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IN THE SUPREME COURT OF FLORIDA

IN RE: STANDARD JURY INSTRUCTIONS IN CRIMINAL CASES REPORT 2014-08 **CASE NO.: SC14-**

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To the Chief Justice and Justices of the Supreme Court of Florida:

This report, proposing new and amended instructions to the Florida Standard Jury Instructions in Criminal Cases, is filed pursuant to Article V, section 2(a), Florida Constitution.

	Instruction #	Topic
Proposal 1	**7.9**	**Vehicular Homicide**
Proposal 2	**11.10(f)**	**Lewd and Lascivious Exhibition Over Computer Service**
Proposal 3	**11.10(g)**	**Lewd and Lascivious Exhibition by a Detainee in the Presence of an Employee of a Facility**
Proposal 4	**13.1**	**Burglary**
Proposal 5	**14.9**	**Exploitation of Elderly/Disabled Person**
Proposal 6	**20.15**	**Fraudulent Use of Personal Id Information**
Proposal 7	**20.16**	**Fraudulent Use of Personal Id Information**
Proposal 8	**20.21**	**Fraudulent Use of Personal Id Information**
Proposal 9	**22.5**	**Setting Up, Promoting, Conducting a Lottery**
Proposal 10	**22.6**	**Disposing of [Money] [Property] By Lottery**
Proposal 11	**22.7**	**[Conducting] [Advertising] a Lottery Drawing**
Proposal 12	**22.8**	**Assisting in Setting Up, Promoting, or Conducting a Lottery**
Proposal 13	**22.9**	**[Sale of Lottery Tickets] [Offering Lottery Tickets for sale] [Transmitting Lottery Tickets]**
Proposal 14	**22.10**	**Possessing a Lottery Ticket**
Proposal 15	**22.11**	**Possessing Rundown Sheets, Etc.**
Proposal 16	**23.8**	**Selling a Minor into Prostitution**
Proposal 17	**29.24**	**Human Trafficking**

Proposal 18 29.25 Human Trafficking by a [Parent] [Legal Guardian] [Person with Custody or Control] of a Minor

The proposals are in Appendix A. Words and punctuation to be deleted are shown with strike-through marks; words and punctuation to be added are underlined.

Appendix B contains the four comments received by the Committee after publication in The Florida Bar *News*.

Appendix C contains relevant statutes.

Appendix D contains a referral letter from the Florida Supreme Court to the Committee and an order extending the deadline to the end of this year.

PROPOSAL #1: INSTRUCTION 7.9 – VEHICULAR HOMICIDE

The 2014 legislature added the term "unborn child" in the Vehicular Homicide statute and deleted the term "viable fetus." (See Appendix C.) Accordingly, the Committee added "unborn child" to element #1 and changed the definition section to conform to the new statute. The other changes initially published were simply stylistic (rearranging, capitalization, deletion of surplusage).

The proposal was published in The Florida Bar *News* on October 15, 2014. Two comments were received; one from the Florida Association of Criminal Defense Lawyers (FACDL) and one from the Florida Public Defenders Association (FPDA). (See Appendix B).

The FACDL argued that the crime of Vessel Homicide does not allow for conviction based on the death of an unborn child. The Committee disagreed because of s. 775.021(5), Fla. Stat., which allows a person to be convicted of vessel homicide where the reckless act of the defendant causes the death of an unborn child.

Additionally, the FACDL suggested that the instruction provide an explanation of what constitutes "reckless" conduct akin to that used in Instruction 10.6; "Recklessly" means with a conscious and intentional indifference to consequences. The Committee unanimously agreed that there should be an explanation of what "reckless" meant but the Committee added the following sentence instead: **A "reckless manner" means in willful or wanton disregard for the safety of persons or property.** This sentence is based on the language in the reckless driving statute (s. 316.192(1)(a), Fla. Stat.), which is a necessarily

lesser-included of vehicular homicide according to *Chikitus v. Shands,* 373 So. 2d 904 (Fla. 1979).

