

Supreme Court of Florida

STANDARD JURY INSTRUCTIONS IN CRIMINAL CASES (97-2).

No. 91,815

[July 16, 1998]

PER CURIAM.

The Supreme Court Committee on Standard Jury Instructions in Criminal Cases has submitted the following proposed amendments to the Florida Standard Jury Instructions in Criminal Cases:

1. A revised Schedule of Lesser Included Offenses.¹
2. A New Instruction on Duress or Necessity.
3. A Supplemental Instruction on Penalty Phase Proceedings.
4. An Amended Instruction on Entrapment.
5. An Amended Instruction on False Imprisonment.
6. Amended Instructions Relating to DUI.
7. A New Instruction on Sexual Activity with a Minor.

The foregoing list of proposed amendments was published in The Florida Bar News and comments were received. The Committee considered the comments and

revised proposed amendments were published in The Florida Bar News on January 15, 1998. Several new comments were filed with this Court. In addition to some technical changes, the Court on its own motion has modified the proposed instructions as explained below.

First, the word "intentionally" has been added to the first element in the Committee's proposed new instruction on duress and necessity. Second, in the amended instruction on entrapment, the Court has changed the term "police" in the definition of information to "law enforcement." The instruction now reflects that an informant is an agent of law enforcement for the purposes of the entrapment defense.

With these changes, the Court hereby adopts the proposed amendments as set forth in the appendix attached to this opinion and approves them for publication. In doing so, we express no opinion on the correctness of these instructions and remind all interested parties that this approval forecloses neither requesting additional or alternative instructions nor contesting the legal correctness of the new instructions.

Accordingly, the new instructions are appended to this opinion and will be effective on the date this opinion is filed. The new language is indicated by underscoring; deletions are indicated by strike-through type.

It is so ordered.

HARDING, C.J., and OVERTON, SHAW,
KOGAN, WELLS, ANSTEAD and
PARIENTE, JJ., concur.

¹The revised schedule completely replaces the present version. The entire schedule, which is included in the appendix to this opinion, has been reorganized chronologically by statute number and also includes substantive changes.

THE FILING OF A MOTION FOR REHEARING SHALL NOT ALTER THE EFFECTIVE DATE OF THESE INSTRUCTIONS.

Original Proceeding - Standard Jury Instructions in Criminal Cases

Honorable Philip J. Padovano, Chair, Supreme Court Committee on Standard Jury Instructions in Criminal Cases,

for Petitioner

William D. Matthewman, Miami, Florida, John H. Gutmacher, Orlando, Florida, Bob Dillinger, Public Defender, Sixth Judicial Circuit, Clearwater, Florida, and Arthur I. Jacobs, General Counsel for Florida Prosecuting Attorneys Association, Fernandina Beach, Florida,

Responding

APPENDIX

SCHEDULE OF LESSER INCLUDED OFFENSES COMMENT ON SCHEDULE OF LESSER INCLUDED OFFENSES

One of the difficult problems in instructing a criminal jury is to make certain that it is properly charged with respect to the degrees or categories of guilt that may be applicable to a given crime. The supreme court in *Brown v. State*, 206 So.2d 377 (Fla. 1968) described these categories as follows:

1. Crimes divisible into degrees
2. Attempts to commit offenses
3. Offenses necessarily included in the offense charged
4. Offenses which may or may not be included in the offense charged, depending on the accusatory pleading and the evidence.

Because it is often so difficult to determine these categories, the committee prepared a list of the offenses applicable to each of the crimes for which standard jury instructions had been drafted. At the same time, the committee recommended treating lesser degrees as category 3 or 4 offenses depending on the offense and treating attempts as a category 4 offense, thereby eliminating the first two *Brown* categories as separate categories. In its opinion dated April 16, 1981, in which it approved the new standard jury instructions, the supreme court also approved the schedule of lesser included offenses and accepted the recommendation of the committee to consolidate the four *Brown* categories into two categories. The supreme court directed that the four categories should be renumbered and designated as follows:

1. Offenses necessarily included in the offense charged, which will include some lesser degrees of offenses.
2. Offenses which may or may not be included in the offense charged, depending on the accusatory pleading and the evidence, which will include all attempts and some lesser degrees of offenses.

The court also directed that the appropriate Florida Rules of Criminal Procedure be amended to accommodate these changes. The categories of the offenses which appear on the schedule of lesser included offenses have been renumbered and designated according to the supreme court mandate.

In determining the appropriate lesser offenses for inclusion in the table, the committee followed certain guidelines:

1. No offense is deemed to be a lesser offense if it carries the same penalty as the crime under consideration. See *Ray v. State*, 403 So.2d 956 (Fla. 1981); *State v. Carpenter*, 417 So.2d 986 (Fla. 1982).

2. If the definition of the crime includes the attempt or the endeavor to commit the crime, there can be no separate offense of an attempt to commit that crime, e.g., uttering, forgery, grand theft second degree, delivery of controlled substance.

3. Certain crimes do not have attempts, e.g., culpable negligence, extortion, perjury, corruption by threat against public servant, resisting officer with violence, and conspiracy.

4. Except as stated above, attempts to commit crimes generally are included unless the evidence conclusively shows that the charged crime was completed. In such case, attempt should not be instructed.

5. Some statutes provide that the penalty for certain crimes is enhanced if certain events occur during their commission. For example, under F.S. 810.02 burglary is a felony of the first degree if the burglar makes an assault or is armed with explosives or dangerous weapons. If these events do not occur but burglary is committed in a dwelling occupied by human beings, the offense is a felony of the second degree. All other burglaries are felonies of the third degree. Thus, if a defendant is charged with first degree burglary by virtue of having made an assault during the course of the burglary, the jury should be permitted to return a verdict for simple third degree burglary without the enhancement of the assault. In practice, this is similar to the concept of lesser included offenses, but since statutes of this type are couched in terms of enhancement, the schedule does not carry the lower degrees of the offenses proscribed by those statutes as lesser included offenses.

6. Under *Knight v. State*, 338 So.2d 201 (Fla. 1976), felony murder is included within a single indictment count of premeditated murder. Therefore, first degree felony murder should be given if requested by the state and if supported by the evidence, although it is not a lesser included offense.

