therein a crime against a person or against property rights, and he/she recklessly disregards a risk that the building is the dwelling of another, and the building is such a dwelling.

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

These four elements are:

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

2. That, ~~when the [Defendant unlawfully entered the building,]~~ ~~[Defendant's remaining in the building became unlawful,]~~ the Defendant, at that time, had the intent to commit therein a crime against a person or against property rights; and

10.03 (proposed 08/22/08)

3. That the Defendant recklessly disregarded the risk that the building was the dwelling of another; and

4. That the building was a dwelling of another.

#### Notes

H.R.S. §§ 708-810(1)(c), 702-206(1); *State v. Mahoe*, 89 Hawai`i 284, 972 P.2d 287 (1998).

~~The bracketed alternatives in element one of the instruction corresponds respectively to the bracketed alternatives in element two.~~

For definition of states of mind, see instruction:  
6.02 - "intentionally"

For definition of terms defined by H.R.S. Chapter 708, see instructions:

- 10.00 - "building"
- 10.00 - "dwelling"
- 10.00 - "enter or remain unlawfully"
- 10.00 - "premises"

For statutory parameters of a "crime," see H.R.S. § 701-107.

10.04

BURGLARY IN THE SECOND DEGREE:  
H.R.S. § 708-811

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

A person commits the offense of Burglary in the Second Degree if he/she intentionally [enters a building unlawfully] [remains unlawfully in a building], with intent to commit therein a crime against a person or against property rights.

There are two material elements of the offense of Burglary 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 intentionally [entered a building unlawfully] [remained unlawfully in a building]; and

2. That, the Defendant, had the intent to commit therein a crime against a person or against property rights.

**Notes**

H.R.S. §§ 708-811, 702-206(1); *State v. Mahoe*, 89 Hawai`i 284, 972 P.2d 287 (1998).

For definition of states of mind, see instruction:

10.04 (proposed 08/22/08)

6.02 - "intentionally"

For definition of terms defined by H.R.S. Chapter 708, see instructions:

10.00 - "building"

10.00 - "enter or remain unlawfully"

10.00 - "premises"

For statutory parameters of a "crime," see H.R.S. § 701-107.

10.04

BURGLARY IN THE SECOND DEGREE:  
H.R.S. § 708-811

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

A person commits the offense of Burglary in the Second Degree if he/she intentionally [enters a building unlawfully] [remains unlawfully in a building], with intent to commit therein a crime against a person or against property rights.

There are two material elements of the offense of Burglary 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 intentionally [entered a building unlawfully] [remained unlawfully in a building]; and

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

## Notes

H.R.S. §§ 708-811, 702-206(1); *State v. Mahoe*, 89 Hawai'i 284, 972 P.2d 287 (1998).

~~The bracketed alternatives in element one of the instruction correspond respectively to the bracketed alternatives in element two.~~

For definition of states of mind, see instruction:  
6.02 - "intentionally"

For definition of terms defined by H.R.S. Chapter 708, see instructions:

- 10.00 - "building"
- 10.00 - "enter or remain unlawfully"
- 10.00 - "premises"

For statutory parameters of a "crime," see H.R.S. § 701-107.

10.03A

UNAUTHORIZED ENTRY IN A DWELLING:

H.R.S. § 708-812.6

(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 Unauthorized Entry in a Dwelling.

A person commits the offense of Unauthorized Entry in a Dwelling if he/she intentionally or knowingly enters unlawfully into a dwelling, and he/she recklessly disregards a risk that another person was lawfully present in the dwelling, and another person was lawfully present in the dwelling.

There are four material elements of the offense of Unauthorized Entry in a Dwelling, 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 entered unlawfully into a dwelling; and
2. That the Defendant did so intentionally or knowingly; and
3. That the Defendant recklessly disregarded the risk that another person was lawfully present in the dwelling; and
4. That another person, at that time, was lawfully present

in the dwelling.

#### Notes

H.R.S. § 708-812.6.

For definition of states of mind, see instruction:

6.02--"intentionally"

6.03--"knowingly"

6.04--"recklessly"

For definition of terms defined by H.R.S. Chapter 708, see instructions:

10.00--"dwelling"

10.00--"enter or remain unlawfully"

10.03A

UNAUTHORIZED ENTRY IN A DWELLING:

H.R.S. § 708-812.6

(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 Unauthorized Entry in a Dwelling.

A person commits the offense of Unauthorized Entry in a  
Dwelling if he/she intentionally or knowingly enters unlawfully  
into a dwelling, and he/she recklessly disregards a risk that  
another person was lawfully present in the dwelling, and another  
person was lawfully present in the dwelling.