Separately, the FPDA pointed out that the new Vehicular Homicide statute requires that the killing of the unborn child has to occur by injury to the mother. The FPDA hypothesized that an unborn child could be killed as a result of a defendant's reckless driving even if an expectant mother was uninjured. The Committee agreed with the FPDA and added an italicized note to explain the new three options within element #1. The final proposal for the elements section of this instruction is as follows:

Give 1a, 1b, or 1c as applicable. Element 1a applies to either Vehicular Homicide or Vessel Homicide. Element 1b applies to Vehicular Homicide only. Element 1c applies to Vessel Homicide only. See § 775.021(5), Fla. Stat.

1. **a.** (Victim) **is dead.**
b. An unborn child is dead by injury to the mother.
c. An unborn child is dead.

2. **The death was caused by the operation of a [motor vehicle] [vessel] by** (defendant).

3. (Defendant) **operated the [motor vehicle] [vessel] in a reckless manner likely to cause the death of or great bodily harm to another person.**

Finally, the FPDA suggested that one paragraph suffered from a lack of parallel construction. The Committee thought the following explanation was sufficient: **The State does not have to prove the defendant intended to harm or injure anyone. However, the reckless operation of a [motor vehicle] [vessel] requires the State to prove more than a failure to use ordinary care. A "reckless manner" means in willful or wanton disregard for the safety of persons or property.**

Post-publication, the Committee voted unanimously to forward the revised proposal to the Court.

PROPOSAL #2: INSTRUCTION 11.10(f) – LEWD AND LASCIVIOUS EXHIBITION OVER COMPUTER SERVICE

The Committee's initial change for the published proposal was to add an italicized cite to *Lakey v. State*, 113 So. 3d 90 (Fla. 5th DCA 2013), above a new

instruction stating that: **The definition of "an object" includes a finger.** This change was proposed because in most sex crimes cases, the "object" is a finger and because the Committee wanted all of the sex crimes instruction to be consistent. Additionally, the Committee added italicized cites to statutes for the sections regarding the victim's lack of chastity and the defendant's ignorance of the victim's age. The Committee also deleted the reference to crimes occurring prior to October 1, 2008 in the Comment section because the Committee did not think there would be many cases charging this crime that would be seven years old. The Committee passed the proposal unanimously.

The proposal was then published in The Florida Bar *News* on October 15, 2014. One comment was received from a Stetson University law student George Pavlidakey, Jr. (See Appendix B.) He suggested a number of stylistic changes but the Committee only accepted his one suggestion to streamline the definition of "lewd" and "lascivious."

Post-publication, the Committee voted for two additional changes. First, the Committee added the words "at the time of the offense" in the elements section to make it clear that the victim and defendant had to be certain ages at the time of the defendant's act. Second, the Committee concluded that if the state charges that the defendant was 18 years of age or older at the time of the crime, then a necessary lesser included offense is that the defendant was not 18 years of age or older (or, in other words, the defendant was less than 18). Accordingly, the heading in the box of lesser-included offenses was changed to reflect the second degree felony in s. 847.0135(5)(b), Fla. Stat. and the crime of s. 847.0135(5)(c), Fla. Stat., was added as a Category 1 offense. The vote for these two changes was unanimous. (Note: Similar changes are being proposed for the sexual battery instructions, which are being published in January 2015 and should be filed with the Court early next year.)

PROPOSAL #3: INSTRUCTION 11.10(g) – LEWD AND LASCIVIOUS EXHIBITION BY A DETAINEE IN THE PRESENCE OF AN EMPLOYEE OF A FACILITY

The two changes proposed for this instruction are: 1) The Committee added an italicized cite to *Lakey v. State*, 113 So. 3d 90 (Fla. 5th DCA 2013), above a new instruction that states: **The definition of "an object" includes a finger**. This change is proposed because in most sex crimes cases, the "object" is a finger and because the Committee wants all of the sex crimes instruction to be consistent. 2) The Committee added an italicized cite to s. 800.04(2), Fla. Stat., above the

section that informs jurors that the victim's lack of chastity and the victim's consent is not a defense. The Committee passed the proposal unanimously.

The proposal was published in The Florida Bar *News* on October 15, 2014. One comment was received from a Stetson University law student George Pavlidakey, Jr. He again suggested stylistic changes which were not accepted other than the streamlined section that explains "lewd" and "lascivious."

Post-publication, the Committee voted unanimously to forward the proposal to the Court.