TABLE OF LESSER INCLUDED OFFENSES

SECTION	CHARGED OFFENSE	CATEGORY 1	CATEGORY 2
316.193(1)	Driving under the influence	None	Attempt
316.193(2)(b)	Felony DUI - prior convictions	None	Attempt
316.193(3)(c)(1)	DUI with damage to property or person	DUI - 316.193(1)	None
316.193(3)(c)(2)	DUI with serious bodily injury	DUI - 316.193(1)	DUI- 316.193(3)(c)(1)
316.193(3)(c)(3)	DUI manslaughter	DUI - 316.193(1)	DUI serious bodily injury - 316.193(3)(c)(2) DUI damage to person or property - 316.193(3)(c) Vehicular homicide - 782.071
550.361	Bookmaking on grounds of permit holder (adapted from former 849.24)	None	Attempt
782.04(1)	First degree (premeditated) murder	Second degree (depraved mind) murder - 782.04(2) Manslaughter - 782.07	Second degree (felony) murder - 782.04(3) Third degree (felony murder) - 782.04(4) Vehicular homicide - 782.071 (Nonhomicide lessers) Attempt Culpable negligence - 784.05(2) Aggravated battery 784.045 Aggravated assault - 784.021 Battery - 784.03 Assault - 784.011

SECTION	CHARGED OFFENSE	CATEGORY 1	CATEGORY 2
782.04(1)	First degree (felony) murder	Second degree (depraved mind) murder - 782.04(2) Manslaughter - 782.07	Second degree (felony) murder - 782.04(3) Third degree (felony) murder - 782.04(4) (Nonhomicide lessers) Aggravated battery - 784.045 Aggravated assault - 784.021 Battery - 784.03 Assault - 784.011
782.04(1)(a) & 777.04	Attempted first degree (premeditated) murder	Attempt second degree (depraved mind) murder - 782.04(2) & 777.04 Attempt voluntary manslaughter - 782.07 & 777.04	Aggravated assault - 784.021 Aggravated battery - 784.045 Assault - 784.011 Battery - 784.03
782.04(2)	Second degree (depraved mind) murder	Manslaughter - 782.07	Third degree (felony) murder - 782.04(4) Vehicular homicide - 782.071 (Nonhomicide lessers) Attempt Culpable negligence - 784.05(2) Aggravated battery - 784.045 Aggravated assault - 784.021 Battery - 784.03 Assault - 784.011
782.04(3)	Second degree (felony) murder	None	Third degree (felony) murder - 782.04(4)
782.051	Felony causing bodily injury	None	Felony causing bodily injury - 782.051(2) Felony causing bodily injury - 782.051(3)
782.04(4)	Third degree (felony) murder	None	Aggravated assault - 784.021 Battery - 784.03 Assault - 784.011

SECTION	CHARGED OFFENSE	CATEGORY 1	CATEGORY 2
782.07	Manslaughter	None	Vehicular homicide - 782.071 (Nonhomicide lessers) Attempt Aggravated assault - 784.021 Battery - 784.03 Assault - 784.011 Culpable negligence - 784.05(1) Culpable negligence - 784.05(2)
782.071	Vehicular Homicide	Reckless driving - 316.192	Culpable negligence - 784.05(1) Culpable negligence - 784.05(2)
784.011	Assault	None	Attempt
784.021(1)(a)	Aggravated assault	Assault - 784.011	Attempt Improper exhibition of dangerous weapons or firearms - 790.10 Discharging firearms in public - 790.15
784.021(1)(b)	Aggravated assault	Assault - 784.011	Attempt
784.03	Battery	None	Attempt
784.045(1)(a) 1	Aggravated battery	Battery - 784.03	Attempt
784.045(1)(a) 2	Aggravated battery	Battery - 784.03	Attempt Improper exhibition of dangerous weapons or firearms - 790.10
784.045(1)(b)	Aggravated battery	Battery - 784.03	Attempt
784.048(2)	Stalking	None	Attempt
784.048(3)	Aggravated stalking	Stalking - 784.048(2)	Attempt Assault - 784.011 Improper exhibition of dangerous weapon - 790.10

SECTION	CHARGED OFFENSE	CATEGORY 1	CATEGORY 2
784.048(4)	Aggravated stalking	Stalking - 784.048(2)	Attempt Violation of injunction for protection against domestic violence - 741.31(4)
784.05(2)	Culpable negligence	Culpable negligence - 784.05(1)	None
784.07(2)	Assault of law enforcement officer	Assault - 784.011	Attempt
784.07(2)	Battery of law enforcement officer	Battery - 784.03	Attempt
784.07(2)(c)	Aggravated assault on law enforcement officer	Aggravated assault - 784.021 Assault on law enforcement officer - 784.07(2)(a) Assault - 784.011	Attempt Improper exhibition of dangerous weapons or firearms - 790.10 Discharging firearms in public - 790.15
784.07(2)(d)	Aggravated battery on law enforcement officer	Aggravated battery - 784.045 Battery on law enforcement officer - 784.07(2)(b) Battery - 784.03	Attempt Improper exhibition of dangerous weapons or firearms - 790.10 Discharging firearms in public - 790.15
784.08(2)(a)	Aggravated battery on person 65 years of age or older	Aggravated battery - 784.045 Battery on person 65 years of age or older - 784.08(2)(c) Battery - 784.03	Attempt Improper exhibition of dangerous weapons or firearms - 790.10 Discharging firearms in public - 790.15

SECTION	CHARGED OFFENSE	CATEGORY 1	CATEGORY 2
784.08(2)(b)	Aggravated assault on person 65 years of age or older	Aggravated assault - 784.021 Assault on person 65 years of age or older - 784.08(2)(d) Assault - 784.011	Attempt Improper exhibition of dangerous weapons or firearms - 790.10 Discharging firearms in public - 790.15
784.08(2)(c)	Battery on person 65 years of age or older	Battery - 784.03	Attempt
784.08(2)(d)	Assault on person 65 years of age or older	Assault - 784.011	Attempt
787.01	Kidnapping	False imprisonment - 787.02	Attempt Aggravated assault - 784.021(1)(b) Battery - 784.03(1)(a) Assault - 784.011
787.02	False imprisonment	None	Attempt Battery - 784.03(1)(a) Assault - 784.011
790.01(1)	Carrying concealed weapons	None	Attempt
790.01(2)	Carrying concealed firearms	None	Attempt
790.06	Carrying pistol or repeating rifle without first obtaining license	None	Attempt
790.07(1)	Persons engaged in criminal offense, having weapons	None	Attempt (may be applicable when concealed weapon is charged) Carrying concealed weapons - 790.01(1) Improper exhibition of dangerous weapons - 790.10

SECTION	CHARGED OFFENSE	CATEGORY 1	CATEGORY 2
790.07(2)	Persons engaged in criminal offense, having weapons	None	Attempt (may be applicable when concealed firearm is charged) Carrying concealed firearm - 790.01(2) Improper exhibition of dangerous firearms - 790.10
790.10	Improper exhibition of weapon	None	Attempt Assault - 784.011
790.15	Discharging firearms in public	None	Attempt
790.161(1)	Possessing, throwing, making, placing, projecting, or discharging destructive device	None	None
790.161(2)	Possessing, throwing, making, placing, projecting, or discharging destructive device	Possessing, throwing, making, placing, projecting, or discharging destructive device - 790.161(1)	Aggravated assault - 784.021 Assault - 784.011
790.161(3)	Possessing, throwing, making, placing, projecting, or discharging destructive device	Possessing, throwing, making, placing, projecting, or discharging destructive device - 790.161(1)	Possessing, throwing, making, placing, projecting, or discharging destructive device - 790.161(2) Aggravated assault - 784.021 Assault - 784.011

