

ICJI 1201 ASSAULT DEFINED

INSTRUCTION NO.

An "assault" is committed when a person:

(1) unlawfully attempts, with apparent ability, to commit a violent injury on the person of another; or

(2) intentionally and unlawfully threatens by word or act to do violence to the person of another, with an apparent ability to do so, and does some act which creates a well-founded fear in the other person that such violence is imminent.

Comment

I.C. § 18-901. This instruction should be used only when the commission of an assault is an element of another crime, e.g., I.C. § 18-909. The definition of assault may be tailored to fit the facts of the case.

The inability to immediately complete the crime does not negate the intent element. *State v. Daniels*, 134 Idaho 896, 11 P.3d 1114 (2000).

Legislative policy expressed within §§ 18-901 and 18-905 evidenced an intent that it was victim's reasonable perception that was dispositive of the question whether a weapon was deadly. *State v. Cudd*, 137 Idaho 625, 51 P.3d 439 (Ct. App. 2002).

ICJI 1202 ASSAULT

INSTRUCTION NO.

In order for the defendant to be guilty of Assault, the state must prove each of the following:

1. On or about [date]
2. in the state of Idaho
3. the defendant [name] committed an assault
4. upon [name of victim]
- [5. by (description of conduct alleged in the charging document)].

If any of the above has not been proven beyond a reasonable doubt, you must find the defendant not guilty. If each of the above has been proven beyond a reasonable doubt, then you must find the defendant guilty.

Comment

I.C. § 18-901. Use with ICJI 1201 which provides a definition of assault.

The charging document apprises the defendant in general terms of the manner in which he is alleged to have committed the crime charged. If there is evidence of other uncharged conduct by the defendant which could also fit within the statutory definition of the crime charged and if the jury is merely instructed regarding the statutory definition of the crime, the defendant may be denied due process by being convicted for a crime different from that charged. *State v. Sherrod*, 131 Idaho 56, 951 P.2d 1283 (Ct. App. 1998). Therefore, in that circumstance the jury instruction should include, in general terms, the description of the conduct alleged in the charging document to constitute the crime charged.

ICJI 1203 BATTERY DEFINED

INSTRUCTION NO.

A "battery" is committed when a person:
(1) willfully and unlawfully uses force or violence upon the person of another; or
(2) actually, intentionally and unlawfully touches or strikes another person against the will of the other; or
(3) unlawfully and intentionally causes bodily harm to an individual.

Comment

I.C. § 18-903. This instruction should be used when the commission of a battery is an element of another crime, e.g., IC § 18-911. The definition should be tailored to fit the allegations in the charging document. *State v. Brazil*, 136 Idaho 327, 33 P.3d 218 (Ct. App. 2001); *State v. Sherrod*, 131 Idaho 56, 951 P.2d 1283 (Ct. App. 1998).

INSTRUCTION NO.

In order for the defendant to be guilty of Battery, the state must prove each of the following:

1. On or about [date]
2. in the state of Idaho
3. the defendant [name] committed a battery,
4. upon [name of victim]
- [5. by (description of conduct alleged in the charging document)].

If any of the above has not been proven beyond a reasonable doubt, you must find the defendant not guilty. If each of the above has been proven beyond a reasonable doubt, then you must find the defendant guilty.

Comment

I.C. § 18-903.

The charging document apprises the defendant in general terms of the manner in which he is alleged to have committed the crime charged. If there is evidence of other uncharged conduct by the defendant which could also fit within the statutory definition of the crime charged and if the jury is merely instructed regarding the statutory definition of the crime, the defendant may be denied due process by being convicted for a crime different from that charged. *State v. Sherrod*, 131 Idaho 56, 951 P.2d 1283 (Ct. App. 1998). Therefore, in that circumstance the jury instruction should include, in general terms, the description of the conduct alleged in the charging document to constitute the crime charged.

ICJI 1205 AGGRAVATED ASSAULT

INSTRUCTION NO.

In order for the defendant to be guilty of Aggravated Assault, the state must prove each of the following:

1. On or about [date],
2. in the state of Idaho,
3. the defendant [name] committed an assault upon [name of victim]
4. by [description of conduct alleged in the charging document], and
5. the defendant committed that assault [with a deadly weapon or instrument][or] [by any means or force likely to produce great bodily harm.] [or] [with any vitriol, corrosive acid, or a caustic chemical of any kind.]

If any of the above has not been proven beyond a reasonable doubt, you must find the defendant not guilty. If each of the above has been proven beyond a reasonable doubt, then you must find the defendant guilty.

Comment

I.C. § 18-905. The definition of "deadly weapon" is set out in ICJI 1206. No definition of "great bodily harm" is necessary, see the comment to ICJI 1206 and ICJI 1207. The bracketed words "but without the intent to kill" should be used only when the jury is instructed on "Aggravated Assault" as an included offense of a higher offense that includes an intent to kill. Assault is defined in ICJI 1201.

The charging document apprises the defendant in general terms of the manner in which he is alleged to have committed the crime charged. If there is evidence of other uncharged conduct by the defendant which could also fit within the statutory definition of the crime charged and if the jury is merely instructed regarding the statutory definition of the crime, the defendant may be denied due process by being convicted for a crime different from that charged. *State v. Sherrod*, 131 Idaho 56, 951 P.2d 1283 (Ct. App. 1998). Therefore, in that circumstance the jury instruction should include, in general terms, the description of the conduct alleged in the charging document to constitute the crime charged.

ICJI 1206 DEADLY WEAPON DEFINED

INSTRUCTION NO.

[A "deadly weapon or instrument" is one likely to produce death or great bodily injury. It also includes any other object that is capable of being used in a deadly or dangerous manner if the person intends to use it as a weapon.]

[Any firearm is a "deadly weapon", though unloaded or so defective that it cannot be fired.]

[A "firearm" is any device designed to eject or propel a projectile by the force of an explosion or other form of combustion.]

Comment

State v. Missenberger, 86 Idaho 321, 386 P.2d 559 (1963);
State v. Lenz, 103 Idaho 632, 651 P.2d 566 (Ct. App. 1982).
I.C. § 18-905(d).

The committee recommends that the phrase "great bodily injury" not be defined. "The irresistible impulse to define words of ordinary English is unfortunately pervasive. It should be curbed." *People v. Kimbrel*, 174 Cal.Rptr. 816, 819 (Ct. App. 1981).

See also *State v. Townsend*, 124 Idaho 881, 865 P.2d 972 (1993), holding that a bare hand is not a deadly weapon under the aggravated assault and aggravated battery statutes, I.C. §§ 18-907 & 18-905; and *State v. Huston*, 121 Idaho 738, 828 P.2d 301 (1992), holding that a boot worn by the defendant can be a weapon under I.C. § 18-905.

ICJI 1207 AGGRAVATED BATTERY

INSTRUCTION NO.

In order for the defendant to be guilty of Aggravated Battery, the state must prove each of the following:

1. On or about [date]
2. in the state of Idaho
3. the defendant [name] committed a battery upon [name of victim], [who was a pregnant female],
4. by [description of conduct alleged in the charging document], and
5. when doing so the defendant [caused great bodily harm, permanent disability, or permanent disfigurement] [or] [used a deadly weapon or instrument] [or] [used any vitriol, corrosive acid, or a caustic chemical of any nature] [or] [used any poison or other noxious or destructive substance or liquid] [or] [caused great bodily harm, permanent disability, or permanent disfigurement to an embryo or fetus].

If any of the above has not been proven beyond a reasonable doubt, then you must find the defendant not guilty. If each of the above has been proven beyond a reasonable doubt, you must find the defendant guilty.

Comment

I.C. § 18-907. *State v. Clark*, 115 Idaho 1056, 772 P.2d 263 (Ct. App. 1989). The committee recommends that the phrase "great bodily injury" not be defined. "The irresistible impulse to define words of ordinary English is unfortunately pervasive. It should be curbed." *People v. Kimbrel*, 174 Cal.Rptr. 816, 819 (Ct. App. Cal. 1981).

Use of a deadly weapon to intimidate the victim to endure physical contact which she otherwise would have resisted or attempted to evade fits the definition of "use of a deadly weapon". *State v. Cates*, 117 Idaho 90, 785 P.2d 654 (Ct. App. 1989).

The charging document apprises the defendant in general terms of the manner in which he is alleged to have committed the crime charged. If there is evidence of other uncharged conduct by the defendant which could also fit within the statutory definition of the crime charged and if the jury is merely instructed regarding the statutory definition of the

crime, the defendant may be denied due process by being convicted for a crime different from that charged. *State v. Sherrod*, 131 Idaho 56, 951 P.2d 1283 (Ct. App. 1998). Therefore, in that circumstance the jury instruction should include, in general terms, the description of the conduct alleged in the charging document to constitute the crime charged.

For a definition of "battery", see ICJI 1203.

ICJI 1208 ASSAULT WITH INTENT TO COMMIT A SERIOUS FELONY

INSTRUCTION NO.

In order for the defendant to be guilty of Assault With Intent to Commit [name of felony], the state must prove each of the following:

1. On or about [date]
2. in the state of Idaho
3. the defendant [name] committed an assault upon [name of victim]
4. by [description of conduct alleged in the charging document], and
5. the defendant did so with the intent to commit [murder,] [rape,] [the infamous crime against nature,] [mayhem,] [robbery,] [or] [lewd and lascivious conduct with a minor child.]

If any of the above has not been proven beyond a reasonable doubt, you must find the defendant not guilty. If each of the above has been proven beyond a reasonable doubt, then you must find the defendant guilty.

Comment

I.C. § 18-909. Assault is defined in ICJI 1201.

The charging document apprises the defendant in general terms of the manner in which he is alleged to have committed the crime charged. If there is evidence of other uncharged conduct by the defendant which could also fit within the statutory definition of the crime charged and if the jury is merely instructed regarding the statutory definition of the crime, the defendant may be denied due process by being convicted for a crime different from that charged. *State v. Sherrod*, 131 Idaho 56, 951 P.2d 1283 (Ct. App. 1998). Therefore, in that circumstance the jury instruction should include, in general terms, the description of the conduct alleged in the charging document to constitute the crime charged.

ICJI 1209 ASSAULT WITH INTENT TO COMMIT—WHEN INTENT MUST
EXIST

INSTRUCTION NO.

The crime of Assault With Intent to Commit [name of
felony] is complete if an assault is made and at any moment
during the assault the aggressor intends to commit [murder]
[rape] [the infamous crime against nature] [mayhem]
[robbery] [or] [lewd and lascivious conduct].

ICJI 1210 BATTERY WITH INTENT TO COMMIT A SERIOUS FELONY

INSTRUCTION NO.

In order for the defendant to be guilty of Battery With Intent to Commit [name of felony], the state must prove each of the following:

1. On or about [date]
2. in the state of Idaho
3. the defendant committed a battery upon [name of victim],
4. by [description of conduct alleged in the charging document], and
5. the defendant did so with the intent to commit [murder] [rape] [the infamous crime against nature] [mayhem] [robbery] [or] [lewd and lascivious conduct with a minor child].

If any of the above has not been proven beyond a reasonable doubt, you must find the defendant not guilty. If each of the above has been proven beyond a reasonable doubt, then you must find the defendant guilty.

Comment

I.C. § 18-911. Battery is defined in ICJI 1203.

The charging document apprises the defendant in general terms of the manner in which he is alleged to have committed the crime charged. If there is evidence of other uncharged conduct by the defendant which could also fit within the statutory definition of the crime charged and if the jury is merely instructed regarding the statutory definition of the crime, the defendant may be denied due process by being convicted for a crime different from that charged. *State v. Sherrod*, 131 Idaho 56, 951 P.2d 1283 (Ct. App. 1998). Therefore, in that circumstance the jury instruction should include, in general terms, the description of the conduct alleged in the charging document to constitute the crime charged.

ICJI 1211 BATTERY WITH INTENT TO COMMIT—WHEN INTENT MUST
EXIST

INSTRUCTION NO.

The crime of Battery With Intent to Commit [name of
felony] is complete if a battery is made and at any moment
during the battery the aggressor intends to commit [murder]
[rape] [the infamous crime against nature] [mayhem]
[robbery] [or] [lewd and lascivious conduct with a minor
child].

ICJI 1212A ASSAULT UPON CERTAIN PERSONNEL

INSTRUCTION NO.