PROPOSAL #4: INSTRUCTION 13.1 – BURGLARY

The Committee added a new section to capture the 2014 legislature's creation of s. 843.22, Fla. Stat. (See Appendix C.) The new statute bumps up the degree of a burglary, attempted burglary, solicitation to commit burglary, or conspiracy to commit burglary if the defendant lived in Florida, travelled to a county different than his or her county of residence, with the intent to commit a burglary, and with the purpose to thwart law enforcement attempts to track stolen items from the burglary. The Committee also added the statutory definition of "county of residence" and the examples of proof of a person's county of residence that are listed in the new statute. The Committee passed the proposal unanimously.

The proposal was published in The Florida Bar *News* on October 15, 2014. Comments were received from FACDL and the FPDA who both objected to language from a prior proposal about a dwelling's curtilage having an opening for exiting and entering. The Committee deleted that language; the final proposal has no changes in the section that defines "dwelling." Also, George Palidakey Jr. suggested a few edits to tighten up language. The Committee did not adopt those suggestions.

Upon post-publication review, the Committee realized that s. 790.07(1), Fla. Stat., and s. 790.07(2), Fla. Stat., should be in the Category 2 box of lesser-included offenses for Burglary While Armed (similar to what is in Category 2 for Robbery While Armed). After making the changes outlined above, the Committee voted unanimously to send the proposal to the Court.

PROPOSAL #5: INSTRUCTION 14.9 – EXPLOITATION OF AN ELDERLY/DISABLED PERSON

The 2014 legislature revised the Exploitation of an Elderly Person/Disabled Adult statute which required changes to the standard instruction for that crime.

(See Appendix C for the new statute.) For the first change, the Committee added the option that there might be only three elements (in cases where the new s. 825.103(1)(d), Fla. Stat., or the new s. 825.103(1)(e), Fla. Stat., is charged). Next, the words "used deception or intimidation to" are deleted because that phrase was taken out of the statute. The next substantive changes were based on the statute and consisted of adding an instruction that a "trustee" must be an individual and a definition for "unauthorized appropriation" as part of the s. 825.103(1)(c) section. For the new s. 825.103(1)(d), Fla. Stat., and s. 825.103(1)(e), Fla. Stat., the Committee simply tracked the statute. The Committee also tracked the statute to explain the new inference of exploitation law. The next change was to ensure that the enhancements based on the amount of funds involved in the crime matched the new statute. Since "deception" and "intimidation" are no longer a part of the statute, those definitions are deleted. In the section regarding the aggregation of funds involved in the exploitation, the words "total value of the [funds] [assets] [property] involved in the exploitation" were substituted for "degree of the offense." Finally, a definition of "convenience account" was taken from the statute and added to the instruction.

The Committee passed the proposal unanimously. The proposal was published in The Florida Bar *News* on October 15, 2014. George Palidakey Jr. sent a comment wherein he suggested a few edits to tighten up language. The Committee did not agree with those changes. However, the Committee did agree with a FPDA comment that the instruction more closely track the statute to ensure that jurors draw a statutory inference only upon proof, not upon a finding in the absence of proof. The Committee changed that section and added words so that the sentence would read: **You may, but are not required to, draw an inference of exploitation of (victim), if you find the State has proved beyond a reasonable doubt that: …**

Post-publication, the Committee voted unanimously to forward the proposal to the Court.

PROPOSAL #6: INSTRUCTION 20.15 – FRAUDULENT USE OF PERSONAL IDENTIFICATION INFORMATION

In 2014, the legislature amended s. 817.568(6), Fla. Stat., to protect those 60 years of age or older as well as minors. (See Appendix C for the new statute.) Accordingly, the Committee proposes to change the title and element 2b to reflect this legislative change. The other proposed changes are to add italicized headings for the definitions of "authorization" and "personal identification information" and to move the information about the enhanced penalty from an italicized note before

the lesser included box to the Comment section. The Committee passed the proposal unanimously.

The proposal was published in The Florida Bar *News* on October 15, 2014. Three comments were received. George Palidakey Jr. sent one comment wherein he suggested a few edits to tighten up language. The Committee did not agree to those changes. The FPDA sent a comment in which it argued that the word "willfully" in the statute carried over to the age of the victim such that the state has to prove that the defendant knew the age of the victim. The FACDL made the same point in its comment. The Committee did not agree because no one thought the word "willfully" carried over to the age of the victim. The Committee did, however, agree with the FPDA and FACDL to add the word "knowingly" to the definition of "willfully."