SECTION	CHARGED OFFENSE	CATEGORY 1	CATEGORY 2
790.161(4)	Possessing, throwing, making, placing, projecting, or discharging destructive device	Possessing, throwing, making, placing, projecting, or discharging destructive device - 790.161(1) Possessing, throwing, making, placing, projecting, or discharging destructive device - 790.161(3)	Possessing, throwing, making, placing, projecting, or discharging destructive device - 790.161(2) Aggravated assault - 784.021 Assault - 784.011
790.162	Threat to throw, project, place, or discharge any destructive device	None	Attempt Assault - 784.011
790.163	False reports of bombing	None	None
790.164	False reports of bombing or arson or other violence to property owned by the State	None	Attempt False reports of bombing - 790.163
790.17	Furnishing weapons to minors under 18 years of age, etc.	None	Attempt
790.18	Selling arms to minors by dealers	None	Attempt
790.19	Shooting or throwing missiles in dwelling	None	Attempt Discharging firearm in public - 790.15
790.221	Possession of forbidden firearms	None	Attempt

SECTION	CHARGED OFFENSE	CATEGORY 1	CATEGORY 2
790.23	Felons; possession of firearms unlawful; exception; penalty	None	Attempt (may be applicable when concealed weapon is charged) Carrying concealed firearm - 790.01(2) Carrying concealed weapon - 790.01(1)
794.011(2) (a)(b)	Sexual battery - victim under 12	Battery - 784.03	Sexual battery - 794.011(5) Attempt Assault - 784.011 Aggravated assault - 784.021(1)(a) Aggravated battery - 784.045(1)(a)
794.011(3)	Sexual battery - victim over 12 - weapon or force	Sexual battery - 794.011(5) Battery - 784.03	Sexual battery - 794.011(2)(b) Attempt Aggravated battery - 784.045(1)(a) Aggravated assault - 784.021(1)(a) Assault - 784.011 Sexual battery - 794.011(4)
794.011(4)	Sexual battery - victim over 12 - special circumstances	Sexual battery - 794.011(5) Battery - 784.03	Attempt Aggravated assault - 784.021(1)(a) Assault - 784.011
794.011(5)	Sexual battery - victim over 12 - without force	Battery - 784.03	Attempt Assault - 784.011
800.02	Unnatural and lascivious act	None	Attempt
800.03	Exposure of sexual organs	None	Unnatural and lascivious act - 800.02
800.04	Lewd, lascivious, or indecent assault or act upon or in presence of child	None	Attempt Assault - 784.011 Battery - 784.03 Unnatural and lascivious act - 800.02

SECTION	CHARGED OFFENSE	CATEGORY 1	CATEGORY 2
806.01(1)	Arson	None	Arson 806.01(2) Attempt Criminal mischief - 806.13(1)(b)1 Criminal mischief - 806.13(1)(b)2. Criminal mischief - 806.13(1)(b)3. Criminal mischief - 806.13(2)
806.111	Arson - Fire bomb	None	Attempt
806.13 (1)(b)1	Criminal mischief	None	Attempt
806.13(1)(b)2	Criminal mischief	Criminal mischief - 806.13(1)(b)1	Attempt
806.13(1)(b)3	Criminal mischief	Criminal mischief - 806.13(1)(b)1 Criminal mischief - 806.13(1)(b)2	Attempt
810.02(2)	Burglary with assault or battery or while armed	Burglary - 810.02(4)	Aggravated battery - 784.045 Battery - 784.03 Aggravated assault - 784.021 Assault - 784.011 Attempt Burglary - 810.02(3) Trespass - 810.08(2)(a) Trespass - 810.08(2)(c)
810.02(3)	Burglary of dwelling; Burglary of structure or conveyance with human being inside	Burglary - 810.02(4)	Attempt Burglary - 810.02(3) Trespass - 810.08(2)(a) Trespass - 810.08(2)(b)
810.02(4)	Burglary	None	Attempt Trespass - 810.08(2)(a)
810.06	Possession of burglary tools	None	None

SECTION	CHARGED OFFENSE	CATEGORY 1	CATEGORY 2
810.08	Trespass in structure or conveyance	None	Attempt (except refuse to depart)
810.09	Trespass on property other than structure or conveyance	None	Attempt
812.014(2)(a)	Grand theft - first degree (property valued at \$100,000 or more)	Grand theft - second degree - 812.014(2)(b) Grand theft - third degree - 812.014(2)(c) (1), (2), (3) Petit theft - first degree 812.014(2)(e) Petit theft - second degree - 812.014(3)(a)	Trade secrets - 812.081
812.014(2)(b)	Grand theft - second degree (property valued at \$20,000 or more but less than \$100,000)	Grand theft - third degree - 812.014(2)(c) (1), (2), (3) Petit theft - first degree 812.014(2)(e) Petit theft - second degree 812.014(3)(a)	Trade secrets - 812.081
812.014(2)(c)	Grand theft - third degree	Petit theft - first degree - 812.014(2)(e) Petit theft - second degree 812.014(3)(a)	Trade secrets - 812.081 Trespass to conveyance - 812.014(2)(c)(6)
812.014(2)(d)	Grand theft - third degree	None	Petit theft - second degree - 812.014(3)(a)
812.014(2)(e)	Petit theft - first degree	None	Petit theft - second degree - 812.014(3)(a)
812.014(3)(b)	Petit theft	None	None

SECTION	CHARGED OFFENSE	CATEGORY 1	CATEGORY 2
812.014(3)(a)	Petit theft - second degree	None	None
812.014(3)(c)	Felony Petit theft	None	Petit theft - first degree - 812.014(2)(e) Petit theft - 812.014(3)(b) Petit theft - second degree - 812.014(3)(a)
812.016	Possession of altered property	None	Attempt
812.019(1)	Dealing in stolen property - trafficking	None	Grand theft - third degree - 812.014(2)(c) Petit theft - 812.014(2)(e) Petit theft - 812.014(3)(a)
812.019(2)	Dealing in stolen property - managing and trafficking	Dealing in stolen property - 812.019(1)	None
812.13(2)(a)	Robbery with a firearm or deadly weapon	Robbery with a weapon - 812.13(2)(b) Robbery - 812.13(2)(c) Petit theft - 812.014(3)(a)	Attempt Grand theft 1st degree - 812.014(2)(a) Grand theft 2d degree - 812.014(2)(b) Grand theft 3d degree - 812.014(2)(c) Petit theft - 812.014(2)(e) Battery - 784.03 Aggravated battery - 784.045 Assault - 784.011 Aggravated assault - 784.021 Display of firearm - 790.07 Resisting a Merchant - 812.015(6)

