

IN THE SUPREME COURT OF FLORIDA

IN RE: STANDARD JURY  
 INSTRUCTIONS IN CRIMINAL CASES — CASE NO.: SC15-  
REPORT 2015-08 /

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.

RECEIVED, 12/29/2015 10:33:27 AM, Clerk, Supreme Court

	<u>Instruction #</u>	<u>Title</u>
Proposal 1	8.3	Battery
Proposal 2	8.26	Violation of Injunction for Protection Against [Repeat] [Sexual] [Dating] Violence
Proposal 3	21.16	Falsely Personating an Officer
Proposal 4	23.1	Maintaining a Place of Prostitution, Lewdness, or Assignment
Proposal 5	23.2	Soliciting for the Purpose of Prostitution, Lewdness, or Assignment
Proposal 6	23.3	Receiving for the Purpose of Prostitution, Lewdness, or Assignment
Proposal 7	23.4	Transporting for the Purpose of Prostitution, Lewdness, or Assignment
Proposal 8	23.5	Offering to Commit, Committing, or Engaging in Prostitution, Lewdness, or Assignment
Proposal 9	23.6	Soliciting for Prostitution, Lewdness, or Assignment
Proposal 10	23.7	Entering for the Purpose of Prostitution, Lewdness, or Assignment
Proposal 11	28.11	Driving While License Suspended, Revoked, or Canceled with Knowledge
Proposal 12	29.20	Abuse of [an Elderly Person] [a Disabled Adult]
Proposal 13	29.21	Aggravated Abuse of [an Elderly Person] [a Disabled Adult]
Proposal 14	29.22	Neglect of [an Elderly Person] [a Disabled Adult]

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. The proposals were published in *The Florida Bar News*. No comments were received.

### **PROPOSAL #1: INSTRUCTION #8.3**

The idea to revise the standard Battery instruction came from a member who noted there is no provision in the existing instruction for a penalty enhancement based on a prior violation. The enhancement, which is in § 784.03(2), Fla. Stat., states that a misdemeanor battery is enhanced to a third degree felony if the defendant had previously been found guilty of a battery, felony battery, or aggravated battery. The statute states it does not matter whether adjudication was withheld on the prior violation. Moreover, according to *R.R. v. State*, 920 So. 2d 146 (Fla. 5th DCA 2006), the prior is an element of the crime, not a sentencing factor.

Accordingly, the Committee added language to Instruction #8.3 to allow a trial judge to instruct on a prior violation after the jury rendered a verdict on the underlying battery charge. The proposed language makes it clear the burden of proof is on the state to prove the prior violation beyond a reasonable doubt and the word “conviction” includes a withhold of adjudication.

The vote was unanimous to publish the proposal in the *Bar News*. No comments were received and the vote was unanimous to file the proposal with the Court.

### **PROPOSAL #2: INSTRUCTION #8.26**

The idea to create an instruction for the crime in § 784.047, Fla. Stat., - Violation of Injunction for Protection against [Repeat] [Sexual] [Dating] Violence came from the chair of the Committee. The Committee believes the crime can be covered in two elements: 1) An injunction for protection against [repeat] [sexual] [dating] violence was issued by a court against the defendant for the benefit of (victim). 2) Defendant willfully violated the injunction by (insert relevant statutory provision). The Committee added an italicized note for the judge to define certain terms if the charge involved the commission of an act of repeat violence, dating violence, or sexual violence. The definition of “willfully” includes “knowingly” because one cannot be guilty of this crime without knowing an injunction had been entered and without knowing the terms of the injunction. Finally, the Committee concluded there were no Category One lesser-included offenses.

The proposal passed unanimously. No comments were received after publication and the Committee voted unanimously to send the proposal to the Court.