Additionally, upon post-publication review, the Committee noticed that the lesser included box should have the third degree felony of Fraudulent Use of Personal Identification Information (s. 817.568(2)(a), Fla. Stat.) in Category One and there should be an explanation that the part in s. 817.568(2)(a), Fla. Stat., about possessing personal identification information with the intent to use is not a necessarily included offense. After all changes, the Committee voted unanimously to send the proposal to the Court.

PROPOSAL #7: INSTRUCTION 20.16 – FRAUDULENT USE OF PERSONAL IDENTIFICATION INFORMATION

In 2014, the legislature amended s. 817.568(7), Fla. Stat., to protect those 60 years of age or older as well as minors. (See Appendix C for the new statute.) Accordingly, the Committee proposes to change the title and element 2b to reflect this legislative change. The Committee also added the words "Or Person Who Exercised Custodial Authority" to the title of the crime to better track the statute. The other proposed changes are to add an italicized heading for the definition of "personal identification information" and to move the information about the enhanced penalty from an italicized note before the lesser included box to the Comment section. The Committee passed the proposal unanimously.

The proposal was published in The Florida Bar *News* on October 15, 2014. Three comments were received. George Palidakey Jr. sent a comment wherein he suggested a few edits to tighten up the language in the instruction. The Committee did not agree to any of his proposed changes. The FPDA again commented that the word "willfully" in the statute carried over to the age of the victim such that the state has to prove that the defendant knew the age of the victim. The FACDL sent a

comment that made the same point. As discussed above, the Committee did not agree with that statutory interpretation but did add the word "knowingly" to the definition of "willfully."

Upon post-publication review, the Committee also realized that Fraudulent Use of Personal Identification Information should be added to the Category 2 box of lesser included offenses. After all changes, the Committee voted unanimously to send the proposal to the Court.

PROPOSAL #8: INSTRUCTION 20.21 – FRAUDULENT USE OF PERSONAL IDENTIFICATION INFORMATION

In 2014, the legislature amended s. 817.568, Fla. Stat., to include a new crime for the Fraudulent Use of Personal Identification Information for certain specified people. The Committee used Instructions 20.15 and 20.16 as templates and had no issues tracking the statute for the elements section. The Committee then added definitions, most of which are taken from statutes, for "willfully," "fraudulently," "authorization," "personal identification information," "disabled adult," "public servant," "veteran," "first responder," "law enforcement officer," "firefighter," and "paramedic." A note was created for the Comment section that both s. 817.568(6), Fla. Stat., and s. 817.568(11), Fla. Stat., criminalize Fraudulent Use of Personal Identification Information of a Person 60 Years of Age or Older but they have different offense levels. The Committee passed the proposal unanimously.

The proposal was published in The Florida Bar *News* on October 15, 2014. Three comments were received. George Palidakey Jr. sent a comment wherein he suggested a few edits to tighten up the language in the instruction. The Committee did not agree to any of those suggestions. The FPDA again commented that the word "willfully" in the statute carried over to the age of the victim such that the state has to prove that the defendant knew the age of the victim. The FACDL sent a comment that made the same point. As discussed above, the Committee did not agree but did add the word "knowingly" to the definition of "willfully."

Upon post-publication review, the Committee noticed that the lesser included box should have the third degree felony of Fraudulent Use of Personal Identification Information (s. 817.568(2)(a), Fla. Stat.) in Category One and there should be an explanation that the part of s. 817.568(2)(a), Fla. Stat., about possessing personal identification information with the intent to use is not a necessarily included offense. After all changes, the Committee voted unanimously to send the proposal to the Court.

PROPOSAL #9 – INSTRUCTION 22.5 – SETTING UP, PROMOTING, CONDUCTING A LOTTERY

The Committee's first proposed change is to add a closing bracket after the word "Conducting" and to delete the closing bracket after the word "Lottery" in the initial paragraph.

The next change is to simplify the definition of "lottery" to its core three components: 1) a prize; 2) awarded by lot or chance; and, 3) for consideration. These three components are supported by the *Little River Theater v. State*, 185 So. 855 (Fla. 1939), opinion which the Committee cited in italics above the definition of "lottery."