There are four material elements of the offense of  
Unauthorized Entry in a Dwelling, 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 entered unlawfully into a  
dwelling; and

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

3. That the Defendant recklessly disregarded the risk that  
another person was lawfully present in the dwelling; and

4. That another person, at that time, was lawfully present

in the dwelling.

Notes

H.R.S. § 708-812.6.

For definition of states of mind, see instruction:

6.02--"intentionally"

6.03--"knowingly"

6.04--"recklessly"

For definition of terms defined by H.R.S. Chapter 708, see instructions:

10.00--"dwelling"

10.00--"enter or remain unlawfully"

10.03B BURGLARY OF A DWELLING DURING A CIVIL DEFENSE  
EMERGENCY OR DISASTER RELIEF PERIOD:  
H.R.S. § 708-817

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

[In Count (count number) of the Indictment/Complaint, the]  
[The] Defendant, (defendant's name), is charged with the offense of  
Burglary of a Dwelling During a Civil Defense Emergency or Disaster  
Relief Period.

A person commits the offense of Burglary of a Dwelling During  
a Civil Defense Emergency or Disaster Relief Period if during a  
[civil defense emergency][disaster relief period], the defendant  
intentionally [enters a dwelling unlawfully][remains unlawfully in  
a dwelling], with intent to commit therein a crime against a person  
or against property rights, and he/she recklessly disregards a risk  
that the building is the dwelling of another, and the building is  
such a dwelling.

There are six material elements of the offense of Burglary of  
a Dwelling During a Civil Defense Emergency or Disaster Relief  
Period, each of which the prosecution must prove beyond a  
reasonable doubt.

These six elements are:

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

2. That the Defendant had the intent to commit therein a crime against a person or against property rights; and

3. That the Defendant recklessly disregarded the risk that the building was the dwelling of another; and

4. That the building was a dwelling of another; and

5. That the defendant's foregoing behavior occurred during [the time of a civil defense emergency proclaimed by the governor pursuant to the Civil Defense and Emergency Act within the area covered by the civil defense emergency] [the period of disaster relief under Chapter 127, HRS]; and

6. That the defendant recklessly disregarded the risk that his/her behavior occurred during [the time of a civil defense emergency proclaimed by the governor pursuant to the Civil Defense and Emergency Act within the area covered by the civil defense emergency] [the period of disaster relief under Chapter 127, HRS].

#### Notes

H.R.S. § 708-817.

For definition of states of mind, see instruction:

10.03B (proposed 08/22/08)

6.02 - "intentionally"

For definition of terms defined by H.R.S. Chapter 708, see instructions:

- 10.00 - "building"
- 10.00 - "dwelling"
- 10.00 - "enter or remain unlawfully"
- 10.00 - "premises"

For statutory parameters of a "crime," see H.R.S. § 701-107.



10.03B BURGLARY OF A DWELLING DURING A CIVIL DEFENSE  
EMERGENCY OR DISASTER RELIEF PERIOD:  
H.R.S. § 708-817

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

[In Count (count number) of the Indictment/Complaint, the  
[The] Defendant, (defendant's name), is charged with the offense of  
Burglary of a Dwelling During a Civil Defense Emergency or Disaster  
Relief Period.

A person commits the offense of Burglary of a Dwelling During  
a Civil Defense Emergency or Disaster Relief Period if during a  
[civil defense emergency] [disaster relief period], the defendant  
intentionally [enters a dwelling unlawfully] [remains unlawfully in  
a dwelling], with intent to commit therein a crime against a person  
or against property rights, and he/she recklessly disregards a risk  
that the building is the dwelling of another, and the building is  
such a dwelling.

There are six material elements of the offense of Burglary of  
a Dwelling During a Civil Defense Emergency or Disaster Relief  
Period, each of which the prosecution must prove beyond a  
reasonable doubt.

These six elements are:

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

2. That the Defendant had the intent to commit therein a crime against a person or against property rights; and

3. That the Defendant recklessly disregarded the risk that the building was the dwelling of another; and

4. That the building was a dwelling of another; and

5. That the defendant's foregoing behavior occurred during [the time of a civil defense emergency proclaimed by the governor pursuant to the Civil Defense and Emergency Act within the area covered by the civil defense emergency] [the period of disaster relief under Chapter 127, HRS]; and

6. That the defendant recklessly disregarded the risk that his/her behavior occurred during [the time of a civil defense emergency proclaimed by the governor pursuant to the Civil Defense and Emergency Act within the area covered by the civil defense emergency] [the period of disaster relief under Chapter 127, HRS].

#### Notes

H.R.S. § 708-817.