SECTION	CHARGED OFFENSE	CATEGORY 1	CATEGORY 2
812.13(2)(b)	Robbery with a weapon	Robbery - 812.13(2)(c) Petit theft - 812.014(3)(a)	Attempt Grand theft 1st degree - 812.014(2)(a) Grand theft 2d degree - 812.014(2)(b) Grand theft 3d degree - 812.014(2)(c) Petit theft - 812.014(2)(e) Battery - 784.03 Aggravated battery - 784.045 Assault - 784.011 Display of weapon - 790.07(1) Resisting a merchant - 812.015(6)
812.13(2)(c) 812.013 (2)(b)	Robbery	Petit theft - 812.014(3)(a)	Attempt Grand theft 1st degree - 812.014(2)(a) Grand theft 2d degree - 812.014(2)(b) Grand theft 3d degree - 812.014(2)(c) Petit theft - 812.014(2)(e) Battery - 784.03 Assault - 784.011 Aggravated assault - 784.021 Resisting a merchant - 812.015(6)
812.135	Home invasion robbery	Robbery - 812.13(2)(c) Petit theft - 812.014(3)(a)	Petit theft - 812.014(2)(e)
817.233	Burning to defraud insurer	None	None
817.563	Sale of substance in place of a controlled substance	None	Attempt
826.04	Incest	None	Attempt

SECTION	CHARGED OFFENSE	CATEGORY 1	CATEGORY 2
827.03(1)(a)	Aggravated child abuse	None	Attempt Child abuse - 827.04(1) Battery - 784.03 only under certain circumstances <u>see Kama v. State</u> , 507 So.2d 154 (Fla. 1st DCA 1987)
827.03(1)(b) 827.03(1)(c) 827.03(1)(d)	Aggravated child abuse	None	Attempt Child abuse - 827.04(1) Battery - 784.03; only under certain circumstances <u>see Kama v. State</u> , 507 So.2d 154 (Fla. 1st DCA 1987)
827.04(3)	Contributing to child delinquency or dependency or to child in need of services	None	Attempt
827.071(2)	Sexual performance by a child	None	Attempt Sexual performance by a child - 827.071(5)
827.071(3)	Sexual performance by a child	None	Attempt Sexual performance by a child - 827.071(5)
827.071(4)	Sexual performance by a child	Sexual performance by a child - 827.071(5)	Attempt
827.071(5)	Sexual performance by a child	None	Attempt
831.01	Forgery	None	Attempt
831.02	Uttering forged instrument	None	None
832.04	Stopping payment; purchase of farm or grove products	None	Attempt, except when uttering is charged - 832.04 under \$150

SECTION	CHARGED OFFENSE	CATEGORY 1	CATEGORY 2
832.041	Stopping payment with intent to defraud	None	Attempt, except when uttering is charged 832.04 if farm or grove product 832.041 under \$150 Worthless check - 832.05(2) (first degree misdemeanor)
832.05(2)	Worthless checks	None	Attempt, except when uttering is charged 832.05(2) under \$150
832.05(4)	Obtaining property by worthless checks	Worthless check - 832.05(2)	Attempt
837.012	Perjury not in official proceeding	None	None
837.02	Perjury in official proceeding	None	None
837.021	Perjury by contradictory statements	None	None
837.05	False reports to law enforcement authorities	None	None
837.06	False official statements	None	None
838.015(1)	Bribery of public servant	None	Attempt if only "give" is charged
838.015	Bribery	None	Attempt if only "accept" is charged
838.016(1)	Bribery by a public servant	None	Attempt if only "give" or "accept" is charged
838.016	Unlawful compensation for official behavior	None	Attempt if only "give" or "accept" is charged
838.021	Corruption by threat against public servant	None	Attempt if only harm is charged

SECTION	CHARGED OFFENSE	CATEGORY 1	CATEGORY 2
838.12(1)	Bribery in athletic contests	None	Attempt if only give is charged
838.12(2)	Bribery in athletic contests	None	Attempt if only accept is charged
843.01	Resisting officer with violence	None	Resisting officer without violence - 843.02
843.02	Resisting officer without violence	None	Attempt
849.01	Keeping gambling house	None	Lottery - 849.09(1)(f) Lottery - 849.09(1)(k) Lottery - 849.11
849.01 (849.02)	Maintaining a gambling establishment	None	Lottery - 849.09(1)(f) Lottery - 849.09(1)(k) Lottery - 894.11
849.01 (849.02)	Permitting gambling	None	Lottery - 849.09(1)(f) Lottery - 849.09(1)(k) Lottery - 849.11
849.02	Agents, servants, etc., of keeper of gambling house	None	Lottery - 849.09(1)(f) Lottery - 849.09(1)(k)
849.02	Renting house for gambling purposes	None	None
849.03	Renting space for gambling	None	None
849.04	Permitting minors and persons under guardianship to gamble	None	Permitting gambling on billiard or pool table by holder of license - 849.07 Playing at games of chance by lot - 849.11
849.08	Gambling	None	None

SECTION	CHARGED OFFENSE	CATEGORY 1	CATEGORY 2
849.09(1)(a)	Lottery	None	Lottery - 849.09(1)(f) Lottery - 849.09(1)(g) Lottery - 849.09(1)(h) Lottery - 849.09(1)(i) Lottery - 849.09(1)(j) Lottery - 849.09(1)(k) Playing at game of chance by lot - 849.11 Gambling devices, etc. - 849.231
849.09(1)(b)	Lottery	None	Lottery - 849.09(1)(f) Lottery - 849.09(1)(g) Lottery - 849.09(1)(h) Lottery - 849.09(1)(i) Lottery - 849.09(1)(j) Lottery - 849.09(1)(k) Gambling devices, etc. - 849.231
849.09(1)(c)	Lottery	None	Lottery - 849.09(1)(f) Lottery - 849.09(1)(g) Lottery - 849.09(1)(h) Lottery - 849.09(1)(i) Lottery - 849.09(1)(j) Lottery - 849.09(1)(k) Gambling devices, etc. - 849.231
849.09(1)(d)	Lottery	None	Lottery - 849.09(1)(f) Lottery - 849.09(1)(g) Lottery - 849.09(1)(h) Lottery - 849.09(1)(i) Lottery - 849.09(1)(j) Lottery - 849.09(1)(k) Playing at games of chance by lot - 849.11 Gambling devices, etc. - 849.231
849.09(1)(g)	Lottery	None	None
849.09(1)(h)	Lottery	None	None
849.09(1)(k)	Lottery	None	None
849.14	Betting	None	None
849.25 (1) and (2)	Bookmaking	None	Attempt