The next proposed change is to provide definitions for "bet," "thing ventured," and "prize by lot or chance," which are terms used in the definition of "lottery." These definitions are supported by case law such as *Little River Theater*; *Creash v. State,* 179 So. 149 (Fla. 1938); *Deeb v. Stoutamire*, 53 So. 2d 873 (Fla. 1951); and *Blackburn v. Ippolito*, 156 So. 2d 550 (Fla. 2d DCA 1963). The most important of these definitions is "thing ventured," which should help jurors understand that the use of the phrase "no purchase necessary to win" does not always create a defense to this crime.

The Committee passed the proposal unanimously. The proposal was published in The Florida Bar *News* on October 15, 2014. Three comments were received. First, George Palidakey Jr. suggested a few edits to tighten up the language in the instruction. The Committee did not agree to any of those suggestions.

Next, the FACDL argued that the concept of a lottery is specific to pooling money with the chance of winning the pool – as opposed to wagering a bet regardless of the assets of the house or amount amassed in the pool. The FACDL argued that in a lottery, as the amount of the bets increase, the pot also increases. Thus, as the pot increases, the chances of winning decreases because the number of participants have gone up. It is this fact that sets a lottery apart from other forms of gambling, argued the FACDL.

However, Assistant State Attorney Joe Cocchiarella also sent the Committee a comment wherein he argued the Committee's definition of lottery was correct. The Committee unanimously agreed with Mr. Cocchiarella because there are many

different types of lotteries and although the FACDL described one type of lottery, the statute is not limited to the type highlighted by the FACDL.

Post-publication, the Committee voted unanimously to forward the proposal to the Court.

PROPOSAL #10 – INSTRUCTION 22.6 – DISPOSING OF [MONEY] [PROPERTY] BY LOTTERY

The Committee reviewed this instruction because the Court had asked for all definitions of lottery in Instructions 22.5-22.11 to be consistent. See the referral letter in Appendix D.

For this instruction, the Committee used the same definition of "lottery" as that proposed for Instruction 22.5. The Committee also made the italicized note about exceptions and the explanatory information in the Comment section compatible with Instruction 22.5. The Committee's only other proposed changes were to add Attempt as a Category 2 lesser-included offense and to delete the paragraphs about what is not sufficient evidence and what must be proved in order to find guilt. The Committee thought those two paragraphs were extraneous and that it was better for the jurors to focus on the elements. The Committee passed the proposal unanimously.

The proposal was published in The Florida Bar *News* on October 15, 2014. Three comments (Palidakey, FACDL, and Cocchiarella) were received. The prior explanation for why the Committee agreed with Mr. Cocchiarella and disagreed with the FACDL applies to all the lottery instructions.

Post-publication, the Committee voted unanimously to forward the proposal to the Court.

PROPOSAL #11 – INSTRUCTION 22.7 – [CONDUCTING] [ADVERTISING] A LOTTERY DRAWING

For Instruction 22.7, the Committee revised the name of the crime and the elements in order to capture the possibility that a defendant would be prosecuted for advertising a lottery under section 849.09(1)(c), Fla. Stat. To be consistent with Instruction 22.5, the new explanation for "lottery" was inserted, the italicized note about exceptions was made compatible with Instruction 22.5, Attempt was added as a Category 2 lesser-included offense, and the explanatory note in the Comment section was copied. The only other changes were to delete what the Committee believed to be extraneous information about the definition of a "lottery drawing"

and "it is not essential for conviction that the defendant had any other interest or participation in the lottery." The Committee passed the proposal unanimously. The proposal was published in The Florida Bar *News* on October 15, 2014. Three comments (Palidakey, FACDL, and Cocchiarella) were received. The prior explanation for why the Committee agreed with Mr. Cocchiarella and disagreed with the FACDL applies to all the lottery instructions.

Post-publication, the Committee voted unanimously to forward the proposal to the Court.

PROPOSAL #12 – INSTRUCTION 22.8 – ASSISTING IN SETTING UP, PROMOTING, OR CONDUCTING A LOTTERY

The proposal for this instruction incorporated the changes made in the prior lottery-related instructions (e.g., definition of "lottery," italicized note about exceptions, Attempt in Category 2, and Comment section made consistent). The only other change was to the name of the crime to more properly capture s. 849.09(1)(d), Fla. Stat., which requires Assisting in Setting Up, Promoting, or Conducting a Lottery. The Committee passed the proposal unanimously. The proposal was published in The Florida Bar *News* on October 15, 2014. Three comments (Palidakey, FACDL, and Cocchiarella) were received. The prior explanation for why the Committee agreed with Mr. Cocchiarella and disagreed with the FACDL applies to all the lottery instructions.