In order for the defendant to be guilty of Assault upon Certain Personnel, the state must prove each of the following:

1. On or about [date]
2. in the state of Idaho
3. the defendant [name] committed an assault
4. upon [name of victim]
5. by [description of conduct alleged in the charging Document]], and
6. at the time of the offense, [name of victim] was [a] [an] [justice] [judge] [magistrate] [prosecuting attorney] [public defender] [peace officer] [bailiff] [marshal] [sheriff] [police officer] [correctional officer] [employee of the Department of Correction] [employee of a private prison contractor while employed at a private correctional facility in the state of Idaho] [employee of the Department of Water Resources authorized to enforce the provisions of chapter 38, title 42, Idaho Code] [jailer] [parole officer] [officer of the Idaho State Police] [fireman] [social caseworker or social work specialist of the Department of Health and Welfare] [employee of a state secure confinement facility for juveniles] [employee of a juvenile detention facility] [teacher at a detention facility] [juvenile probation officer] [emergency medical technician certified by the Department of Health and Welfare] [advanced emergency technician and EMT-paramedic certified by the State Board of Medicine] [member, employee, or agent of the State Tax Commission] [United States marshal] [federally commissioned law enforcement officer or the deputy or agent of such officer], and
7. the defendant knew or had reason to know [name of victim] was [a] [an] [name of position].

If any of the above has not been proven beyond a reasonable doubt, you must find the defendant not guilty. If each of the above has been proven beyond a reasonable doubt, then you must find the defendant guilty.

Comment

ICJI 1212B BATTERY UPON CERTAIN PERSONNEL

INSTRUCTION NO.

In order for the defendant to be guilty of Battery upon Certain Personnel, the state must prove each of the following:

1. On or about [date]
2. in the state of Idaho
3. the defendant [name] committed a battery,
4. upon [name of victim]
- [5. by [description of conduct alleged in the charging document]], and
6. at the time of the offense, [name of victim] was [a] [an] [justice] [judge] [magistrate] [prosecuting attorney] [public defender] [peace officer] [bailiff] [marshal] [sheriff] [police officer] [correctional officer] [employee of the Department of Correction] [employee of a private prison contractor while employed at a private correctional facility in the state of Idaho] [employee of the Department of Water Resources authorized to enforce the provisions of chapter 38, title 42, Idaho Code] [jailer] [parole officer] [officer of the Idaho State Police] [fireman] [social caseworker or social work specialist of the Department of Health and Welfare] [employee of a state secure confinement facility for juveniles] [employee of a juvenile detention facility] [teacher at a detention facility] [juvenile probation officer] [emergency medical technician certified by the Department of Health and Welfare] [advanced emergency technician and EMT-paramedic certified by the State Board of Medicine] [member, employee, or agent of the State Tax Commission] [United States marshal] [federally commissioned law enforcement officer or the deputy or agent of such officer], and
7. the defendant knew or had reason to know [name of victim] was [a] [an] [name of position].

If any of the above has not been proven beyond a reasonable doubt, you must find the defendant not guilty. If each of the above has been proven beyond a reasonable doubt, then you must find the defendant guilty.

Comment

I.C. § 18-915.

ICJI 1212C AGGRAVATED ASSAULT UPON CERTAIN PERSONNEL

INSTRUCTION NO.

In order for the defendant to be guilty of Aggravated Assault upon Certain Personnel, the state must prove each of the following:

1. On or about [date],
2. in the state of Idaho,
3. the defendant [name] committed an assault upon [name of victim]
4. by [description of conduct alleged in the charging document], and
5. the defendant committed that assault [with a deadly weapon or instrument][or] [by any means or force likely to produce great bodily harm] [or] [with any vitriol, corrosive acid, or a caustic chemical of any kind], and
6. at the time of the offense, [name of victim] was [a] [an] [justice] [judge] [magistrate] [prosecuting attorney] [public defender] [peace officer] [bailiff] [marshal] [sheriff] [police officer] [correctional officer] [employee of the Department of Correction] [employee of a private prison contractor while employed at a private correctional facility in the state of Idaho] [employee of the Department of Water Resources authorized to enforce the provisions of chapter 38, title 42, Idaho Code] [jailer] [parole officer] [officer of the Idaho State Police] [fireman] [social caseworker or social work specialist of the Department of Health and Welfare] [employee of a state secure confinement facility for juveniles] [employee of a juvenile detention facility] [teacher at a detention facility] [juvenile probation officer] [emergency medical technician certified by the Department of Health and Welfare] [advanced emergency technician and EMT-paramedic certified by the State Board of Medicine] [member, employee, or agent of the State Tax Commission] [United States marshal] [federally commissioned law enforcement officer or the deputy or agent of such officer], and
7. the defendant knew or had reason to know [name of victim] was [a] [an] [name of position].

If any of the above has not been proven beyond a reasonable doubt, you must find the defendant not guilty. If each of the above has been proven beyond a reasonable doubt, then you must find the defendant guilty.

Comment

I.C. § 18-915.

ICJI 1212D AGGRAVATED BATTERY UPON CERTAIN PERSONNEL

INSTRUCTION NO.

In order for the defendant to be guilty of Aggravated Battery upon Certain Personnel, the state must prove each of the following:

1. On or about [date]
2. in the state of Idaho
3. the defendant [name] committed a battery upon [name of victim], [who was a pregnant female],
4. by [description of conduct alleged in the charging document], and
5. when doing so the defendant [caused great bodily harm, permanent disability, or permanent disfigurement] [or] [used a deadly weapon or instrument] [or] [used any vitriol, corrosive acid, or a caustic chemical of any nature] [or] [used any poison or other noxious or destructive substance or liquid] [or] [caused great bodily harm, permanent disability, or permanent disfigurement to an embryo or fetus], and
6. at the time of the offense, [name of victim] was [a] [an] [justice] [judge] [magistrate] [prosecuting attorney] [public defender] [peace officer] [bailiff] [marshal] [sheriff] [police officer] [correctional officer] [employee of the Department of Correction] [employee of a private prison contractor while employed at a private correctional facility in the state of Idaho] [employee of the Department of Water Resources authorized to enforce the provisions of chapter 38, title 42, Idaho Code] [jailer] [parole officer] [officer of the Idaho State Police] [fireman] [social caseworker or social work specialist of the Department of Health and Welfare] [employee of a state secure confinement facility for juveniles] [employee of a juvenile detention facility] [teacher at a detention facility] [juvenile probation officer] [emergency medical technician certified by the Department of Health and Welfare] [advanced emergency technician and EMT-paramedic certified by the State Board of Medicine] [member, employee, or agent of the State Tax Commission] [United States marshal] [federally commissioned law enforcement officer or the deputy or agent of such officer], and
7. the defendant knew or had reason to know [name of victim] was [a] [an] [name of position].

If any of the above has not been proven beyond a reasonable doubt, then you must find the defendant not

guilty. If each of the above has been proven beyond a reasonable doubt, you must find the defendant guilty.

Comment

I.C. § 18-915.

ICJI 1212E ASSAULT WITH INTENT TO COMMIT A SERIOUS FELONY
UPON CERTAIN PERSONNEL

INSTRUCTION NO.

In order for the defendant to be guilty of Assault With Intent to Commit [name of felony] upon Certain Personnel, the state must prove each of the following:

1. On or about [date]
2. in the state of Idaho
3. the defendant [name] committed an assault upon [name of victim]
4. by [description of conduct alleged in the charging document], and
5. the defendant did so with the intent to commit [murder,] [rape,] [the infamous crime against nature,] [mayhem,] [robbery,] [or] [lewd and lascivious conduct with a minor child], and
6. at the time of the offense, [name of victim] was [a] [an] [justice] [judge] [magistrate] [prosecuting attorney] [public defender] [peace officer] [bailiff] [marshal] [sheriff] [police officer] [correctional officer] [employee of the Department of Correction] [employee of a private prison contractor while employed at a private correctional facility in the state of Idaho] [employee of the Department of Water Resources authorized to enforce the provisions of chapter 38, title 42, Idaho Code] [jailer] [parole officer] [officer of the Idaho State Police] [fireman] [social caseworker or social work specialist of the Department of Health and Welfare] [employee of a state secure confinement facility for juveniles] [employee of a juvenile detention facility] [teacher at a detention facility] [juvenile probation officer] [emergency medical technician certified by the Department of Health and Welfare] [advanced emergency technician and EMT-paramedic certified by the State Board of Medicine] [member, employee, or agent of the State Tax Commission] [United States marshal] [federally commissioned law enforcement officer or the deputy or agent of such officer], and
7. the defendant knew or had reason to know [name of victim] was [a] [an] [name of position].

If any of the above has not been proven beyond a reasonable doubt, you must find the defendant not guilty. If each of the above has been proven beyond a reasonable doubt, then you must find the defendant guilty.

Comment

I.C. § 18-915.

ICJI 1212F BATTERY WITH INTENT TO COMMIT A SERIOUS FELONY
UPON CERTAIN PERSONNEL

INSTRUCTION NO.

In order for the defendant to be guilty of Battery with Intent to Commit [name of felony] upon Certain Personnel, the state must prove each of the following:

1. On or about [date]
2. in the state of Idaho
3. the defendant committed a battery upon [name of victim],
4. by [description of conduct alleged in the charging document], and
5. the defendant did so with the intent to commit [murder] [rape] [the infamous crime against nature] [mayhem] [robbery] [or] [lewd and lascivious conduct with a minor child].
6. at the time of the offense, [name of victim] was [a] [an] [justice] [judge] [magistrate] [prosecuting attorney] [public defender] [peace officer] [bailiff] [marshal] [sheriff] [police officer] [correctional officer] [employee of the Department of Correction] [employee of a private prison contractor while employed at a private correctional facility in the state of Idaho] [employee of the Department of Water Resources authorized to enforce the provisions of chapter 38, title 42, Idaho Code] [jailer] [parole officer] [officer of the Idaho State Police] [fireman] [social caseworker or social work specialist of the Department of Health and Welfare] [employee of a state secure confinement facility for juveniles] [employee of a juvenile detention facility] [teacher at a detention facility] [juvenile probation officer] [emergency medical technician certified by the Department of Health and Welfare] [advanced emergency technician and EMT-paramedic certified by the State Board of Medicine] [member, employee, or agent of the State Tax Commission] [United States marshal] [federally commissioned law enforcement officer or the deputy or agent of such officer], and
7. the defendant knew or had reason to know [name of victim] was [a] [an] [name of position].

If any of the above has not been proven beyond a reasonable doubt, you must find the defendant not guilty. If each of the above has been proven beyond a reasonable doubt, then you must find the defendant guilty.

Comment

I.C. § 18-915.

ICJI 1212G ASSAULT BECAUSE OF AN OFFICIAL'S EXERCISE OF
DUTIES OR STATUS

INSTRUCTION NO.

In order for the defendant to be guilty of Assault Because of an Official's Exercise of Duties or Status, the state must prove each of the following:

1. On or about [date]
2. in the state of Idaho
3. the defendant [name] committed an assault
4. upon [name of victim]
- [5. by (description of conduct alleged in the charging document)], and
6. at the time of the offense, [name of victim] was a former or present [justice,] [judge] [magistrate] [jailer] [correctional officer or other staff of [the department of correction] [or] [a county jail] [or] [a private correctional facility]] [employee of a state secure confinement facility for juveniles] [employee of a juvenile detention facility] [teacher at a detention facility] [misdemeanor probation officer] [or] [juvenile probation officer], and
- [7. [name of defendant] committed the offense because of [[name of victim]'s exercise of official duties] [or] [[name of victim]'s former or present official status].]

[or]

- [7. the offense was committed while [name of victim] was engaged in the performance of [his] [her] duties, and
8. [name of defendant] knew or reasonably should have known that [name of victim] was [a] [an] [name of position].]

If any of the above has not been proven beyond a reasonable doubt, you must find the defendant not guilty. If each of the above has been proven beyond a reasonable doubt, then you must find the defendant guilty.

Comment

Idaho Code § 18-915.

ICJI 1212H BATTERY BECAUSE OF AN OFFICIAL'S EXERCISE OF DUTIES OR STATUS

INSTRUCTION NO.