SECTION	CHARGED OFFENSE	CATEGORY 1	CATEGORY 2
893.13(1)(a)	Sale, manufacture, delivery or possession with intent to sell, manufacture or deliver controlled substance	None	Attempt, except when delivery is charged 893.13(3) if delivery of cannabis is charged; 893.13(6)(b) if possession of cannabis is charged; 893.13(6)(a) - if possession is charged and offense would be a second degree felony under 893.13(1)(a)1.
893.13(1)(b)	Sale or delivery or possession of more than 10 grams of controlled substance	Sale or delivery of controlled substance - 893.13(1)(a)	Attempt, except when delivery is charged 893.13(6)(a) if possession is charged
893.13(1)(c)	Sale, manufacture, delivery, etc. near public or private elementary, middle or secondary school	Sale, manufacture, delivery, etc. - 893.13(1)(a)	Attempt, except when delivery is charged; 893.13(6)(a) if possession is charged and the offense would be a second degree felony under 893.13(1)(a) 893.13(6)(b) if possession of cannabis is charged 893.13(3) if delivery of cannabis is charged
893.13(1)(d)	Sale, manufacture, delivery, etc. near a college, university, other post-secondary educational institution or public park	Sale, manufacture, delivery, etc. - 893.13(1)(a)	Attempt, except when delivery is charged 893.13(6)(a) if possession is charged and the offense would be a second degree felony under 893.13(1)(a)1; 893.13(6)(b) if possession of cannabis is charged; 893.13(3) if delivery of cannabis is charged.
893.13(2)(a)	Purchase or possession with intent to purchase controlled substance	None	Attempt; 893.13(6)(a) if possession is charged and the offense would be a second degree felony under 893.13(2)(a)1 893.13(6)(b) if possession of cannabis is charged

SECTION	CHARGED OFFENSE	CATEGORY 1	CATEGORY 2
893.13(2)(b)	Purchase in excess of 10 grams of a controlled substance	893.13(2)(a) purchase of less than 10 grams	Attempt
893.13(3)	Delivery without consideration not more than 20 grams of cannabis	None	None
893.13(4)	Delivery of controlled substance to person under 18 years old, etc.	None	893.13(1)(a); 893.13(3) if delivery of cannabis is charged.
893.13(5)	Bringing controlled substance into state	None	Attempt 893.13(6)(a); 893.14(3) if delivery of cannabis charged; 893.13(6)(b) if possession of cannabis charged.
893.13(6)(a)	Possession of controlled substance	None	Attempt; 893.13(3) if delivery of cannabis charged; 893.13(6)(b) if possession of cannabis charged.
893.13(6)(b)	Possession of not more than 20 grams of cannabis	None	Attempt
893.13(6)(c)	Possession in excess of 10 grams of controlled substance	Possession of less than 10 grams 893.13(6)(a)	Attempt 893.13(6)(b) if possession of cannabis charged.
893.13(7)(a)1, 2, 3, 4, 5, 6, 7, 8, 10 and 11	Distribute or dispense a controlled substance, etc.	None	Attempt
893.13(7)(a)9	Obtaining controlled substances by fraud	None	None

SECTION	CHARGED OFFENSE	CATEGORY 1	CATEGORY 2
893.135 (1)(a)	Trafficking in cannabis	Trafficking offenses requiring lower quantities of cannabis - 893.135(1)(a)1 and 2	Attempt, (but not conspiracy), except when delivery is charged 893.13(1)(a) if sale, manufacture or delivery is charged 893.13(2)(a) - if purchase is charged Bringing cannabis into state - 893.13(5) Possession of cannabis - 893.13(6)(a) -893.13(6)(b) if less than 20 grams of cannabis Delivery of less than 20 grams of cannabis - 893.13(3)
893.135(1) (b) 1&2	Trafficking in cocaine	Trafficking offenses requiring lower quantities of cocaine 893.135(1)(b)1	Attempt (but not conspiracy), except when delivery is charged; 893.13(1)(a) if sale, manufacture or delivery is charged; 893.13(2)(a) if purchase is charged; Bringing cocaine into state 893.13(5); Possession of cocaine 893.13(6)(a).
893.135(1)(c) 1&2	Trafficking in illegal drugs	Trafficking offenses requiring lower quantities of illegal drugs - 893.135(1)(c) 1	Attempt (but not conspiracy), except when delivery is charged; 893.13(1)(a) if sale, manufacture or delivery is charged; 893.13(2)(a) if purchase is charged; Bringing same illegal drug as charged into state - 893.13(5) Possession of same illegal drug - 893.13(6)(a).

SECTION	CHARGED OFFENSE	CATEGORY 1	CATEGORY 2
893.135 (1)(d)1	Trafficking in phencyclidine	Trafficking offenses requiring lower quantities of phencyclidine - 893.135(1)(d)1.a and b.	Attempt (but not conspiracy), except when delivery is charged 893.13(1)(a) if sale, manufacture or delivery is charged 893.13(2)(a) - if purchase is charged Bringing phencyclidine into state - 893.13(5); Possession of phencyclidine - 893.13(6)(a)
893.135 (1)(e)1	Trafficking in methaqualone	Trafficking offenses requiring lower quantities of methaqualone - 893.135(1)(e)1.a and b.	Attempt (but not conspiracy), except when delivery is charged 893.13(1)(a) if sale, manufacture or delivery is charged; 893.13(2)(a) - if purchase is charged Bringing methaqualone into state - 893.13(5) Possession of methaqualone - 893.13(6)(a)
893.135(1)(f) 1	Trafficking in amphetamine	Trafficking offenses requiring lower quantities of amphetamine - 893.135(1)(f)1 a&b	Attempt (but not conspiracy), except when delivery is charged 893.13(1)(a) - if sale, manufacture or delivery is charged; 893.13(2)(a) - if purchase is charged; Bringing amphetamine into state - 893.13(5); Possession of amphetamine - 893.13(6)(a)
893.147(1)	Possession of drug paraphernalia	None	Attempt
893.147(2)	Delivery, possession with intent to deliver, or manufacture with intent to deliver drug paraphernalia	None	Attempt, except when delivery is charged.