Post-publication, the Committee voted unanimously to forward the proposal to the Court.

PROPOSAL #13 – INSTRUCTION 22.9 – [SALE OF LOTTERY TICKETS] [OFFERING LOTTERY TICKETS FOR SALE] [TRANSMITTING LOTTERY TICKETS]

For this instruction, the Committee changed the name of the crime and the elements section so that the instruction would track s. 849.09(1)(g), Fla. Stat. The other changes proposed relate to making the instruction consistent with the other lottery-related instructions (e.g., definition of "lottery," italicized note about exceptions, explanatory note in Comment). The Committee passed the proposal unanimously. The proposal was published in The Florida Bar *News* on October 15, 2014. Three comments (Palidakey, FACDL, and Cocchiarella) were received. The prior explanation for why the Committee agreed with Mr. Cocchiarella and disagreed with the FACDL applies to all the lottery instructions.

Post-publication, the Committee voted unanimously to forward the proposal to the Court.

PROPOSAL #14 – INSTRUCTION 22.10 – POSSESSING A LOTTERY TICKET

For the crime of Possessing a Lottery Ticket, the Committee proposes to add the word "live" in the elements section in order to more accurately track the statute. Then, the standard definition of "lottery" is inserted. Next, the Committee proposes to delete the existing explanation of the concept of criminal possession and replace it with the format used by the Committee in its recent proposals. Finally, the italicized note about exceptions and the Comment section was made consistent with the other lottery-related instructions. The Committee passed the proposal unanimously. The proposal was published in The Florida Bar *News* on October 15, 2014. Three comments (Palidakey, FACDL, and Cocchiarella) were received. The prior explanation for why the Committee agreed with Mr. Cocchiarella and disagreed with the FACDL applies to all the lottery instructions.

Post-publication, the Committee voted unanimously to forward the proposal to the Court.

PROPOSAL #15 – INSTRUCTION 22.11 – POSSESSING RUNDOWN SHEETS, ETC.

For Instruction 22.11, the Committee proposes to expand the initial paragraph and element #1 to more accurately track the statute. Then the standard format for the definition of "lottery" was inserted. The new standard explanation for the concept of criminal possession was also inserted. Finally, the italicized note about exceptions and the Comment section was made consistent with the other lottery-related instructions. The Committee passed the proposal unanimously. The proposal was published in The Florida Bar *News* on October 15, 2014. Three comments (Palidakey, FACDL, and Cocchiarella) were received. The prior explanation for why the Committee agreed with Mr. Cocchiarella and disagreed with the FACDL applies to all the lottery instructions.

Post-publication, the Committee voted unanimously to forward the proposal to the Court.

PROPOSAL #16 – INSTRUCTION 23.8 – SELLING A MINOR INTO PROSTITUTION

The 2014 legislature repealed s. 796.035, Fla. Stat., in Chapter 2014-160, Laws of Florida. (Appendix C contains the relevant page (page 7) of that law.)

Therefore, the Committee proposes to delete Instruction 23.8. The Committee passed the proposal unanimously. It was published in The Florida Bar *News* on October 15, 2014 and no comments were received.

Post-publication, the Committee voted unanimously to forward the proposal to delete the entire instruction to the Court.