In order for the defendant to be guilty of Battery Because of an Official's Exercise of Duty or Status, the state must prove each of the following:

1. On or about [date]
2. in the state of Idaho
3. the defendant [name] committed a battery
4. upon [name of victim]
- [5. by (description of conduct alleged in the charging document)], and
6. at the time of the offense, [name of victim] was a former or present [justice,] [judge] [magistrate] [jailer] [correctional officer or other staff of [the department of correction] [or] [a county jail] [or] [a private correctional facility]] [employee of a state secure confinement facility for juveniles] [employee of a juvenile detention facility] [teacher at a detention facility] [misdemeanor probation officer] [or] [juvenile probation officer], and
- [7. [name of defendant] committed the offense because of [[name of victim]'s exercise of official duties] [or] [[name of victim]'s former or present official status].]

[or]

- [7. the offense was committed while [name of victim] was engaged in the performance of [his] [her] duties, and
8. [name of defendant] knew or reasonably should have known that [name of victim] was [a] [an] [name of position].]

If any of the above has not been proven beyond a reasonable doubt, you must find the defendant not guilty. If each of the above has been proven beyond a reasonable doubt, then you must find the defendant guilty.

Comment

Idaho Code § 18-915.

ICJI 1212I BATTERY ON A PRESENT OR FORMER PEACE OFFICER

INSTRUCTION NO.

In order for the defendant to be guilty of Battery, the state must prove each of the following:

1. On or about [date]
2. in the state of Idaho
3. the defendant [name] committed a battery,
4. upon [name of victim]
- [5. by (description of conduct alleged in the charging document)]
6. at the time of the offense, [name of victim] was a former or present [peace officer] [sheriff] [police officer] [and]
- [7. [name of defendant] committed the offense because of [[name of victim]'s exercise of official duties] [or] [[name of victim]'s former or present official status].]

[or]

- [7. the offense was committed while [name of victim] was engaged in the performance of [his] [her] duties, and
8. [name of defendant] knew or reasonably should have known that [name of victim] was a [name of position].]

If any of the above has not been proven beyond a reasonable doubt, you must find the defendant not guilty. If each of the above has been proven beyond a reasonable doubt, then you must find the defendant guilty.

Comment

Idaho Code § 18-915.

ICJI 1213 FELONIOUS ADMINISTERING OF DRUGS

INSTRUCTION NO.

In order for the defendant to be guilty of Felonious Administering of Drugs, the state must prove each of the following:

1. On or about [date]
2. in the state of Idaho
3. the defendant [name] [administered] [or] [aided in administering] [or] [ordered the administering of] any [chloroform] [ether] [laudanum] [(narcotic) (anesthetic) (intoxicating) agent]
4. to [name of victim]
5. with intent to enable or assist the defendant or any other person to commit [name of felony].

If any of the above has not been proven beyond a reasonable doubt, you must find the defendant not guilty. If each of the above has been proven beyond a reasonable doubt, then you must find the defendant guilty.

Comment

I.C. § 18-913.

ICJI 1214 ATTEMPTED STRANGULATION

INSTRUCTION NO.

In order for the defendant to be guilty of Attempted Strangulation, the state must prove each of the following:

1. On or about [date]
2. in the state of Idaho
3. the defendant [name] [choked] [or] [attempted to strangle],
4. [name of victim]
5. willfully and unlawfully, and
6. [name of victim] was [a household member at the time of the offense] [or] [a person with whom [name of defendant] had a dating relationship, either at the time of the offense or at a previous time].

If any of the above has not been proven beyond a reasonable doubt, you must find the defendant not guilty. If each of the above has been proven beyond a reasonable doubt, then you must find the defendant guilty.

[Persons are "household members" if they [are married to each other] [were previously married to each other] [have a child in common, regardless of whether they have been married] [are cohabitating, regardless of whether they have married or hold themselves out as husband and wife].]

["Dating relationship" is a social relationship of a romantic nature. Factors that you may consider in making this determination include: (1) the nature of the relationship; (2) the length of time the relationship has existed; and (3) the frequency of interaction between the persons.]

The state is not required to show that the defendant intended to kill or injure the victim. The only intent required is the intent to choke or attempt to strangle.

Comment

I.C. § 18-923; I.C. §§ 18-918, 39-6303.

INSTRUCTION NO.

In order for the defendant to be guilty of Hazing, the state must prove each of the following:

1. On or about [date]
2. in the state of Idaho
3. the defendant [name], while a member of a [fraternity,] [sorority,] [or] [a living or social organization organized or operating on or near a college or university campus for purposes of participating in student activity,]
4. intentionally,
5. [hazed] [or] [conspired to haze] [name of victim],
6. a member, potential member or person pledged to be a member of the organization,
7. the activity constituting hazing was a condition or precondition of attaining membership, status, or any office in the organization, and
8. did not take place as part of the curricular activities or athletic team activities of or within the college or university.

If any of the above has not been proven beyond a reasonable doubt, you must find the defendant not guilty. If each of the above has been proven beyond a reasonable doubt, then you must find the defendant guilty.

Comment

I.C. § 18-917.

ICJI 1221 HAZING DEFINED

INSTRUCTION NO.

The word "haze" means to subject a person to bodily danger or physical harm or a likelihood of bodily danger or physical harm, or to require, encourage, authorize or permit that the person be subjected to any of the following:

1. total or substantial nudity on the part of the person;
2. compelling ingestion of any substance by the person;
3. wearing or carrying of any obscene or physically burdensome article by the person;
4. physical assaults upon or offensive physical contact with the person;
5. participation by the person in boxing matches, excessive number of calisthenics or other physical contests;
6. transportation and abandonment of the person;
7. confinement of the person to unreasonably small unventilated, unsanitary or unlighted areas;
8. sleep deprivation;
9. assignment of pranks to be performed by the person.

Comment

I.C. § 18-917(2).

Only those subsections that are supported by at least some evidence should be given in the instruction.

INSTRUCTION NO.

In order for the defendant to be guilty of Mayhem, the state must prove each of the following:

1. On or about [date]
2. in the state of Idaho
3. the defendant [name] intentionally
4. injured [name of victim] by [insert appropriate description of conduct from statute below].

If any of the above has not been proven beyond a reasonable doubt, you must find the defendant not guilty. If each of the above has been proven beyond a reasonable doubt, then you must find the defendant guilty.

Comment

I.C. § 18-5001: Every person who unlawfully and maliciously deprives a human being of a member of his body, or disables, disfigures or renders it useless, or cuts out or disables the tongue, puts out an eye, slits the nose, ear or lip, is guilty of mayhem.

This crime appears to require a specific intent. The term "maliciously" is defined in I.C. § 18-101(4) as "import[ing] a wish to vex, annoy, or injure another person...." The Court has characterized criminal intent as being either general or specific, as follows: "A general criminal intent requirement is satisfied if it is shown that the defendant knowingly performed the proscribed acts, *State v. Booten*, 85 Idaho 51, 375 P.2d 536 (1962), but a specific intent requirement refers to that state of mind which in part defines the crime and is an element thereof. *Lafave & Scott, Criminal Law*, § 28, p. 196." *State v. Gowin*, 97 Idaho 766, 767-68, 554 P.2d 944, 945-46 (1976), *quoted in State v. Stiffler*, 117 Idaho 405, 406, 788 P.2d 220, 221 (1990). Thus the wish or desire to vex, annoy or injure another person refers to a state of mind which in part defines the crime of mayhem and is an element thereof.

INSTRUCTION NO.

In order for the defendant to be guilty of Cannibalism, the state must prove each of the following:

1. On or about [date]
 2. in the state of Idaho
 3. the defendant [name] willfully
 4. ingested the flesh or blood of a human being[.] [, and]
- [5. the action was not taken under extreme life threatening conditions as the only apparent means of survival.]

If any of the above has not been proven beyond a reasonable doubt, you must find the defendant not guilty. If each of the above has been proven beyond a reasonable doubt, then you must find the defendant guilty.

Comment

I.C. § 18-5003.

Part 5 of the instruction should be given only where the defendant has raised the defense set out in I.C. § 18-5003(2) and where there is some evidence to support the defense.

INSTRUCTION NO.

In order for the defendant to be guilty of Kidnapping, the state must prove each of the following:

1. On or about [date]
2. in the state of Idaho

[3. the defendant [name] [seized] [confined] [inveigled] [or] [kidnapped] [name of victim]

4. with the intent to cause [him] [her], without authority of law, [to be secretly [confined] [or] [imprisoned] within this state] [or] [to be sent out of this state] [or] [to be in any way [held to service] [or] [kept] [or] [detained] against [his] [her] will].]

[or]

[3. the defendant [name] [led] [took] [enticed away] [or] [detained] [name of victim]

4. a child under the age of 16 years

5. with the intent [to keep or conceal [the child] from [his] [her] [custodial parent] [guardian] [or] [a person having lawful care or control of the child]] [or] [to steal any article upon the person of the child].]

[or]

[3. the defendant [name] [abducted] [enticed] [or] [by force or fraud unlawfully took or carried away] [name of victim]

4. at or from a place outside the state of Idaho

5. and afterwards [sent] [brought] [had] [or] [kept] [him] [her] [or] [caused [him] [her] to be kept or secreted within the state of Idaho.]

[or]

[3. the defendant [name] [seized] [confined] [inveigled] [led] [took] [enticed away] [or] [kidnapped] [name of victim]

4. against [his] [her] will

5. with the intent to [extort [money] [property] [or] [any thing of value]] [or] [obtain [money] [property] [reward] [or] [any thing of value]] for [his] [her] return or disposition.]

If any of the above has not been proved beyond a reasonable doubt, you must find the defendant not guilty. If each of the above has been proven beyond a reasonable doubt, then you must find the defendant guilty.

Comment

I.C. § 18-4501.

ICJI 1231A FIRST DEGREE KIDNAPPING

INSTRUCTION NO.

In order for the defendant to be guilty of Kidnapping, the state must prove each of the following:

1. On or about [date]
2. in the state of Idaho

[[3. the defendant [name] [seized] [confined] [inveigled] [or] [kidnapped] [name of victim]

4. with the intent to cause [him] [her], without authority of law, [to be secretly [confined] [or] [imprisoned] within this state] [or] [to be sent out of this state] [or] [to be in any way [held to service] [or] [kept] [or] [detained] against [his] [her] will].]

[or]

[3. the defendant [name] [led] [took] [enticed away] [or] [detained] [name of victim]

4. a child under the age of 16 years

5. with the intent [to keep or conceal [the child] from [his] [her] [custodial parent] [guardian] [or] [a person having lawful care or control of the child]] [or] [to steal any article upon the person of the child].]

[or]

[3. the defendant [name] [abducted] [enticed] [or] [by force or fraud unlawfully took or carried away] [name of victim]

4. at or from a place outside the state of Idaho

5. and afterwards [sent] [brought] [had] [or] [kept] [him] [her] [or] [caused [him] [her] to be kept or secreted within the state of Idaho.]

[or]

[3. the defendant [name] [seized] [confined] [inveigled] [led] [took] [enticed away] [or] [kidnapped] [name of victim]

4. against [his] [her] will

5. with the intent to [extort [money] [property] [or] [any thing of value]] [or] [obtain [money] [property] [reward] [or] [any thing of value]] for [his] [her] return or disposition.]],

and

6. [such kidnapping was committed for the purpose of obtaining money, property or any other thing of value for the return or disposition of the person who was kidnapped]

[or]

[such kidnapping was committed for the purpose of
[raping] [committing the infamous crime against nature]
[or] [committing serious bodily injury] upon the person
kidnapped]

[or]

[committed for the purpose of committing any lewd and
lascivious act upon any child under the age of 16 years,
with the intent of arousing, appealing to, or gratifying
the lust or passions or sexual desires of any person].

If any of the above has not been proved beyond a
reasonable doubt, you must find the defendant not guilty.
If each of the above has been proven beyond a reasonable
doubt, then you must find the defendant guilty.

Comment

I.C. § 18-4502.

See *Schad v. Arizona*, 501 U.S. 624, 111 S.Ct. 2491, 115
L.Ed.2d 555 (1991). In that case, the defendant was found
guilty of first degree murder, committed either as a
premeditated homicide or as a homicide during the
commission of a felony (robbery). The Court held that the
jury need not agree on a single theory of guilt in order to
convict the defendant.

ICJI 1231B SECOND DEGREE KIDNAPPING

INSTRUCTION NO.