SECTION	CHARGED OFFENSE	CATEGORY 1	CATEGORY 2
893.147(3)	Delivery of drug paraphernalia to a minor	None	None
893.147(4)	Advertisement of drug paraphernalia	None	None
893.149	Unlawful possession, etc., of listed chemical	None	Attempt
895.03(1)	RICO - Use or investment of proceeds from pattern of racketeering activity	None	None
895.03(1)	RICO - Use or investment of proceeds from collection of unlawful debt	None	None
895.03(2)	RICO - Acquisition or maintenance through pattern of racketeering activity	None	None
895.03(2)	RICO - Acquisition or maintenance through collection of unlawful debt	None	None
895.03(3)	RICO - Conduct or participation in an enterprise through collection of unlawful debt	None	None

SECTION	CHARGED OFFENSE	CATEGORY 1	CATEGORY 2
895.03(3)	RICO - Conduct or participation in an enterprise through a pattern of racketeering activity	None	None
895.03(4)	Conspiracy to engage in pattern of racketeering activity	None	None
944.40	Escape	None	None
944.47	Contraband in state correctional institution	None	Possession of less than 20 grams cannabis - 893.13(6)(b)
951.22	Contraband in county detention facilities	None	Possession of less than 20 grams cannabis - 893.13(6)(b)

DURESS OR NECESSITY

An issue in this case is whether (defendant) acted out of [duress][necessity] in committing the crime of (crime charged) (lesser included offenses).

It is a defense to the (crime charged) (lesser included offenses) if the defendant acted out of [duress][necessity]. In order to find the defendant committed the (crime charged) (lesser included offense) out of [duress][necessity], you must find the following six elements:

1. the defendant reasonably believed [a danger][an emergency] existed which was not intentionally caused by [himself][herself].

2(a). the [danger][emergency] threatened significant harm to [himself][herself][a third person]. (or)

Give 2(b) if escape charged

2(b). the [danger][emergency] threatened death or serious bodily injury.

3. The threatened harm must have been real, imminent and impending.

Give 4(a) if escape not charged

4(a). the defendant had no reasonable means to avoid the [danger][emergency] except by committing the (crime charged) (lesser included offenses).

Note to Judge

If escape is charged, the court must first determine whether the defendant has satisfied the conditions precedent enumerated in Muro v. State, 445 So. 2d 374 (Fla. 3d DCA 1984) and Alcantaro v. State, 407 So. 2d 922 (Fla. 1st DCA 1981) and if so, give 4b.

4(b). the defendant left

[the place of [his][her] confinement][the vehicle in which [he][she] was being transported]
[to][from][his][her] work on a public road]

because [he][she] reasonably believed that escape was necessary to avoid the danger of death or serious injury, rather than with the intent to elude lawful authority.

5. the (crime charged) (lesser included offenses) must have been committed out of [duress][necessity] to avoid the [danger][emergency].

6. The harm that the defendant avoided must outweigh the harm caused by committing the (crime charged) (lesser included offenses).

Defini-
tions

"Imminent and impending" means the [danger][emergency] is about to take place and cannot be avoided by using other means. A threat of future harm is not sufficient to prove this defense. Nor can the defendant use the defense of [duress][necessity] if [he][she] committed the crime after the danger from the threatened harm had passed.

The reasonableness of the defendant's belief that [a danger][an emergency] existed should be examined in the light of all the evidence.

In deciding whether it was necessary for the defendant to commit the (crime charged) (lesser included offenses), you must judge the defendant by the circumstances by which [he][she] was surrounded at the time the crime was committed.

The [danger][emergency] facing the defendant need not have been actual; however to justify the commission of the (crime charged) (lesser included offenses), the appearance of the [danger][emergency] must have been so real that a reasonably cautious and prudent person under the same circumstances would have believed that the [danger][emergency] could be avoided only by committing the (crime charged) (lesser included offenses). Based upon appearances, the defendant must have actually believed that the [danger][emergency] was real.

If you find from the evidence that the defendant committed the (crime charged) (lesser included offenses) out of [duress][necessity], you should find the defendant not guilty.

However if you find that the defendant did not commit the (crime charged) (lesser included offenses) out of [duress][necessity] you should find the defendant guilty if all the elements of the charge have been proved.

Note to Judge

Duress is not a defense to an intentional homicide. See Wright v. State, 402 So. 2d 193 (Fla. 3d DCA 1981).

PENALTY PROCEEDINGS-CAPITAL CASES

After the first paragraph on page 114 of the manual, the following additional language is proposed:

Note to
Judge

Give before a new penalty phase jury

[A reasonable doubt is not a mere possible doubt, a speculative, imaginary or forced doubt. Such a doubt must not influence you to disregard an aggravating circumstance if you have an abiding conviction that it exists. On the other hand, if, after carefully considering, comparing and weighing all the evidence, you do not have an abiding conviction that the aggravating circumstance exists, or if, having a conviction, it is one which is not stable but one which wavers and vacillates, then the aggravating circumstance has not been proved beyond a reasonable doubt and you should disregard it, because the doubt is reasonable.

It is to the evidence introduced in this proceeding, and to it alone, that you are to look for that proof.

A reasonable doubt as to the existence of an aggravating circumstance may arise from the evidence, conflicts in the evidence or the lack of evidence.

If you have a reasonable doubt as to the existence of an aggravating circumstance, you should find that it does not exist. However, if you have no reasonable doubt, you should find that the aggravating circumstance does exist and give it whatever weight you feel it should receive.]

3.04(c)(2) ENTRAPMENT

Note to
Judge

This instruction is to be used for offenses occurring on or after October 1, 1987.

The defense of entrapment has been raised. (Defendant) was entrapped if

1. [he] [she] was, for the purpose of obtaining evidence of the commission of a crime, induced or encouraged to engage in conduct constituting the crime of (crime charged), and
2. [he] [she] engaged in such conduct as the direct result of such inducement or encouragement, and
3. the person who induced or encouraged [him] [her] was a law enforcement officer or a person engaged in cooperating with or acting as an agent of a law enforcement officer, and
4. the person who induced or encouraged [him] [her] employed methods of persuasion or inducement which created a substantial risk that the crime would be committed by a person other than one who was ready to commit it, and
5. (defendant) was not a person who was ready to commit the crime.

When claim of entrapment no defense

It is not entrapment if (defendant) had the predisposition to commit the (crime charged). (Defendant) had the predisposition if before any law enforcement officer or person acting for the officer persuaded, induced, or lured (defendant), [he] [she] had a readiness or willingness to commit (crime charged) if the opportunity presented itself.

~~When claim of entrapment no defense~~

It is also not entrapment merely because a law enforcement officer in a good faith attempt to detect crime

Give a, b, or c as applicable

- (a) [provided the defendant the opportunity, means and facilities to commit the offense, which the defendant intended to commit and would have committed otherwise.]
- (b) [used tricks, decoys or subterfuge to expose the defendant's criminal acts.]