### **PROPOSAL #3: INSTRUCTION #21.16**

The Committee amended the standard instruction for Falsely Personating an Officer because of 2015 legislative changes to § 843.08, Fla. Stat. To track the latest version of the statute, the Committee added “firefighter” and “fire or arson investigator of the Department of Financial Services,” and deleted “officer of the Department of Transportation.” Also, the Committee changed “Parole Commission” to “Florida Commission on Offender Review.”

Additionally, because element #3 requires the jurors to find the defendant’s impersonation occurred during the commission of a felony, the Committee added a new section for the trial judge to instruct the jurors that (name of crime) is a felony which is defined as (insert elements of felony). The Committee also added an italicized statutory cite for the definition of “federal law enforcement officer.” The statutory definition of “watchman” was also added. For other types of officers covered in the statute, the Committee thought it sufficient to refer everyone to other statutes.

The proposal passed unanimously. No comments were received after publication and the Committee voted unanimously to send the proposal to the Court.

### **PROPOSALS #4—#10: INSTRUCTIONS #23.1—#23.7**

The idea to revise the standard Prostitution instructions came from a member who noted that the instructions do not incorporate § 796.07(4), Fla. Stat., in which prostitution crimes are enhanced based on the number of prior violations. According to that statute, a first violation of a prostitution crime is a second degree misdemeanor; a second violation is a first degree misdemeanor, and a third violation is a third degree felony.

The Committee found no case law holding that prior violations of the prostitution laws were either an element of the crime or a sentencing factor. Because § 796.07(4), Fla. Stat., is a recidivism statute, the Court could find that prior violations are a sentencing factor. However, in similar contexts such as Petit Theft, DUI, and Battery, Florida courts have held that priors are elements. The Committee saw no reason why the Court would deviate from its standard practice. Accordingly, in all of the Prostitution instructions, the Committee added notes in the Comment sections pointing out that 1) an enhancement based on prior violations exists; 2) the Court has treated enhancements for priors as an element; 3) the jury should not be informed about the allegation of a prior before or during the initial trial; and 4) a jury finding regarding a prior violation should be made in a bifurcated proceeding.

The only other changes to these instructions were to add italicized citations above definitions; to copy the statutory definition of “conveyance” to include a

“railroad vehicle or car;” and to alter the definition of “solicit” in Instruction 23.6 to more closely track the statutory explanation of solicitation in § 777.04(2), Fla. Stat.

The vote was unanimous to publish the proposals in the *Bar News*. No comments were received and the vote was unanimous to send the proposals to the Court.

### **PROPOSAL #11: INSTRUCTION #28.11**

The idea to revise the Driving While License Suspended, Revoked, or Cancelled instruction came from a member who noted there is no provision in the existing instruction for an enhancement based on a prior violation. The enhancement is in § 322.34(2), Fla. Stat., which states that the first violation of the statute is a second degree misdemeanor; the second violation of the statute is a first degree misdemeanor; and the crime is enhanced to a third degree felony if the defendant has two prior violations of the statute. According to *Raulerson v. State*, 763 So. 2d 285 (Fla. 2000), a withhold of adjudication is treated as a prior violation. Moreover, because Florida courts have a lengthy history of treating these types of enhancements as elements of the crime (as was done for the theft, DUI, and the battery statutes), the Committee felt comfortable treating priors as an element, rather than as a sentencing factor.

Accordingly, the Committee added language to Instruction #28.11 for a trial judge to instruct the jury regarding the prior violation(s) after the jury rendered a verdict on the underlying driving while license suspended, revoked, or cancelled charge. The proposed language makes it clear the burden of proof is on the state to prove the prior violation beyond a reasonable doubt and the word “conviction” includes a withhold of adjudication.

The only other changes are non-substantive alterations to italicized notes. Included in these non-substantive changes is the re-location of an italicized note referring to § 322.251(1), Fla. Stat., from the body of the instruction into the Comment section.

The vote was unanimous to publish the proposal in the *Bar News*. No comments were received and the Committee voted unanimously to send the proposal to the Court.