In order for the defendant to be guilty of Kidnapping, the state must prove each of the following:

1. On or about [date]
2. in the state of Idaho

[[3. the defendant [name] [seized] [confined] [inveigled] [or] [kidnapped] [name of victim]

4. with the intent to cause [him] [her], without authority of law, [to be secretly [confined] [or] [imprisoned] within this state] [or] [to be sent out of this state] [or] [to be in any way [held to service] [or] [kept] [or] [detained] against [his] [her] will].]

[or]

[3. the defendant [name] [led] [took] [enticed away] [or] [detained] [name of victim]

4. a child under the age of 16 years

5. with the intent [to keep or conceal [the child] from [his] [her] [custodial parent] [guardian] [or] [a person having lawful care or control of the child]] [or] [to steal any article upon the person of the child].]

[or]

[3. the defendant [name] [abducted] [enticed] [or] [by force or fraud unlawfully took or carried away] [name of victim]

4. at or from a place outside the state of Idaho

5. and afterwards [sent] [brought] [had] [or] [kept] [him] [her] [or] [caused [him] [her] to be kept or secreted within the state of Idaho.]

[or]

[3. the defendant [name] [seized] [confined] [inveigled] [led] [took] [enticed away] [or] [kidnapped] [name of victim]

4. against [his] [her] will

5. with the intent to [extort [money] [property] [or] [any thing of value]] [or] [obtain [money] [property] [reward] [or] [any thing of value]] for [his] [her] return or disposition.]],

If any of the above has not been proved beyond a reasonable doubt, you must find the defendant not guilty. If each of the above has been proven beyond a reasonable doubt, then you must find the defendant guilty.

Comment

I.C. § 18-4501.

ICJI 1232 INVEIGLE DEFINED

INSTRUCTION NO.

The word "inveigle," as used in these instructions, means to lure or entice or lead astray by false representations or promises, or other deceitful means.

Comment

United States v. Hoog, 504 F.2d 45 (8th Cir. 1974), cert. denied, 420 U.S. 961, 95 S.Ct. 1349, 43 L.Ed.2d 437 (1975).

ICJI 1233 FALSE IMPRISONMENT

INSTRUCTION NO.

In order for the defendant to be guilty of False Imprisonment, the state must prove each of the following:

- (1) On or about [date]
- (2) in the state of Idaho
- (3) the defendant [name], unlawfully
- (4) violated the right of [name of victim] to come and go or to stay when or where [name of victim] wanted.

If any of the above has not been proven beyond a reasonable doubt, you must find the defendant not guilty. If each of the above has been proven beyond a reasonable doubt, then you must find the defendant guilty.

Comment

I.C. § 18-2901.

The offense of false imprisonment is an included offense of kidnapping. *State v. Wilcott*, 103 Idaho 766, 653 P.2d 1178 (1982); See ICJI 225.

INSTRUCTION NO.

In order for the defendant [name] to be guilty of Child Custody Interference, the state must prove each of the following:

1. On or about [date]
2. the defendant [name] intentionally
3. and without lawful authority
4. [took] [enticed away] [kept] [withheld]
5. a child under the age of 18 years,
6. from [name of custodian] [who] [which] had the right to custody, [and]
7. [the (taking) (enticing away) (keeping) (withholding) of the child occurred in the state of Idaho] [or] [the (keeping) (withholding) occurred when (name of custodian) was a resident of the state of Idaho], and
8. the defendant [either] [removed the child from the state of Idaho] [or] [did not voluntarily return the child unharmed prior to the defendant's arrest].

If any of the above has not been proven beyond a reasonable doubt, you must find the defendant not guilty. If each of the above has been proven beyond a reasonable doubt, then you must find the defendant guilty.

The "right to custody" includes custody, joint custody, visitation, or other parental rights, whether such rights arise from a temporary or permanent custody order or from the equal custodial rights of each parent in the absence of a custody order.

[It is not "without lawful authority" to [take] [entice away] [keep] [withhold] a child if [such action is taken to protect the child from imminent physical harm.]

[or]

[such action is taken by a parent fleeing from imminent physical harm to such parent.]

[or]

[such action is consented to by the lawful custodian of the child.]

[or]

[the child is returned within 24 hours after expiration of an authorized visitation privilege.]]

Comment

I.C. § 18-4506.

Under I.C. § 18-4507(3), child custody interference is a felony "unless the defendant did not take the child outside the state, and the child was voluntarily returned unharmed prior to the defendant's arrest." Because both circumstances are required for the crime to be reduced to a misdemeanor, it is a felony if the defendant fails to comply with either circumstance.

The last bracketed language sets forth what is not "without lawful authority" (element 3 of the crime), the affirmative defenses stated in IC § 18-4506(2). The appropriate statement concerning such authority should be given only if there is evidence supporting the defense.

In order for the crime to have been committed "in the State of Idaho," it is only necessary that one of the essential elements of the crime was committed in this state. The duty to return the child to the custodial parent follows the custodial parent. Thus, if a child is kept or withheld from a custodial parent or other person having proper legal custody, and if that parent or other person is a resident present within the state of Idaho, the keeping or withholding and the deprivation of custodial rights are regarded as having occurred in the state of Idaho. This satisfies the requirement that the crime must have occurred "in the State of Idaho." *State v. Doyle*, 121 Idaho 911, 828 P.2d 1316 (1992).

INSTRUCTION NO.

In order for the defendant [name] to be guilty of Child Custody Interference, the state must prove each of the following:

1. On or about [date]
2. the defendant [name] intentionally
3. and without lawful authority
4. [took] [enticed away] [kept] [withheld]
5. a child under the age of 18 years,
6. from [name of custodian] [who] [which] had the right to custody, and
7. [the (taking) (enticing away) (keeping) (withholding) of the child occurred in the state of Idaho] [or] [the (keeping) (withholding) occurred when (name of custodian) was a resident of the state of Idaho].

If any of the above has not been proven beyond a reasonable doubt, you must find the defendant not guilty. If each of the above has been proven beyond a reasonable doubt, then you must find the defendant guilty.

The "right to custody" includes custody, joint custody, visitation, or other parental rights, whether such rights arise from a temporary or permanent custody order or from the equal custodial rights of each parent in the absence of a custody order.

[It is not "without lawful authority" to [take] [entice away] [keep] [withhold] a child if [such action is taken to protect the child from imminent physical harm.]

[or]

[such action is taken by a parent fleeing from imminent physical harm to such parent.]

[or]

[such action is consented to by the lawful custodian of the child.]

[or]

[the child is returned within 24 hours after expiration of an authorized visitation privilege.]]

Comment

I.C. § 18-4506. The last bracketed language sets forth what is *not* "without lawful authority" (element 3 of the crime),

the affirmative defenses stated in IC § 18-4506(2). The appropriate statement concerning such authority should be given only if there is evidence supporting the defense.

In order for the crime to have been committed "in the State of Idaho," it is only necessary that one of the essential elements of the crime was committed in this state. The duty to return the child to the custodial parent follows the custodial parent. Thus, if a child is kept or withheld from a custodial parent or other person having proper legal custody, and if that parent or other person is a resident present within the state of Idaho, the keeping or withholding and the deprivation of custodial rights are regarded as having occurred in the state of Idaho. This satisfies the requirement that the crime must have occurred "in the State of Idaho." *State v. Doyle*, 121 Idaho 911, 828 P.2d 1316 (1992).

ICJI 1243 INJURY TO A CHILD

INSTRUCTION NO.

In order for the defendant to be guilty of Injury to a Child, the state must prove each of the following:

1. On or about [date]
2. in the state of Idaho
3. the defendant [name]

[4. [wilfully caused or permitted [name of child] to suffer,] [or] [wilfully inflicted on [name of child] unjustifiable physical pain or mental suffering,] and

5. [name of child] was under 18 years of age.]
- [or]

[4. had the care or custody of [name of child]

5. who was a child under 18 years of age, and
6. the defendant wilfully caused or permitted [the child's person or health to be injured], [or] [the child to be placed in a situation that [may have] endangered the child's person or health].]

[or]

[4. was over 18 years of age, and

5. transported [name of child]
6. who was under 18 years of age
7. in a [commercial] motor vehicle
8. and [drove] [or] [was in actual physical control of]
9. such [commercial] motor vehicle
10. upon a highway, street or bridge or upon public or private property open to the public,
- [11. while under the influence of [alcohol] [or] [a controlled substance] [or] [a combination of alcohol and a controlled substance].]

[or]

[11.while having an alcohol concentration of 0.02 or more as shown by analysis of the defendant's (blood) (urine) (breath), and

12. the defendant was under the age of 21 years.]

[or]

[11. while having an alcohol concentration of [0.04] [0.08] or more as shown by analysis of the defendant's (blood) (urine)(breath).]

[or]

[4. was over 18 years of age, and
5. transported [name of child]
6. who was under 18 years of age
7. in a vessel
8. and [operated] [or] [was in actual physical
control of]
9. such vessel
[10. while under the influence of [alcohol] [drugs]
[or] [any intoxicating substance].]
[or]
[10. while having an alcohol concentration of 0.08 or
more.]]

If any of the above has not been proven beyond a reasonable doubt, you must find the defendant not guilty. If each of the above has been proven beyond a reasonable doubt, then you must find the defendant guilty.

[The word "willfully" means acting or failing to act where a reasonable person would know the act or failure to act is likely to result in injury or harm or is likely to endanger the person, health, safety or well-being of the child.]

[The practice of a parent or guardian who chooses for his child treatment by prayer or spiritual means alone shall not for that reason alone be construed to have violated the duty of care to such child.]

["Vessel" means every description of watercraft, including a seaplane on the water, used or capable of being used as a means of transportation on water, but does not include float houses, diver's aids operated and designed primarily to propel a diver below the surface of the water, and nonmotorized devices not designed or modified to be used as a means of transportation on the water, such as inflatable air mattresses, single inner tubes, and beach and water toys.]

Comment

I.C. §§ 18-1501& 32-101. The last paragraph should be given only where there is at least some evidence to support a defense under IC § 18-1501(3). In No. 6, the words "[may have]" should only be used when the crime is a misdemeanor.

ICJI 1244 FELONY INJURY TO CHILDREN

INSTRUCTION NO.

In order for the defendant to be guilty of Felony Injury to a Child, the state must prove each of the following:

1. On or about [date]
2. in the state of Idaho
3. the defendant [name]

[[4. [wilfully caused or permitted [name of child] to suffer,] [or] [wilfully inflicted on [name of child] unjustifiable physical pain or mental suffering,] and

5. [name of child] was under 18 years of age.]

[or]

[4. had the care or custody of [name of child]
5. who was a child under 18 years of age, and
6. the defendant wilfully caused or permitted [the child's person or health to be injured], [or] [the child to be placed in such a situation that the child's person or health was endangered]],

and

7. the above occurred under circumstances or conditions likely to produce great bodily harm or death to [name of child]

[or]

[4. was over 18 years of age, and
5. transported [name of child]
6. who was under 18 years of age
7. in a [commercial] motor vehicle
8. and [drove] [or] [was in actual physical control

of]

9. such [commercial] motor vehicle
10. upon a highway, street or bridge or upon public or private property open to the public,

[11. while under the influence of [alcohol] [or] [a controlled substance] [or] [a combination of alcohol and a controlled substance]]

[or]

[11.while having an alcohol concentration of 0.02 or more as shown by analysis of the defendant's (blood) (urine) (breath), and

12. the defendant was under the age of 21 years]
[or]
[11. while having an alcohol concentration of [0.04]
[0.08] or more as shown by analysis of the defendant's
(blood) (urine)(breath)]]

[or]

[4. was over 18 years of age, and
5. transported [name of child]
6. who was under 18 years of age
7. in a vessel
8. and [operated] [or] [was in actual physical
control of]
9. such vessel
[10. while under the influence of [alcohol] [drugs]
[or] [any intoxicating substance].]
[or]
[10. while having an alcohol concentration of 0.08 or
more]]

and

[11][12][13]. [name of child] suffered bodily injury
or death due to these actions by [name of defendant].]

If any of the above has not been proven beyond a
reasonable doubt, you must find the defendant not guilty.
If each of the above has been proven beyond a reasonable
doubt, then you must find the defendant guilty.

[The word "willfully" means acting or failing to act
where a reasonable person would know the act or failure to
act is likely to result in injury or harm or is likely to
endanger the person, health, safety or well-being of the
child.]

[The practice of a parent or guardian who chooses for
his child treatment by prayer or spiritual means alone
shall not for that reason alone be construed to have
violated the duty of care to such child.]