(c) [was present and pretending to aid or assist in the commission of the offense.]

On the issue of entrapment, the defendant must prove to you by a preponderance the greater weight of the evidence that his criminal conduct occurred as the result of entrapment. a law enforcement officer or agent induced or encouraged the crime charged. Greater weight of the evidence means that evidence which is more persuasive and convincing. If the defendant does so, the State must prove beyond a reasonable doubt that the defendant was predisposed to commit the (crime charged). The state must prove defendant's predisposition to commit the (crime charged) existed prior to and independent of the inducement or encouragement.

Give if applicable

An informant is an agent of law enforcement for purposes of the entrapment defense.

If you find that the defendant was entrapped, you should find the defendant not guilty of (crime charged). If, however, you find that the defendant was not entrapped, you should find the defendant guilty if all of the elements of the charge have been proved.

Note to Judge

This instruction should be given only if there is some evidence of the defendant's lack of predisposition to commit the crime. See Munoz v. State, 629 So.2d 90 (Fla. 1993).

FALSE IMPRISONMENT
F.S. 787.02

Before you can find the defendant guilty of False Imprisonment, the State must prove the following three two elements beyond a reasonable doubt:

Elements

1. (Defendant) [**forcibly**] [**secretly**] [**by threat**] [**confined**] [**abducted**] [**imprisoned**] [**restrained**] (victim) against [**his**] [**her**] will.
2. (Defendant) had no lawful authority.

Give ~~(a),~~
~~(b),~~ ~~(c)~~
or ~~(d)~~ as
applicable

3. ~~(Defendant) acted for any purpose other than to:~~
 - a. ~~hold for ransom or reward or as a shield or hostage.~~
 - b. ~~commit or facilitate commission of any felony.~~
 - c. ~~inflict bodily harm upon or to terrorize the victim or another person.~~
 - d. ~~interfere with the performance of any governmental or political function.~~

Read only
if
confinement is
alleged
and child
is under
13
thirteen
years of
age.

Confinement of a child under the age of thirteen ~~(13)~~ is against [**his**] [**her**] will if such confinement is without the consent of [**his**] [**her**] parent or legal guardian.

FELONY DUI--PRIOR CONVICTIONS

F.S. 316.193(2)(b)

Before you can find the defendant guilty of DUI, the State must prove the following two elements beyond a reasonable doubt:

- Elements
1. (Defendant) drove or was in actual physical control of a vehicle.
 2. While driving or in actual physical control of the vehicle, (defendant)
 - a. [was under the influence of [alcoholic beverages] [a chemical substance] [a controlled substance] to the extent that [his][her] normal faculties were impaired.] or
 - b. [had a blood or breath alcohol level of ~~0.10~~ 0.08 percent or higher.]
- Give 2a and/or 2b as applicable

Defini-
tions;
give as
applica-
ble

"Vehicle" is any device in, upon, or by which any person or property is or may be transported or drawn upon a highway, except devices used exclusively upon stationary rails or tracks.

F.S.
316.003
(75)

"Normal faculties" ~~mean those faculties of a person, such as~~ include but are not limited to the ability to see, hear, walk, talk, judge distances, drive an automobile, make judgments, act in emergencies and, in general, to normally perform the many mental and physical acts of our daily lives.

"Actual physical control of a vehicle" means the defendant must be physically in or on the vehicle and have the capability to operate the vehicle, regardless of whether [he][she] is actually operating the vehicle at the time.

"Alcoholic beverages" are considered to be substances of any kind and description which contain alcohol.

F.S.
877.111
(1)

() is a chemical substance under Florida law.

Ch. 893,
F.S.

() is a controlled substance under Florida law.

Note to
Judge

In appropriate cases, an instruction may be given on one or more of the presumptions of impairment established by F.S. 316.1934(2)(a),

(2)(b), and (2)(c), as follows:

(2)(a)1. If you find from the evidence that the defendant had a blood or breath alcohol level of 0.05 percent or less, you shall presume that the defendant was not under the influence of alcoholic beverages to the extent that [his] or [her] normal faculties were impaired.

(2)(b)2. If you find from the evidence that the defendant had a blood or breath alcohol level in excess of 0.05 percent but less than 0.08 percent, you may consider that evidence with other competent evidence in determining whether the defendant was under the influence of alcoholic beverages to the extent that [his] or [her] normal faculties were impaired; or

(2)(c)3. If you find from the evidence that the defendant had a blood or breath alcohol level of 0.08 percent or more, that evidence would be sufficient by itself to establish that the defendant was under the influence of alcohol to the extent that [his] or [her] normal faculties were impaired. However, such evidence may be contradicted or rebutted by other evidence.

These presumptions may be considered along with any other evidence presented in deciding whether the defendant was under the influence of alcoholic beverages to the extent that [his] or [her] normal faculties were impaired.

Defense
of
inopera-
bility;
give if
applica-
ble

It is a defense to the charge of driving or being in actual physical control of a vehicle while under the influence if at the time of the alleged offense the vehicle was inoperable.

However, it is not a defense if, while impaired, the defendant drove or was in actual physical control of the vehicle before it became inoperable.

Therefore, if you are not convinced beyond a reasonable doubt that the vehicle was operable at the time of the alleged offense, you should find the defendant not guilty.

However, if you are convinced that the vehicle was operable at the time of the alleged offense, then you should find the defendant guilty if all the other elements of the charge

have been proved beyond a reasonable doubt.

FELONY DUI- SERIOUS BODILY INJURY
F.S. 316.193(3)(c)(2)

Before you can find the defendant guilty of DUI with Causing Serious Bodily Injury, the State must prove the following three elements beyond a reasonable doubt:

Elements

1. (Defendant) drove or was in actual physical control of a vehicle.

2. While driving or while in actual physical control of the vehicle, (defendant)

Give 2a
or 2b as
applica-
ble

a. [was under the influence of [alcoholic beverages] [a chemical substance] [a controlled substance] to the extent that [his][her] normal faculties were impaired.] or

b. [had a blood or breath alcohol level of ~~0.10~~ 0.08 percent or higher.]

3. As a result (defendant) caused serious bodily injury to (victim).

Defini-
tions;
give as
applica-
ble

"Vehicle" is any device in, upon, or by which any person or property is or may be transported or drawn upon a highway, except devices used exclusively upon stationary rails or tracks.

F.S.
316.003
(75)

~~"Normal faculties" mean those faculties of a person, such as~~ include but are not limited to the ability to see, hear, walk, talk, judge distances, drive an automobile, make judgments, act in emergencies and, in general, to normally perform the many mental and physical acts of our daily lives.

"Actual physical control of a vehicle" means the defendant must be physically in or on the vehicle and have the capability to operate the vehicle, regardless of whether [he][she] is actually operating the vehicle at the time.