PROPOSAL #17 – INSTRUCTION 29.24 – HUMAN TRAFFICKING

The 2014 legislature made substantial revisions to the Human Trafficking statute, which necessitated changes to the standard instructions. (See Appendix C.) The Committee did not find it difficult to set forth all the different ways to commit Human Trafficking as set out in s. 787.06(3), Fla. Stat. The Committee's main issue was that the statutory definition of Human Trafficking requires the transporting, soliciting, recruiting, etc., of another person for the purpose of exploitation of that person, but there is no definition or explanation as to what constitutes "exploitation." The Committee decided that it could not create a definition for "exploitation." The Committee concluded it best to ensure that the standard instruction accurately reflected the Human Trafficking statute. Accordingly, after all the various ways to commit the crime were delineated, the Committee revamped the definition of Human Trafficking to mimic the definition in the statute. The Committee also added definitions for "child" and "adult." The Committee then revised the definition of "coercion" to mimic the statutory definition. Finally, the Committee added statutory definitions for "mentally incapacitated" and "mentally defective"; deleted sections from the existing standard instruction that are no longer a part of the Human Trafficking statute; and added in a section informing jurors of the statute that states that ignorance of the victim's age, a victim's misrepresentation of age, or a defendant's bona fide belief of the victim's age is no defense. The only other change is a new Comment that points out it would be easier to prove the more serious crime of Human Trafficking via Commercial Sexual Activity of a Child than to prove the less serious crime of Human Trafficking via Commercial Sexual Activity of a Child who was transported or transferred into Florida. The Committee passed the proposal unanimously. The proposal was published in The Florida Bar *News* on October 15, 2014 and three comments were received. (See Appendix B.)

First, the FACDL pointed out that there is no definition of "exploitation." As discussed earlier, the Committee had the same problem but did not think it could create a definition. Mr. Pavlidakey suggested some edits which the Committee did not agree with. Finally, the FPDA argued that the *mens rea* of "knowingly or in

reckless disregard of the facts" had to be linked to all elements. The Committee did not agree with the FPDA on this point and left the elements section as published.

Post-publication, the Committee voted unanimously to forward the proposal to the Court.

PROPOSAL #18 – INSTRUCTION 29.25 –HUMAN TRAFFICKING BY A [PARENT] [LEGAL GUARDIAN] [PERSON WITH CUSTODY OR CONTROL] OF A MINOR

For the crime of Human Trafficking by a Parent, the Committee needed to make only a few changes to make the standard instruction consistent with the new Human Trafficking statute passed in 2014. The words "Custody or" were added to the title, the word **[or]** was added in element #3, the definitions of "human trafficking" were updated, the definition of "unauthorized alien" was deleted because it is no longer in the statute, and the sections covering the former ss. 787.06(3)(g) and (3)(h), Fla. Stat., were deleted because of the recent legislative changes. The Committee passed the proposal to unanimously. The proposal was published in The Florida Bar *News* on October 15, 2014 and three comments were received. (See Appendix B.)

The FACDL pointed out the absence of a definition for "exploitation." The Committee agrees that is a problem but had no solution in the absence of new legislation or caselaw. Mr. Pavlidakey had some edits but the Committee did not agree to his style changes. Finally, the FPDA argued that element 3 should retain statutory language of "as a consequence of the sale or transfer…." The Committee agreed with the FPDA and revised element 3 to read:

> **3.** (Defendant) **did so [knowing] [or] [in reckless disregard of the fact] that as a consequence of the sale or transfer,** (victim) **would be subjected to human trafficking.**

Also, upon post-publication review, the Committee realized that some of the definitions in the published proposal were unnecessary because those terms are not in this instruction. Accordingly, the Committee voted unanimously to delete the definitions for "coercion," "commercial sexual activity," "financial harm," "labor," "services," and "unauthorized alien." The vote to forward the proposal to the Court was unanimous.

CONCLUSION

The Standard Jury Instructions in Criminal Cases Committee respectfully requests the Court authorize for use the proposals in Appendix A.

Respectfully submitted this 23rd day of December, 2014.

s/ Jerri L. Collins
The Honorable Jerri L. Collins
Chair, Supreme Court Committee on
Standard Jury Instructions in Criminal Cases
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CERTIFICATE OF SERVICE AND FONT COMPLIANCE

I hereby certify that a true and correct copy of this report and the appendices were sent by e-mail to Joseph Cocchiarella at jcocchiarella@sao9.org; to Glen Gifford at glen.gifford@flpd2.com; to Julianne Holt at jholt@pd13.state.fl.us; to Luke Newman at luke@lukenewmanlaw.com; to William Ponall at ponallb@criminaldefenselaw.com; and to George Pavlidakey, Jr. at gpavlida@law.stetson.edu, this 23rd day of December, 2014.

I hereby certify that this report has been prepared using Times New Roman 14 point font in compliance with the font requirements of Florida Rule of Appellate Procedure 9.210(a)(2).

s/ Jerri L. Collins
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