["Vessel" means every description of watercraft,
including a seaplane on the water, used or capable of being
used as a means of transportation on water, but does not
include float houses, diver's aids operated and designed

primarily to propel a diver below the surface of the water, and nonmotorized devices not designed or modified to be used as a means of transportation on the water, such as inflatable air mattresses, single inner tubes, and beach and water toys.]

Comment

I.C. § 18-1501. This instruction should be given where the defendant is charged with felony injury to children under I.C. § 18-1501(1) or (3).

ICJI 1245 DESERTION OF A CHILD

INSTRUCTION NO.

In order for the defendant to be guilty of Desertion of a Child, the state must prove each of the following:

1. On or about [date]
2. in the state of Idaho
3. [name of child] was a child under 18 years of age
4. who was dependent upon the defendant [name] for care, education, or support, and
5. the defendant deserted such child
6. with the intent to abandon the child.

If any of the above has not been proven beyond a reasonable doubt, you must find the defendant not guilty. If each of the above has been proven beyond a reasonable doubt, then you must find the defendant guilty.

Comment

I.C. § 18-401(1).

ICJI 1246 NONSUPPORT OF A CHILD

INSTRUCTION NO.

In order for the defendant to be guilty of Nonsupport of a Child, the state must prove each of the following:

1. On or about [date]
2. [name of child] was a [child] [ward] of the defendant [name],
3. the defendant without lawful excuse
4. wilfully omitted to furnish such [child] [ward] with necessary [food] [clothing] [shelter] [medical attendance], and
5. the [defendant] [child] was a resident of the state of Idaho.

If any of the above has not been proved beyond a reasonable doubt, you must find the defendant not guilty. If each of the above has been proven beyond a reasonable doubt, then you must find the defendant guilty.

Comment

I.C. § 18-401(2).

The last paragraph should be given only where there is at least some evidence to support such a defense.

Where the children are within the state of Idaho, the non-support, and consequently the offense, are regarded as occurring within the state, even if the defendant is outside the state throughout the time of the commission of the offense. *State v. Shaw*, 96 Idaho 897, 539 P.2d 250 (1975); see also, *State v. Doyle*, 121 Idaho 911, 828 P.2d 1316 (1992).

ICJI 1247 RITUALIZED ABUSE OF A CHILD

INSTRUCTION NO.

In order for the defendant to be guilty of the Ritualized Abuse of a Child, the state must prove each of the following:

1. On or about [date]
2. in the state of Idaho
3. the defendant [name], with, upon, or in the presence of [name of child], a child under 18 years of age,
4. as part of a ceremony, rite, or any similar observance,

[5. actually or in simulation, tortured, mutilated or sacrificed any warm-blooded animal or human being.]

[or]

[5. forced ingestion, injection or other application of any narcotic, drug, hallucinogen or anesthetic for the purpose of dulling sensitivity, cognition, recollection of, or resistance to any criminal activity,]

[or]

[5. forced ingestion, or external application, of human or animal urine, feces, flesh, blood, bones, body secretions, nonprescribed drugs or chemical compounds,]

[or]

[5. involved the child in a mock, unauthorized or unlawful marriage ceremony with another person or representation of any force or deity, followed by sexual contact with the child,]

[or]

[5. placed a living child into a coffin or open grave containing a human corpse or remains,]

[or]

[5. threatened death or serious harm to a child, his parents, family, pets or friends which instills a well-founded fear in the child that the threat will be carried out,]

[or]

[5. unlawfully dissect, mutilates, or incinerates a human corpse,]

[and]

[6. the defendant's acts did not consist of [lawful agricultural, animal husbandry, food preparation or wild game hunting and fishing practices, including the branding or identification of livestock,] [or] [the lawful medical

practice of circumcision or any ceremony related thereto]
[or] [any state or federally approved, licensed or funded
research project].]

If any of the above has not been proven beyond a
reasonable doubt, you must find the defendant not guilty.
If each of the above has been proven beyond a reasonable
doubt, then you must find the defendant guilty.

Comment

I.C. § 18-1506A.

Paragraph 6 should be given only when there is at least
some evidence to support one or more of the defenses set
out in I.C. § 18-1506A(2).

ICJI 1250 DISPENSING OF ALCOHOL TO MINOR

INSTRUCTION NO.

In order for the defendant to be guilty of Disposal of Alcohol to a Minor, the state must prove each of the following:

1. On or about [date]
2. in the state of Idaho
3. the defendant [name], who at the time was 18 years of age or older,
4. sold, gave or furnished, or caused to be sold, given or furnished
5. an alcoholic beverage
6. to [name of person] a person under the age of 21 years.

If any of the above has not been proven beyond a reasonable doubt, you must find the defendant not guilty. If each of the above has been proven beyond a reasonable doubt, then you must find the defendant guilty.

An alcoholic beverage includes any distilled spirits, beer, or wine.

Comment

I.C. § 23-603.

A second or subsequent offense has an enhanced penalty. If the state is seeking the enhanced penalty based upon a prior offense, there would have to be a bifurcated trial regarding that prior conviction. See ICJI 1008 for instruction form and comment.

ICJI 1251 ALCOHOLIC LIQUOR DEFINED

INSTRUCTION NO.

"Alcoholic liquor" includes the following:

(1) alcohol, meaning the product of distillation of any fermented liquor, rectified either once or oftener, whatever may be the origin thereof, or synthetic ethyl alcohol;

(2) spirits, meaning any beverage which contains alcohol obtained by distillation mixed with drinkable water and other substances in solution, including, among other things, brandy, rum, whiskey, and gin;

(3) wine, meaning any alcoholic beverage obtained by the fermentation of the natural sugar content of fruits (grapes, apples, etc.) or other agricultural products containing sugar (honey, milk, etc.); and

(4) any liquid or solid, patented or not, containing alcohol, spirits, or wine, and susceptible of being consumed by a human being, for beverage purposes, and containing more than 4 per cent of alcohol by weight.

Comment

I.C. § 23-105.

ICJI 1252 PROCURING BEER FOR MINOR

INSTRUCTION NO.

In order for the defendant to be guilty of Procuring Beer for a Minor, the state must prove each of the following:

1. On or about [date]
2. in the state of Idaho
3. the defendant [name] obtained
4. beer
5. for the purpose of providing it to [name], a person under 21 years of age.

If any of the above has not been proven beyond a reasonable doubt, you must find the defendant not guilty. If each of the above has been proven beyond a reasonable doubt, then you must find the defendant guilty.

Comment

I.C. § 23-1023. The Supreme Court discussed this statute in *State v. Murphy*, 94 Idaho 849, 499 P.2d 548 (1972). The Court stated that "procure" was synonymous with "obtain." The Court also stated that the illegal purpose must exist when the beer was obtained. It would not violate this statute if someone obtained beer for a lawful purpose and later decided to deliver it to a minor.

ICJI 1253 BEER DEFINED

INSTRUCTION NO.

"Beer" means any beverage obtained by the alcoholic fermentation of an infusion or decoction of barley, malt and/or other ingredients in drinkable water.

Comment

I.C. § 23-1001.

ICJI 1254 ILLEGAL CONSUMPTION/POSSESSION BY A MINOR

INSTRUCTION NO.

In order for the defendant to be guilty of Illegal [Consumption] [Possession], the state must prove each of the following:

1. On or about [date]
2. in the state of Idaho
3. the defendant [name], being under 21 years of age,
4. [purchased,] [attempted to purchase,] [possessed,] [served,] [dispensed,] [or] [consumed,]
5. [beer,] [wine,] [or] [alcoholic liquor].

If any of the above has not been proven beyond a reasonable doubt, you must find the defendant not guilty. If each of the above has been proven beyond a reasonable doubt, then you must find the defendant guilty.

Comment

I.C. §§ 23-949 & 23-1023.

I.C. § 23-949 provides that "any person who is nineteen (19) years of age or older may sell, serve, possess and dispense liquor, beer or wine in the course of his employment in any place as defined in section 23-942, Idaho Code or place where liquor, beer or wine are lawfully present so long as such place is the place of employment for such person under twenty-one (21) years of age."

I.C. § 23-1023 provides that it does not apply to "possession by a person under the age of twenty-one (21) years making a delivery of beer in pursuance of the order of his parent or in pursuance of his employment, or when such person under the age of twenty-one (21) years is in a private residence accompanied by his parent or guardian and with such parent's or guardian's consent."

Where there is at least some evidence to support a defense under either of these provisions, ICJI 1255 should also be given.

INSTRUCTION NO.

[You have heard evidence that the defendant (possessed) (served) (dispensed) (beer) (wine) (alcoholic liquor) in the course of the defendant's employment while the defendant was nineteen years of age or older.]

[or]

[You have heard evidence that the defendant (possessed) (served) (dispensed) (beer) (wine) (alcoholic liquor) while employed at [describe place defined in IC § 23-942] [a place of employment where (liquor) (beer) (wine) are lawfully present] and while the defendant was nineteen years of age or older.]

[or]

[You have heard evidence that the defendant possessed beer [by delivering the beer pursuant to (the order of the defendant's parent) (the defendant's employment)] [or] [when the defendant was in a private residence accompanied by the defendant's (parent) (guardian) and with the consent of the defendant's (parent) (guardian).]

If true, [this] [these] fact[s] constitute[s] a defense to the charge[s] against the defendant. The state has the burden to show beyond a reasonable doubt that [this] [these] defense[s] do not apply to the defendant. If, after considering all of the evidence, you have a reasonable doubt that the defendant is guilty, you must find the defendant not guilty.

Comment

I.C. §§ 23-949 & 23-1023.

This instruction should be given in conjunction with ICJI 1254 only where there is some evidence to support a defense under either of these Code provisions.

The exceptions contained in Idaho Code § 23-1023 for the offense of unlawful possession of beer also apply to a prosecution for unlawful possession of beer under Idaho Code § 23-949. *State v. Maland*, 124 Idaho 537, 861 P.2d 107 (Ct. App. 1993). The state is not required to disprove the exceptions as part of its case in chief. The burden is on the defendant to put the exception in issue before the state is required to present evidence negating it. *Id.*

ICJI 1256 ILLEGAL POSSESSION OF TOBACCO BY A MINOR

INSTRUCTION NO.

In order for the defendant to be guilty of Illegal Possession, Distribution, or Use of Tobacco, the state must prove each of the following:

1. On or about [date]
2. in the state of Idaho
3. the defendant [name], being under 18 years of age,

[4. [possessed] [received] [purchased] [sold]
[distributed] [used] or [consumed]]

[or]

[4. attempted to [possess] [receive] [purchase] [sell]
[distribute] [use] or [consume]]

[or]

[4. [provided any false identification] or [made any false statement regarding his/her age] in an attempt to obtain]

5. any tobacco product.

If any of the above has not been proven beyond a reasonable doubt, you must find the defendant not guilty. If each of the above has been proven beyond a reasonable doubt, then you must find the defendant guilty.

Comment

I.C. §§ 39-5702 & 39-5703.

ICJI 1257 SELLING OR DISTRIBUTING TOBACCO PRODUCTS TO A
MINOR

INSTRUCTION NO.

In order for the defendant to be guilty of Giving or Selling Tobacco to a Minor, the state must prove each of the following:

1. On or about [date]
2. in the state of Idaho
3. the defendant [name]
4. sold, distributed, or offered
5. a tobacco product
6. to [name of person] a person under 18 years of age.]

If any of the above has not been proven beyond a reasonable doubt, you must find the defendant not guilty. If each of the above has been proven beyond a reasonable doubt, then you must find the defendant guilty.

Comment

I.C. §§ 39-5702 & 39-5705.

ICJI 1260 RESISTING/DELAYING/OBSTRUCTING AN OFFICER

INSTRUCTION NO.

In order for the defendant to be guilty of [Resisting] [Delaying] [or] [Obstructing] an Officer, the state must prove each of the following:

1. On or about [date]
2. in the state of Idaho
3. the defendant [name] willfully
4. [resisted] [delayed] [obstructed]
5. [name of officer], a public officer,
6. in the discharge, or attempt to discharge, any duty of [name of officer's] office.

If any of the above has not been proven beyond a reasonable doubt, you must find the defendant not guilty. If each of the above has been proven beyond a reasonable doubt, then you must find the defendant guilty.

Comment

I.C. § 18-705.