For definition of states of mind, see instruction:

6.02 - "intentionally"

For definition of terms defined by H.R.S. Chapter 708, see instructions:

10.00 - "building"

10.00 - "dwelling"

10.00 - "enter or remain unlawfully"

10.00 - "premises"

For statutory parameters of a "crime," see H.R.S. § 701-107.



10.03C AFFIRMATIVE DEFENSE TO UNAUTHORIZED ENTRY IN A DWELLING:  
H.R.S. § 708-812.6(3)

The Defendant has raised an affirmative defense to the Unauthorized Entry in a Dwelling charge to allow for an included offense.

If and only if you unanimously find that all of the elements of Unauthorized Entry in a Dwelling have been proven by the prosecution beyond a reasonable doubt, then you must consider whether the Defendant has proven the affirmative defense by a preponderance of the evidence.

There are three elements for the affirmative defense to apply.

These three elements are:

1. That there was a social gathering of invited guests at the dwelling the Defendant entered; and
2. That the Defendant intended to join the social gathering; and
3. That the Defendant did not intend to commit any unlawful act other than the unlawful entry.

The Defendant must prove an affirmative defense by a preponderance of the evidence. Proof by a preponderance of evidence means that the Defendant must prove that it is more

likely than not, or more probable than not, that each element of the affirmative defense to the Unauthorized Entry in a Dwelling occurred. In determining whether the defendant has proven an affirmative defense by a preponderance of the evidence, you must consider all of the evidence that has been presented to you regardless of who presented it.

If you unanimously find that the Defendant has proven the elements of the affirmative defense by a preponderance of the evidence, then you must find the defendant guilty of the included offense of Unauthorized Entry in a Dwelling.

If you unanimously find that the Defendant has not proven the elements of the affirmative defense by a preponderance of the evidence, then you must find the Defendant guilty of Unauthorized Entry in a Dwelling as charged.

If you are unable to reach a unanimous agreement as to whether the affirmative defense has been proved or not been proved, then a verdict may not be returned on the charge of Unauthorized Entry in a Dwelling.

#### Notes

H.R.S. § 708-812.6(3)

For definition of "affirmative defense," see instruction  
10.03C (proposed 08/22/08)

7.06.

10.03C (proposed 08/22/08)



10.03C AFFIRMATIVE DEFENSE TO UNAUTHORIZED ENTRY IN A DWELLING:  
H.R.S. § 708-812.6(3)

The Defendant has raised an affirmative defense to the Unauthorized Entry in a Dwelling charge to allow for an included offense.

If and only if you unanimously find that all of the elements of Unauthorized Entry in a Dwelling have been proven by the prosecution beyond a reasonable doubt, then you must consider whether the Defendant has proven the affirmative defense by a preponderance of the evidence.

There are three elements for the affirmative defense to apply.

These three elements are:

1. That there was a social gathering of invited guests at the dwelling the Defendant entered; and
2. That the Defendant intended to join the social gathering; and
3. That the Defendant did not intend to commit any unlawful act other than the unlawful entry.

The Defendant must prove an affirmative defense by a preponderance of the evidence. Proof by a preponderance of evidence means that the Defendant must prove that it is more

likely than not, or more probable than not, that each element of the affirmative defense to the Unauthorized Entry in a Dwelling occurred. In determining whether the defendant has proven an affirmative defense by a preponderance of the evidence, you must consider all of the evidence that has been presented to you regardless of who presented it.

If you unanimously find that the Defendant has proven the elements of the affirmative defense by a preponderance of the evidence, then you must find the defendant guilty of the included offense of Unauthorized Entry in a Dwelling.

If you unanimously find that the Defendant has not proven the elements of the affirmative defense by a preponderance of the evidence, then you must find the Defendant guilty of Unauthorized Entry in a Dwelling as charged.

If you are unable to reach a unanimous agreement as to whether the affirmative defense has been proved or not been proved, then a verdict may not be returned on the charge of Unauthorized Entry in a Dwelling.

#### Notes

H.R.S. § 708-812.6(3)

For definition of "affirmative defense," see instruction

7.06.

10.03C (proposed 08/22/08)



10.03D AFFIRMATIVE DEFENSE TO UNAUTHORIZED ENTRY IN A DWELLING  
SPECIAL INTERROGATORY:  
H.R.S. § 708-812.6(3)

1. Did the Defendant prove the affirmative defense by a preponderance of the evidence? (Your answer to this question must be unanimous.)

Yes \_\_\_\_\_

No \_\_\_\_\_

Notes

H.R.S. § 708-812.6(3).