"Alcoholic beverages" are considered to be substances of any kind and description which contain alcohol.

F.S.
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(1)
Ch. 893,
F.S.

() is a chemical substance under Florida law.

() is a controlled substance under Florida law.

F.S.
316.1933

"Serious bodily injury" means a physical condition that creates a substantial risk of death, serious personal disfigurement, or protracted loss or impairment of the function of

any bodily member or organ.

Note to
Judge

In appropriate cases, an instruction may be given on one or more of the presumptions of impairment established by F.S. 316.1934(2)(a), (2)(b), and (2)(c), as follows:

(2)(a)1. If you find from the evidence that the defendant had a blood or breath alcohol level of 0.05 percent or less, you shall presume that the defendant was not under the influence of alcoholic beverages to the extent that [his] or [her] normal faculties were impaired.

(2)(b)2. If you find from the evidence that the defendant had a blood or breath alcohol level in excess of 0.05 percent but less than 0.08 percent, you may consider that evidence with other competent evidence in determining whether the defendant was under the influence of alcoholic beverages to the extent that [his] or [her] normal faculties were impaired; or

(2)(c)3. If you find from the evidence that the defendant had a blood or breath alcohol level of 0.08 percent or more, that evidence would be sufficient by itself to establish that the defendant was under the influence of alcohol to the extent that [his] or [her] normal faculties were impaired. However, such evidence may be contradicted or rebutted by other evidence.

These presumptions may be considered along with any other evidence presented in deciding whether the defendant was under the influence of alcoholic beverages to the extent that [his] or [her] normal faculties were impaired.

Defense
of
inopera-
bility;
give if
applica-
ble

It is a defense to the charge of driving or being in actual physical control of a vehicle while under the influence if at the time of the alleged offense the vehicle was inoperable.

However, it is not a defense if, while impaired, the defendant drove or was in actual physical control of the vehicle before it became inoperable.

Therefore, if you are not convinced beyond a reasonable doubt that the vehicle was operable at the time of the alleged offense, you should find the defendant not guilty.

However, if you are convinced that the vehicle was operable at the time of the alleged

offense, then you should find the defendant
guilty if all the other elements of the charge
have been proved beyond a reasonable doubt.

DUI MANSLAUGHTER
F.S. 316.193(3)(c)3

Before you can find the defendant guilty of DUI Manslaughter, the State must prove the following three elements beyond a reasonable doubt:

Elements

~~See Magaw v. State, 537 So.2d 564 (Fla. 1989)~~

~~Give 2(a) or 2(b) as applicable~~

~~Give 3a and or 3b as applicable~~

~~See Magaw v. State, 537 So.2d 564 (Fla. 1989)~~

Defini-
tions;
give as
applica-
ble
F.S.
316.003
(75)

1. (Defendant) operated drove or was in actual physical control of a vehicle.

2. ~~(Defendant), by reason of such operation, caused or contributed to the cause of the death of (victim).~~ While driving or while in actual physical control of the vehicle, (defendant)

a. was under the influence of [alcoholic beverages] [a chemical substance] [a controlled substance] to the extent that [his][her] normal faculties were impaired. or

b. had a blood or breath alcohol level of 0.08 or higher.

3. ~~At the time of such operation (defendant)~~

~~a. [was under the influence of [alcoholic beverages] [a chemical substance] [a controlled substance] to the extent that [his][her] normal faculties were impaired.]~~

~~b. [had a blood or breath alcohol level of 0.10 percent or higher.]~~

As a result, (defendant) caused or contributed to the cause of the death of (victim).

"Vehicle" is any device in, upon, or by which any person or property is or may be transported or drawn upon a highway, except devices used exclusively upon stationary rails or tracks.

"Normal faculties" ~~mean those faculties of a person, such as~~ include but are not limited to the ability to see, hear, walk, talk, judge distances, drive an automobile, make judgments, act in emergencies and, in general, to normally perform the many mental and physical acts of our daily lives.

"Actual physical control of a vehicle"

means the defendant must be physically in or on the vehicle and have the capability to operate the vehicle, regardless of whether [he][she] is actually operating the vehicle at the time.

"Alcoholic beverages" are considered to be substances of any kind and description which contain alcohol.

F.S.
877.111
(1)
Ch. 893,
F.S.

() is a chemical substance under Florida law.

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Note to
Judge

In appropriate cases, an instruction may be given on one or more of the presumptions of impairment established by F.S. 316.1934(2)(a), (2)(b), and (2)(c), as follows:

(2)(a)1. If you find from the evidence that the defendant had a blood or breath alcohol level of 0.05 percent or less, you shall presume that the defendant was not under the influence of alcoholic beverages to the extent that [his] or [her] normal faculties were impaired.

(2)(b)2. If you find from the evidence that the defendant had a blood or breath alcohol level in excess of 0.05 percent but less than 0.08 percent, you may consider that evidence with other competent evidence in determining whether the defendant was under the influence of alcoholic beverages to the extent that [his] or [her] normal faculties were impaired; or,

(2)(c)3. If you find from the evidence that the defendant had a blood or breath alcohol level of 0.08 percent or more, that evidence would be sufficient by itself to establish that the defendant was under the influence of alcohol to the extent that [his] or [her] normal faculties were impaired. However, such evidence may be contradicted or rebutted by other evidence.

These presumptions may be considered along with any other evidence presented in deciding whether the defendant was under the influence of alcoholic beverages to the extent that [his] or [her] normal faculties were impaired.

Defense
of
inopera-
bility;

It is a defense to the charge of driving or being in actual physical control of a vehicle while under the influence if at the time of the alleged offense the vehicle was inoperable.

give if
applica-
ble

However, it is not a defense if, while impaired, the defendant drove or was in actual physical control of the vehicle before it became inoperable.

Therefore, if you are not convinced beyond a reasonable doubt that the vehicle was operable at the time of the alleged offense, you should find the defendant not guilty.

However, if you are convinced that the vehicle was operable at the time of the alleged offense, then you should find the defendant guilty if all the other elements of the charge have been proved beyond a reasonable doubt.

UNLAWFUL SEXUAL ACTIVITY WITH CERTAIN MINORS
F.S. 794.05 [NEW]

Before you can find the defendant guilty of sexual activity with a minor, the State must prove the following three elements beyond a reasonable doubt:

- Elements
1. (Victim) was 16 or 17 years of age.
 2. (Defendant) was age 24 or older.
 3. [(Defendant) engaged in sexual activity with a minor in which the sexual organ of the [(defendant)] [(victim)] penetrated or had union with the [anus] [vagina] [mouth] of the [(victim)] [(defendant)].

Give if applicable Sexual activity does not include an act done for a bona fide medical purpose.