"Public officer" is defined in ICJI 1266. "Willfully" is defined in ICJI 1261.

ICJI 1261 REQUIREMENTS TO SHOW "WILFULNESS"

INSTRUCTION NO.

In order to show that the offense of [Resisting] [Delaying] [or] [Obstructing] a Public Officer was committed "willfully," the state must prove that the defendant knew:

- (1) that the person the defendant [resisted,] [delayed,] [or] [obstructed] was a public officer; and
- (2) that the public officer was attempting to perform, or was engaged in the performance of, some official duty.

The word "duty" includes only the lawful and authorized acts of a public officer.

Comment

State v. Wilkerson, 114 Idaho 174, 755 P.2d 471 (Ct. App.), aff'd, 115 Idaho 357, 766 P.2d 1238 (1988); *State v. Winter*, 24 Idaho 749, 135 P. 739 (1913). This instruction is to be used with ICJI 1260.

ICJI 1262 DUTY TO SUBMIT TO ARREST

INSTRUCTION NO.

If a person has reasonable grounds to believe that the person is being arrested by a peace officer, it is the person's duty to refrain from using force or any weapon in resisting arrest regardless of whether or not there is a legal basis for the arrest. A person may not use force to resist an arrest by someone the person knows or has good reason to believe is an authorized peace officer engaged in the performance of the officer's duties.

Comment

State v. Richardson, 95 Idaho 446, 511 P.2d 263 (1973), cert. denied, 414 U.S. 1163, 94 S.Ct. 928, 39 L.Ed.2d 117 (1974); *State v. Wilkerson*, 114 Idaho 174, 755 P.2d 471 (Ct. App.), aff'd, 115 Idaho 357, 766 P.2d 1238 (1988).

This instruction should be used where the charge against the defendant involves his resistance to his arrest or to the arrest of another.

ICJI 1263 DEFENSE: DEFENDING ONESELF AGAINST USE OF
EXCESSIVE FORCE

INSTRUCTION NO.

An officer is not permitted to use unreasonable or excessive force [in making or attempting to make an arrest] [in detaining or attempting to detain a person for questioning].

If an officer does use unreasonable or excessive force [in making or attempting to make an arrest] [in detaining or attempting to detain a person for questioning], the person being [arrested] [detained] may lawfully use reasonable force to protect himself.

The state must prove beyond a reasonable doubt:

(1) that the officer did not use unreasonable force,
or

(2) if the officer used unreasonable force, that the defendant used unreasonable force in response.

If the state fails to do so, you must find the defendant not guilty [of [Resisting][,] [Delaying] [or] [Obstructing] an Officer].

Comment

State v. Spurr, 114 Idaho 277, 755 P.2d 1315 (Ct. App. 1988).

This instruction should be used where there is some evidence to support the defense that the defendant used reasonable force to resist the use of excessive force by the officer. Reasonable force is defined in ICJI 1518. See also ICJI 1264.

ICJI 1264 PUBLIC OFFICER AND PEACE OFFICER DEFINED

INSTRUCTION NO.

The term "public officer" includes any officer or employee of the state government or any subdivision of the state. It includes all peace officers.

The term "peace officer" includes a member of the Idaho State Police, a sheriff or deputy sheriff, a city policeman or marshal, a constable or any other officer duly authorized to enforce municipal, county, or state laws.

ICJI 1265 OBSTRUCTING AN OFFICER BY FALSE REPORT

INSTRUCTION NO.

In order for the defendant to be guilty of Obstructing an Officer by a False Report, the state must prove each of the following:

1. On or about [date]
2. in the state of Idaho
3. the defendant [name]
4. knowingly gave a false report
5. to a person the defendant knew was a peace officer.

If any of the above has not been proven beyond a reasonable doubt, you must find the defendant not guilty. If each of the above has been proven beyond a reasonable doubt, then you must find the defendant guilty.

Comment

I.C. § 18-705.

A false report connotes a statement, written or oral, made upon the initiative of the defendant to a peace officer for the specific purpose of having some action taken with respect thereto and not a false statement in response to a question asked by an officer. *State v. Brandstetter*, 127 Idaho 885, 908 P.2d 578 (Ct. App. 1995).

ICJI 1266 INTIMIDATING A WITNESS

INSTRUCTION NO.

In order for the defendant to be guilty of Intimidating a Witness, the state must prove each of the following:

1. On or about [date]
2. in the state of Idaho
3. the defendant [name]
4. [by direct or indirect force] [or] [by threats to [a person] [or] [property]] [or] [by any manner]
5. willfully
6. [intimidated] [influenced] [impeded] [deterred] [threatened] [harassed] [obstructed] [or] [prevented]
7. [a witness] [a person who might be called as a witness] [or] [any person the defendant believed might be called as a witness]
8. in any [civil proceeding] [criminal proceeding] [juvenile evidentiary hearing]
9. with the intent to [intimidate] [influence] [impede] [deter] [threaten] [harass] [obstruct] [or] [prevent] from testifying freely, fully and truthfully in that [proceeding] [hearing].

If any of the above has not been proven beyond a reasonable doubt, you must find the defendant not guilty. If each of the above has been proven beyond a reasonable doubt, then you must find the defendant guilty.

Comment

I.C. § 18-2604; *State v. Anderson*, 144 Idaho 743, 170 P.3d 886 (2007). It is not necessary for the state to prove that the defendant's actions had an actual effect on the witness's testimony, or that the defendant's actions prevented the witness from testifying. *State v. Mercer*, 143 Idaho 108, 138 P.3d 308 (2006).

ICJI 1270 INHUMANE TREATMENT OF PRISONER

INSTRUCTION NO.

In order for the defendant to be guilty of Inhumane Treatment of a Prisoner, the state must prove each of the following:

1. On or about [date]
2. in the state of Idaho
3. the defendant [name] while acting as a public officer
4. willfully treated [name of victim]
5. a prisoner under the defendant's care or custody
6. in an inhumane or oppressive manner.

If any of the above has not been proven beyond a reasonable doubt, you must find the defendant not guilty. If each of the above has been proven beyond a reasonable doubt, then you must find the defendant guilty.

Comment

I.C. § 18-704.

Under the Eighth Amendment of the United States Constitution, prison officials are required to provide humane conditions of confinement, including adequate food, clothing, shelter, and medical care for inmates and taking reasonable measures to guarantee their safety. *Farmer v. Brennan*, 511 U.S. 825, 114 S.Ct. 1970, 128 L.Ed.2d 811 (1994).

Inflicting unnecessary suffering on a prisoner by failing to treat his medical needs is inconsistent with contemporary standards of decency and violates the Eighth Amendment of the United States Constitution. *Estelle v. Gamble*, 429 U.S. 97, 97 S.Ct. 285, 50 L.Ed.2d 251 (1976).

ICJI 1271 POISONING

INSTRUCTION NO.

In order for the defendant to be guilty of Poisoning, the state must prove each of the following:

1. On or about [date]
2. in the state of Idaho
3. the defendant [name] willfully

[4. mingled any poison with any [food] [drink] [medicine]

5. with intent that it would be taken by any human being, to his or her injury.]

[or]

[4. poisoned a [spring] [well] [or] [reservoir of water].]

If any of the above has not been proven beyond a reasonable doubt, you must find the defendant not guilty. If each of the above has been proven beyond a reasonable doubt, then you must find the defendant guilty.

Comment

I.C. § 18-5501.

INSTRUCTION NO.

In order for the defendant to be guilty of Riot, the state must prove each of the following:

1. On or about [date]
2. in the state of Idaho
3. the defendant [name] acting together with one or more others,
4. without authority of law

- [5. engaged in any action or used force or violence
6. which disturbed the public peace]
- [or]
- [5. threatened to use force or violence which would disturb the public peace,
6. while having the immediate power to do so]
7. which resulted in [physical injury to any person] [damage or destruction to property] [or] [a disturbance of the public peace].

If any of the above has not been proven beyond a reasonable doubt, you must find the defendant not guilty. If each of the above has been proven beyond a reasonable doubt, then you must find the defendant guilty.

Comment

I.C. § 18-6401.

INSTRUCTION NO.

In order for the defendant to be guilty of Riot, the state must prove each of the following:

1. On or about [date]
2. in the state of Idaho
3. the defendant [name] acting together with one or more others,
4. without authority of law

[5. [engaged in any action] [or] [used force or violence]

6. which disturbed the public peace]
- [or]

[5. threatened to use force or violence which would disturb the public peace,

6. while having the immediate power to do so]
7. which resulted in [physical injury to any person] [damage or destruction to property] [or] [a disturbance of the public peace]]

and

[7][8] [the above occurred at [the state penitentiary,][a county or city jail,][or][any penal facility in the state,]]

[or]

[the riot involved the taking of one or more hostages,]

[or]

[(the riot resulted in damage or destruction to property exceeding \$500)].

If any of the above has not been proven beyond a reasonable doubt, you must find the defendant not guilty. If each of the above has been proven beyond a reasonable doubt, then you must find the defendant guilty.

Comment

I.C. §§ 18-6401, 18-6402.

A riot which is a felony because of damage to property exceeding \$500 carries a lesser maximum penalty than felony riot based on occurrence at a prison, jail or penal facility, or based on the taking of one or more hostages. Therefore, when more than one of the factors elevating riot

to a felony is charged, a special verdict form may be required so the jury can indicate the element they have unanimously agreed upon that elevates the riot to a felony.

ICJI 1274A STALKING IN THE FIRST DEGREE

INSTRUCTION NO.

In order for the defendant to be guilty of Stalking in the First Degree, the state must prove each of the following:

1. On or about [date]
2. in the state of Idaho
3. the defendant [name]
4. knowingly, and
5. maliciously
6. engaged in a course of conduct

[7. that seriously alarmed annoyed or harassed [name of victim] and

8. was such as would cause a reasonable person substantial emotional distress.]

[or]

[7. such as would cause a reasonable person to be [in fear of death or physical injury] [or] [in fear of the death or physical injury of a family or household member],

and

[8][9] [name of victim] was less than 16 years of age at the time of the offense.]

[or]

[at any time during the course of conduct the defendant possessed a deadly weapon or instrument.]

If any of the above has not been proven beyond a reasonable doubt, you must find the defendant not guilty. If each of the above has been proven beyond a reasonable doubt, then you must find the defendant guilty.

Comment

I.C. § 18-7905 and § 18-7906.

ICJI 1274B STALKING IN THE SECOND DEGREE

INSTRUCTION NO.

In order for the defendant to be guilty of Stalking in the First Degree, the state must prove each of the following:

1. On or about [date]
2. in the state of Idaho
3. the defendant [name]
4. knowingly, and
5. maliciously
6. engaged in a course of conduct

[7. that seriously alarmed annoyed or harassed [name of victim] and

8. was such as would cause a reasonable person substantial emotional distress.]

[or]

[7. such as would cause a reasonable person to be [in fear of death or physical injury] [or] [in fear of the death or physical injury of a family or household member],

_____ If any of the above has not been proven beyond a reasonable doubt, you must find the defendant not guilty. If each of the above has been proven beyond a reasonable doubt, then you must find the defendant guilty.

Comment

I.C. § 18-7906.

ICJI 1274C STALKING - ADDITIONAL FINDINGS

INSTRUCTION NO.

Having found the defendant guilty of Stalking, you must next decide whether:

[the actions constituting the offense were in violation of [a temporary restraining order] [a protection order] [a no contact order] [an injunction] [or] [any combination thereof].]

[the actions constituting the offense were in violation of a condition of [probation] [or] [parole].]

[the defendant had previously been convicted of Stalking [or] [a substantially conforming offense in another jurisdiction] within the last seven years. The state alleges:

[1.] The defendant [pled guilty to] [was found guilty of] a violation of Idaho Code § 18-[7905][7906], Stalking, in [name of county], Idaho, Case No._____.

[2. (Add other prior offenses).]

[the defendant had previously been convicted of a crime involving the same victim as the present offense within the last seven years. The state alleges:

[1.] The defendant [pled guilty to] [was found guilty of] a violation of Idaho Code § [], in [name of county], Idaho, Case No._____.

[2. (Add other prior offenses).]

If any of the above has not been proven beyond a reasonable doubt, you must find the defendant not guilty. If each of the above has been proven beyond a reasonable doubt, then you must find the defendant guilty.

Comment

I.C. § 18-7905(1)(e)and (f).