The jury's answer to an interrogatory of this type, whether affirmative or negative, must be unanimous. See *State v. Peralto*, 95 Hawai'i 1, 18 P.3d 203 (2001); see also *State v. Yamada*, 99 Hawai'i 542, 57 P.3d 467 (2002).

10.03D AFFIRMATIVE DEFENSE TO UNAUTHORIZED ENTRY IN A DWELLING  
SPECIAL INTERROGATORY:  
H.R.S. § 708-812.6(3)

1. Did the Defendant prove the affirmative defense by a preponderance of the evidence? (Your answer to this question must be unanimous.)

Yes \_\_\_\_\_

No \_\_\_\_\_

Notes

H.R.S. § 708-812.6(3).

The jury's answer to an interrogatory of this type, whether affirmative or negative, must be unanimous. See State v. Peralto, 95 Hawai'i 1, 18 P.3d 203 (2001); see also State v. Yamada, 99 Hawai'i 542, 57 P.3d 467 (2002).

10.04A BURGLARY OF A BUILDING DURING A CIVIL DEFENSE  
EMERGENCY OR DISASTER RELIEF PERIOD:  
H.R.S. § 708-818

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

[In Count (count number) of the Indictment/Complaint, the]  
[The] Defendant, (defendant's name), is charged with the offense of  
Burglary of a Building During a Civil Defense Emergency or Disaster  
Relief Period.

A person commits the offense of Burglary of a Building During  
a Civil Defense Emergency or Disaster Relief Period if during a  
[civil defense emergency] [disaster relief period], the defendant  
intentionally [enters a building unlawfully] [remains unlawfully in  
a building], with intent to commit therein a crime against a person  
or against property rights.

There are four material elements of the offense of Burglary of  
a Building During a Civil Defense Emergency or Disaster Relief  
Period, 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 intentionally [entered a building  
unlawfully] [remained unlawfully in a building]; and

2. That the Defendant had the intent to commit therein a crime against a person or against property rights; and

3. That the Defendant's foregoing behavior occurred during [the time of a civil defense emergency proclaimed by the governor pursuant to the Civil Defense and Emergency Act within the area covered by the civil defense emergency] [the period of disaster relief under Chapter 127, HRS]; and

4. That the Defendant recklessly disregarded the risk that his/her behavior occurred during [the time of a civil defense emergency proclaimed by the governor pursuant to the Civil Defense and Emergency Act within the area covered by the civil defense emergency] [the period of disaster relief under Chapter 127, HRS].

#### Notes

H.R.S. § 708-818.

For definition of states of mind, see instruction:  
6.02 - "intentionally"

For definition of terms defined by H.R.S. Chapter 708, see instructions:

10.00 - "building"  
10.00 - "enter or remain unlawfully"  
10.00 - "premises"

For statutory parameters of a "crime," see H.R.S. § 701-107.

10.04A BURGLARY OF A BUILDING DURING A CIVIL DEFENSE  
EMERGENCY OR DISASTER RELIEF PERIOD:  
H.R.S. § 708-818

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

[In Count (count number) of the Indictment/Complaint, the  
[The] Defendant, (defendant's name), is charged with the offense of  
Burglary of a Building During a Civil Defense Emergency or Disaster  
Relief Period.

A person commits the offense of Burglary of a Building During  
a Civil Defense Emergency or Disaster Relief Period if during a  
[civil defense emergency] [disaster relief period], the defendant  
intentionally [enters a building unlawfully] [remains unlawfully in  
a building], with intent to commit therein a crime against a person  
or against property rights.

There are four material elements of the offense of Burglary of  
a Building During a Civil Defense Emergency or Disaster Relief  
Period, 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 intentionally [entered a building  
unlawfully] [remained unlawfully in a building]; and

2. That the Defendant had the intent to commit therein a crime against a person or against property rights; and

3. That the Defendant's foregoing behavior occurred during [the time of a civil defense emergency proclaimed by the governor pursuant to the Civil Defense and Emergency Act within the area covered by the civil defense emergency] [the period of disaster relief under Chapter 127, HRS]; and

4. That the defendant recklessly disregarded the risk that his/her behavior occurred during [the time of a civil defense emergency proclaimed by the governor pursuant to the Civil Defense and Emergency Act within the area covered by the civil defense emergency] [the period of disaster relief under Chapter 127, HRS].

#### Notes

H.R.S. § 708-818.

For definition of states of mind, see instruction:

6.02 - "intentionally"

For definition of terms defined by H.R.S. Chapter 708, see instructions:

10.00 - "building"

10.00 - "enter or remain unlawfully"

10.00 - "premises"

For statutory parameters of a "crime," see H.R.S. § 701-107.