State v. Johnson, 86 Idaho 51, 383 P2d 326 (1963) held that a persistent violator charge should be stated in a two-part information. The first part should state the particular offense with which the defendant is charged, and be signed at the end of the page by the prosecutor. The second part, or page, should allege former convictions, and be separable from the first part. It should be signed separately by the prosecutor. The entire information should be read to the accused at arraignment. However, when the jury is informed of the charge only the first part is read, then, after, and depending upon the verdict on part one, the second part is read, and the jury deliberates further.

A Special Verdict instruction, similar to the ones suggested for enhanced DUI and DWP offenses (ICJI 1009 and 1024) should be used.

The determination of whether a foreign criminal violation is substantially conforming is a question of law to be determined by the court. I.C. § 18-7905(3).

ICJI 1275 STALKING DEFINITIONS

INSTRUCTION NO.

"Course of conduct" means repeated acts of nonconsensual contact involving the victim [or] [a family or household member of the victim], provided however, that constitutionally protected activity is not included within the meaning of this definition.

["Family or household member" means a spouse or former spouse of the victim, a person who has a child in common with the victim regardless of whether they have been married, a person with whom the victim is cohabiting whether or not they have married or have held themselves out to be husband or wife, a person related to the victim by blood, adoption or marriage, a person with whom the victim is or has been in a dating relationship, or a person living in the same residence as the victim.]

["Dating relationship" means a social relationship of a romantic nature. Factors that you may consider in making this determination include: (1) the nature of the relationship; (2) the length of time the relationship has existed; (3) the frequency of interaction between the parties; and (4) the time since termination of the relationship, if applicable.]

"Nonconsensual contact" means any contact with the victim that is initiated or continued without the victim's consent, that is beyond the scope of the consent provided by the victim, or that is in disregard of the victim's expressed desire that the contact be avoided or discontinued. "Nonconsensual contact" includes, but is not limited to:

- (1) Following the victim or maintaining surveillance, including by electronic means, on the victim;
- (2) Contacting the victim in a public place or on private property;
- (3) Appearing at the workplace or residence of the victim;
- (4) Entering onto or remaining on property owned, leased or occupied by the victim;
- (5) Contacting the victim by telephone or causing the victim's telephone to ring repeatedly or continuously regardless of whether a conversation ensues;
- (6) Sending mail or electronic communications to the victim; or

(7) Placing an object on, or delivering an object to, property owned, leased or occupied by the victim.

"Victim" means a person who is the target of a course of conduct.

["Constitutionally protected activity" includes [define type of conduct that would be constitutionally protected under the evidence in the case].

COMMENT

I.C. § 18-7906. The court should use only those portions of these definitions that are applicable to the particular case.

INSTRUCTION NO.

In order for the defendant to be guilty of Domestic Assault, the state must prove each of the following:

1. On or about [date]
2. in the state of Idaho
3. the defendant committed an assault upon [name of victim] [by (description of conduct alleged in charging document)]
4. while they were household members.

If any of the above has not been proven beyond a reasonable doubt, you must find the defendant not guilty. If each of the above has been proven beyond a reasonable doubt, then you must find the defendant guilty.

Persons are "household members" if they [are married to each other] [were ever married to each other] [have a child in common, regardless of whether they have been married] [are cohabitating, regardless of whether they have married or hold themselves out as husband and wife].

Comment

I.C. §§ 18-901 & 18-918(2). Use IDJI 1201 for definition of assault.

The charging document apprises the defendant in general terms of the manner in which he is alleged to have committed the crime charged. If there is evidence of other uncharged conduct by the defendant which could also fit within the statutory definition of the crime charged and if the jury is merely instructed regarding the statutory definition of the crime, the defendant may be denied due process by being convicted for a crime different from that charged. *State v. Sherrod*, 131 Idaho 56, 951 P.2d 1283 (Ct. App. 1998). Therefore, in that circumstance the jury instruction should include, in general terms, the description of the conduct alleged in the charging document to constitute the crime charged.

Prior to July 1, 1996, the statute required that the defendant and the alleged victim both be adults, and the definition of "household member" was more restricted.

ICJI 1277 DOMESTIC BATTERY

INSTRUCTION NO.

In order for the defendant to be guilty of Domestic Battery, the state must prove each of the following:

1. On or about [date]
2. in the state of Idaho
3. the defendant [name] committed a battery upon [name of victim][by (description of conduct)]
4. while they were household members [,and
5. in doing so the defendant inflicted a traumatic injury upon (name of victim)].

If any of the above has not been proven beyond a reasonable doubt, you must find the defendant not guilty. If each of the above has been proven beyond a reasonable doubt, then you must find the defendant guilty.

Persons are "household members" if they [are married to each other] [were ever married to each other] [have a child in common, regardless of whether they have been married] [are cohabitating, regardless of whether they have married or hold themselves out to be husband and wife].

["Traumatic injury" means a condition of the body, such as a wound or external or internal injury, whether of a minor or serious nature, caused by physical force.]

Comment

I.C. §§ 18-903 & 18-918(1)&(3). Use IDJI 1201 for definition of battery.

The charging document apprises the defendant in general terms of the manner in which he is alleged to have committed the crime charged. If there is evidence of other uncharged conduct by the defendant which could also fit within the statutory definition of the crime charged and if the jury is merely instructed regarding the statutory definition of the crime, the defendant may be denied due process by being convicted for a crime different from that charged. *State v. Sherrod*, 131 Idaho 56, 951 P.2d 1283 (Ct. App. 1998). Therefore, in that circumstance the jury instruction should include, in general terms, the description of the conduct alleged in the charging document to constitute the crime charged.

Prior to July 1, 1996, the statute required that the defendant and the alleged victim both be adults, and the definition of "household member" was more restricted.

A traumatic injury includes bruising. *State v. Hart*, 135 Idaho 827, 25 P.3d 850 (2001).

The statutory definition of "traumatic injury" is not unconstitutionally vague. *State v. Hellickson*, 135 Idaho 742, 24 P.2d 59 (2001).

INSTRUCTION NO.

Having found the defendant guilty of Domestic [Assault] [Battery], you must next decide whether the defendant has pled guilty to or was found guilty of Domestic [Assault] [Battery] [within the last ten] [twice or more times within the last fifteen] years. The state alleges:

1. On _____, 19__, the defendant [pled guilty to] [was found guilty of] a violation of IC § 18-918, Domestic [Assault] [Battery], in [name of county], Idaho, Case No. _____[.][, and
2. On _____, 19__, the defendant [pled guilty to] [was found guilty of] a violation of IC § 18-918, Domestic [Assault] [Battery] in [name of county] Idaho, Case No. _____[.]
- [3. (Add other prior offenses).]

The state must prove the existence of [this] [these] event[s] beyond a reasonable doubt.

Comment

I.C. § 18-918(3).

State v. Johnson, 86 Idaho 51, 383 P2d 326 (1963) held that a persistent violator charge should be stated in a two-part information. The first part should state the particular offense with which the defendant is charged, and be signed at the end of the page by the prosecutor. The second part, or page, should allege former convictions, and be separable from the first part. It should be signed separately by the prosecutor. The entire information should be read to the accused at arraignment. However, when the jury is informed of the charge only the first part is read, then, after, and depending upon the verdict on part one, the second part is read, and the jury deliberates further.

A Special Verdict instruction, similar to the ones suggested for enhanced DUI and DWP offenses (ICJI 1009 and 1024) should be used.

The determination of whether a foreign criminal violation is substantially conforming is a question of law to be determined by the court. I.C. § 18-918(6).

ICJI 1279A DOMESTIC ASSAULT IN THE PRESENCE OF A CHILD

INSTRUCTION NO.

In order for the defendant to be guilty of Domestic Assault, the state must prove each of the following:

1. On or about [date]
2. in the state of Idaho
3. the defendant committed an assault upon [name of victim][by(description of conduct alleged in charging document)]
4. while they were household members, and
5. [the defendant committed such offense in the physical presence of a child under sixteen (16) years of age] [or] [the defendant committed such offense knowing that a child under sixteen (16) years of age was present and might see or hear an act of domestic assault or battery].

If any of the above has not been proven beyond a reasonable doubt, you must find the defendant not guilty. If each of the above has been proven beyond a reasonable doubt, then you must find the defendant guilty.

Persons are "household members" if they [are married to each other] [were ever married to each other] [have a child in common, regardless of whether they have been married] [are cohabitating, regardless of whether they have married or hold themselves out as husband and wife].

Comment

I.C. §§ 18-901 & 18-918(2)&(4). Use IDJI 1201 for definition of assault.

The charging document apprises the defendant in general terms of the manner in which he is alleged to have committed the crime charged. If there is evidence of other uncharged conduct by the defendant which could also fit within the statutory definition of the crime charged and if the jury is merely instructed regarding the statutory definition of the crime, the defendant may be denied due process by being convicted for a crime different from that charged. *State v. Sherrod*, 131 Idaho 56, 951 P.2d 1283 (Ct. App. 1998). Therefore, in that circumstance the jury instruction should include, in general terms, the

description of the conduct alleged in the charging document to constitute the crime charged.

Prior to July 1, 1996, the statute required that the defendant and the alleged victim both be adults, and the definition of "household member" was more restricted.

ICJI 1279B DOMESTIC BATTERY IN THE PRESENCE OF A CHILD

INSTRUCTION NO.

In order for the defendant to be guilty of Domestic Battery, the state must prove each of the following:

1. On or about [date]
2. in the state of Idaho
3. the defendant [name] committed a battery upon [name of victim][by (description of conduct)]
4. while they were household members, and
5. in doing so the defendant willfully inflicted a traumatic injury upon (name of victim)], and
6. [the defendant committed such offense in the physical presence of a child under sixteen (16) years of age] [or] [the defendant committed such offense knowing that a child under sixteen (16) years of age was present and might see or hear an act of domestic assault or battery].

If any of the above has not been proven beyond a reasonable doubt, you must find the defendant not guilty. If each of the above has been proven beyond a reasonable doubt, then you must find the defendant guilty.

Persons are "household members" if they [are married to each other] [were ever married to each other] [have a child in common, regardless of whether they have been married] [are cohabitating, regardless of whether they have married or hold themselves out to be husband and wife].

["Traumatic injury" means a condition of the body, such as a wound or external or internal injury, whether of a minor or serious nature, caused by physical force.]

Comment

I.C. §§ 18-903 & 18-918(1),(3)&(4). Use IDJI 1201 for definition of battery.

The charging document apprises the defendant in general terms of the manner in which he is alleged to have committed the crime charged. If there is evidence of other uncharged conduct by the defendant which could also fit within the statutory definition of the crime charged and if the jury is merely instructed regarding the statutory definition of the crime, the defendant may be denied due process by being convicted for a crime different from that charged. *State v.*

Sherrod, 131 Idaho 56, 951 P.2d 1283 (Ct. App. 1998). Therefore, in that circumstance the jury instruction should include, in general terms, the description of the conduct alleged in the charging document to constitute the crime charged.

Prior to July 1, 1996, the statute required that the defendant and the alleged victim both be adults, and the definition of "household member" was more restricted.

Do not use the definition of "willful" or "willfully" as defined in ICJI 340. *State v. Sohm*, 140 Idaho 458, 95 P.3d 76 (Ct. App. 2004).

Although the statute requires that the defendant willfully inflicted the traumatic injury, it does not require that the defendant intended to inflict the particular injury that the victim actually suffered. *State v. Reyes*, 139 Idaho 502, 80 P.3d 1103 (Ct. App. 2003).

A traumatic injury includes bruising. *State v. Hart*, 135 Idaho 827, 25 P.3d 850 (2001).

The statutory definition of "traumatic injury" is not unconstitutionally vague. *State v. Hellickson*, 135 Idaho 742, 24 P.2d 59 (2001).

ICJI 1281 VIOLATION OF CIVIL PROTECTION ORDER

INSTRUCTION NO.

In order for the defendant to be guilty of Violating a Protection Order, the state must prove each of the following:

1. On or about [date]
2. in the state of Idaho
3. the defendant [name]
4. violated the provisions of a protection order issued on [date] by Judge [name] [by (description of conduct)], and
5. before such violation the defendant had notice of the order.

If any of the above has not been proven beyond a reasonable doubt, you must find the defendant not guilty. If each of the above has been proven beyond a reasonable doubt, then you must find the defendant guilty.

Comment

I.C. § 39-6312(1). The protection order must have been issued under Chapter 63 of Title 39, Idaho Code.

The charging document apprises the defendant in general terms of the manner in which he is alleged to have committed the crime charged. If there is evidence of other uncharged conduct by the defendant which could also fit within the statutory definition of the crime charged and if the jury is merely instructed regarding the statutory definition of the crime, the defendant may be denied due process by being convicted for a crime different from that charged. *State v. Sherrod*, 131 Idaho 56, 951 P.2d 1283 (Ct. App. 1998). Therefore, in that circumstance the jury instruction should include, in general terms, the description of the conduct alleged in the charging document to constitute the crime charged. *Id.*

ICJI 1282 VIOLATION OF NO CONTACT ORDER

INSTRUCTION NO.

In order for the defendant to be guilty of Violating a No Contact Order, the state must prove each of the following:

1. On or about [date]
2. in the state of Idaho
3. the defendant [name]
4. had been [charged with] [or] [convicted of] [], and
5. a no contact order had been issued by a court or by an Idaho criminal rule forbidding the defendant from having contact with [name of person], and
6. the defendant had contact with [name of person] in violation of the order, and
7. before such contact the defendant had notice of the order.

If any of the above has not been proven beyond a reasonable doubt, you must find the defendant not guilty. If each of the above has been proven beyond a reasonable doubt, then you must find the defendant guilty.

Comment

I.C. § 18-920.

The court should instruct the jury on the element of the defendant's having been charged with or convicted of an offense and include the name of the of the offense, unless the defendant has stipulated that he was charged with or convicted of a crime for which a no contact order could be issued.

ICJI 1283 VIOLATION OF NO CONTACT ORDER - ADDITIONAL
FINDINGS

INSTRUCTION NO.

Having found the defendant guilty of Violation of a No Contact Order, you must next decide whether the defendant has pled guilty to or was found guilty of at least two [Violations of a No Contact Order,] [or] [substantially conforming criminal violations in another jurisdiction,] within the last five years. The state alleges:

1. The defendant [pled guilty to] [was found guilty of] a violation of [Idaho Code § 18-920, Violation of a No Contact Order,] [or] [name of substantially conforming criminal provision in other jurisdiction] on [date]; and

2. The defendant [pled guilty to] [was found guilty of] a violation of [Idaho Code § 18-920, Violation of a No Contact Order,] [or] [name of substantially conforming criminal provision in other jurisdiction] on [date]; and

[3. (Add other prior offenses).]

If any of the above has not been proven beyond a reasonable doubt, you must find the defendant not guilty. If each of the above has been proven beyond a reasonable doubt, then you must find the defendant guilty.

Comment

I.C. § 18-920(3). This instruction should be given where the defendant is charged with felony Violation of a No Contact Order.

ICJI 1285 USING TELEPHONE TO HARASS

INSTRUCTION NO.

In order for the defendant to be guilty of Using the Telephone to Harass, the state must prove each of the following:

1. On or about [date],
2. in the state of Idaho,
3. the defendant [name], with the intent to annoy, terrify, threaten, intimidate, harass, or offend,
- [4. telephoned (name of victim) and
5. [addressed to or about (name of victim) any obscene, lewd or profane language] [or] [made any request, suggestion or proposal which was obscene, lewd, lascivious or indecent] [or] [addressed to (name of victim) any threat to inflict injury or physical harm to (him) (her) (or) (his) (her) (property) (or) (to any other person).]

- [4. by making repeated anonymous or identified telephone calls, whether or not conversation ensued,
5. disturbed or attempted to disturb the peace, quiet, or right of privacy of any person at the place where the telephone call or calls were received.]

If any of the above has not been proven beyond a reasonable doubt, you must find the defendant not guilty. If each of the above has been proven beyond a reasonable doubt, then you must find the defendant guilty.

Comment

I.C. § 18-6710.

If the defendant is charged with "second offense" telephone harassment, I.C. § 18-6710(1), that issue should be presented in a bifurcated proceeding as provided in ICJI 1601 (with appropriate modifications).

ICJI 1290 DISTURBING THE PEACE

INSTRUCTION NO.

In order for the defendant to be guilty of Disturbing the Peace, the state must prove each of the following:

1. On or about [date],
2. in the state of Idaho,
3. the defendant [name] maliciously and willfully
4. disturbed the peace or quiet of a [neighborhood] [family] [person]
5. [by a loud or unusual noise] [by tumultuous or offensive conduct] [by threatening, traducing, quarreling, challenging to fight, or fighting].

If any of the above has not been proven beyond a reasonable doubt, you must find the defendant not guilty. If each of the above has been proven beyond a reasonable doubt, then you must find the defendant guilty.

Comment

I.C. § 18-6409. The latter portion of the statute, which declares it illegal to use vulgar, profane, or indecent language within the presence or hearing of children, was held unconstitutional in *State v. Poe*, 139 Idaho 885, 88 P.3d 704 (2004).

The word "threatening" means "statements where the speaker intends to communicate a serious expression of an intent to commit an act of unlawful violence to a particular individual or group of individuals." *State v. Poe*, 139 Idaho 885, 895, 88 P.3d 704, 714 (2004).

ICJI 1291 ABUSE OR NEGLECT OF A VULNERABLE ADULT -- FELONY

INSTRUCTION NO.

In order for the defendant to be guilty of Abuse or Neglect of a Vulnerable Adult, the state must prove each of the following:

1. On or about [date]
2. in the state of Idaho
3. the defendant [name]
4. [Abused] [or] [neglected] [name of victim]
5. who was at that time a vulnerable adult
6. under circumstances likely to produce great bodily harm or death.

If any of the above has not been proven beyond a reasonable doubt, you must find the defendant not guilty. If each of the above has been proven beyond a reasonable doubt, then you must find the defendant guilty.

"Vulnerable adult" means a person 18 years of age or older who is unable to protect himself or herself from abuse, neglect or exploitation due to physical or mental impairment which affects the person's judgment or behavior to the extent he or she lacks sufficient understanding or capacity to make or communicate or implement decisions regarding his or her person [,funds, property or resources].

["Abuse" means the intentional or negligent infliction of physical pain, injury or mental injury.]

["Neglect" means failure of a caretaker to provide food, clothing, shelter or medical care to a vulnerable adult, in such a manner as to jeopardize the life, health and safety of the vulnerable adult.]

["Caretaker" means any individual or institution that is responsible by relationship, contract or court order to provide food, shelter or clothing, medical or other life-sustaining necessities to a vulnerable adult.]

[A person shall not be considered to be abused or neglected for the sole reason that the person is relying upon treatment by spiritual means through prayer alone in accordance with the tenets and practices of a recognized church or religious denomination; nor shall the provisions of this section be construed to

require any medical care or treatment in contravention of the stated or implied objection of such a person.]

Comment

I.C. § 18-1505. The committee recommends that the phrase "great bodily injury" not be defined; see the comment to ICJI 1207.

The phrase "funds, property or resources" in the definition of "vulnerable adult" should be used only in those cases where the offense is alleged to have occurred on or after July 1, 2009.

The last paragraph of this instruction should be given only where there is at least some evidence to support a defense under I.C. § 18-1505(5).

ICJI 1292 ABUSE OR NEGLECT OF A VULNERABLE ADULT -
MISDEMEANOR

INSTRUCTION NO.

In order for the defendant to be guilty of Abuse or Neglect of a Vulnerable Adult, the state must prove each of the following:

1. On or about [date]
2. in the state of Idaho
3. the defendant [name]
4. [Abused] [or] [neglected] [name of victim]
5. who was at that time a vulnerable adult.

If any of the above has not been proven beyond a reasonable doubt, you must find the defendant not guilty. If each of the above has been proven beyond a reasonable doubt, then you must find the defendant guilty.

"Vulnerable adult" means a person 18 years of age or older who is unable to protect himself or herself from abuse, neglect or exploitation due to physical or mental impairment which affects the person's judgment or behavior to the extent he or she lacks sufficient understanding or capacity to make or communicate or implement decisions regarding his or her person [,funds, property or resources].

["Abuse" means the intentional or negligent infliction of physical pain, injury or mental injury.]

["Neglect" means failure of a caretaker to provide food, clothing, shelter or medical care to a vulnerable adult, in such a manner as to jeopardize the life, health and safety of the vulnerable adult.]

["Caretaker" means any individual or institution that is responsible by relationship, contract or court order to provide food, shelter or clothing, medical or other life-sustaining necessities to a vulnerable adult.]

[A person shall not be considered to be abused or neglected for the sole reason that the person is relying upon treatment by spiritual means through prayer alone in accordance with the tenets and practices of a recognized church or religious denomination; nor shall the provisions of this section be construed to require any medical care or treatment in contravention of the stated or implied objection of such a person.]

Comment

I.C. § 18-1505. The committee recommends that the phrase "great bodily injury" not be defined; see the comment to ICJI 1207.

The phrase "funds, property or resources" in the definition of "vulnerable adult" should be used only in those cases where the offense is alleged to have occurred on or after July 1, 2009.

The last paragraph of this instruction should be given only where there is at least some evidence to support a defense under I.C. § 18-1505(5).

ICJI 1293 EXPLOITATION OF A VULNERABLE ADULT - FELONY

INSTRUCTION NO.

In order for the defendant to be guilty of Exploitation of a Vulnerable Adult, the state must prove each of the following:

1. On or about [date]
2. in the state of Idaho
3. the defendant [name]
4. exploited [name of victim]
5. who was at that time a vulnerable adult, and
6. the monetary damage from the exploitation exceeded on thousand dollars (\$1,000).

If any of the above has not been proven beyond a reasonable doubt, you must find the defendant not guilty. If each of the above has been proven beyond a reasonable doubt, then you must find the defendant guilty.

"Vulnerable adult" means a person 18 years of age or older who is unable to protect himself or herself from abuse, neglect or exploitation due to physical or mental impairment which affects the person's judgment or behavior to the extent he or she lacks sufficient understanding or capacity to make or communicate or implement decisions regarding his or her person [,funds, property or resources].

"Exploit" means an action which may include, but is not limited to, the unjust or improper use of a vulnerable adult's financial power of attorney, funds, property or resources by another person for profit or advantage.

[A person shall not be considered to be abused or neglected for the sole reason that the person is relying upon treatment by spiritual means through prayer alone in accordance with the tenets and practices of a recognized church or religious denomination; nor shall the provisions of this section be construed to require any medical care or treatment in contravention of the stated or implied objection of such a person.]

Comment

I.C. § 18-1505.

The phrase "funds, property or resources" in the definition of "vulnerable adult" should be used only in those cases where the offense is alleged to have occurred on or after July 1, 2009.

The last paragraph of this instruction should be given only where there is at least some evidence to support a defense under I.C. § 18-1505(5).

ICJI 1294 EXPLOITATION OF A VULNERABLE ADULT - MISDEMEANOR

INSTRUCTION NO.

In order for the defendant to be guilty of Exploitation of a Vulnerable Adult, the state must prove each of the following:

1. On or about [date]
2. in the state of Idaho
3. the defendant [name]
4. exploited [name of victim]
5. who was at that time a vulnerable adult.

If any of the above has not been proven beyond a reasonable doubt, you must find the defendant not guilty. If each of the above has been proven beyond a reasonable doubt, then you must find the defendant guilty.

"Vulnerable adult" means a person 18 years of age or older who is unable to protect himself or herself from abuse, neglect or exploitation due to physical or mental impairment which affects the person's judgment or behavior to the extent he or she lacks sufficient understanding or capacity to make or communicate or implement decisions regarding his or her person [,funds, property or resources].

"Exploit" means an action which may include, but is not limited to, the unjust or improper use of a vulnerable adult's financial power of attorney, funds, property or resources by another person for profit or advantage.

[A person shall not be considered to be abused or neglected for the sole reason that the person is relying upon treatment by spiritual means through prayer alone in accordance with the tenets and practices of a recognized church or religious denomination; nor shall the provisions of this section be construed to require any medical care or treatment in contravention of the stated or implied objection of such a person.]

Comment

I.C. § 18-1505.

The phrase "funds, property or resources" in the definition of "vulnerable adult" should be used only in those cases

where the offense is alleged to have occurred on or after July 1, 2009.

The last paragraph of this instruction should be given only where there is at least some evidence to support a defense under I.C. § 18-1505(5).