### **PROPOSAL #12: INSTRUCTION #29.20**

The idea to amend the Abuse of an Elderly Person/Disabled Adult instruction came from staff who pointed out that it would be preferable for this instruction to be consistent with the Child Abuse instruction because the two statutes are similarly worded.

The Committee has already proposed a fix to the awkwardly worded element #1 in the Child Abuse instruction. Specifically, in the proposal for the Child Abuse instruction which is pending in SC15-1172, the Committee changed element #1a to read as follows: “(Defendant) knowingly or willfully abused (victim) by intentionally inflicting [physical] [or] [mental] injury upon (victim).” Element #1b was reworded to: “(Defendant) knowingly or willfully abused (victim) by committing an intentional act that could reasonably be expected to result in [physical] [or] [mental] injury to (victim). Element #1c was reworded to: “(Defendant) knowingly or willfully abused (victim) by actively encouraging another person to commit an act that resulted in or could reasonably have been expected to result in [physical] [or] [mental] injury to (victim).”

A similar fix is proposed for Instruction 29.20. Under the proposal, element #1a would read: “(Defendant) knowingly or willfully abused (victim) by intentionally inflicting physical or psychological injury upon (victim).” Element #1b would read: “(Defendant) knowingly or willfully abused (victim) by committing an intentional act that could reasonably be expected to result in physical or psychological injury to (victim). Element #1c would read: “(Defendant) knowingly or willfully abused (victim) by actively encouraging another person to commit an act that resulted in or could reasonably have been expected to result in physical or psychological injury to (victim).”

The only other change was to delete the word “knowingly” from the definition of “willfully” because the Committee concluded the legislature would not have used “knowingly or willfully” if “willfully” already meant “knowingly.”

All votes were unanimous and the proposal was published in *The Florida Bar News*. No comments were received. Upon post-publication review, the Committee voted unanimously to send the proposal to the Court.

### **PROPOSAL #13: INSTRUCTION #29.21**

The idea to update the Aggravated Abuse of an Elderly Person/Disabled Adult instruction also came from staff. The changes proposed are minor. The statutory cites for the definitions of “disabled adult” and “elderly person” are updated. The word “knowingly” is deleted from the definition of “willfully” in order to make this instruction consistent with the Abuse of an Elderly Person/Disabled Adult instruction. Finally, a stylistic change was made to the box of lesser-included offenses. All votes were unanimous and the proposal was published in *The Florida Bar News*. No comments were received. Upon post-publication review, the Committee voted unanimously to send the proposal to the Court.

**PROPOSAL #14: INSTRUCTION #29.22**

Since the Committee was reviewing the Abuse of Elderly Person/Disabled Adult instructions, the Committee also updated the Neglect of an Elderly Person/Disabled Adult instruction. The changes proposed are mostly minor. In element #3a, the Committee added a bracketed “[or]” because the defendant can commit the crime either willfully or by culpable negligence. In element #3b, the Committee put brackets around “abuse,” “neglect”, or “exploitation” in case the state did not charge all three alternatives. The italicized statutory cites for the definitions of “disabled adult” and “elderly person” were updated. Most important, the italicized note above the explanation of “neglect of an elderly person/disabled adult” is deleted because the existing note is misleading. More specifically, the idea within § 825.102(3), Fla. Stat., that neglect can be based on a single incident or repeated conduct applies if element #3a is charged. However, the existing note incorrectly suggests the statutory explanation of neglect should be given only if element #3b is charged.

All votes were unanimous and the proposal was published in *The Florida Bar News*. No comments were received. Upon post-publication review, the Committee voted unanimously to send the proposal to the Court.

**CONCLUSION**

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

Respectfully submitted this 29th day of December, 2015.

s/ Jerri L. Collins  
The Honorable Jerri L. Collins  
Chair, Supreme Court Committee on  
Standard Jury Instructions in Criminal Cases  
Criminal Justice Center  
101 Bush Boulevard  
Sanford, FL 32773  
Florida Bar Number #886981  
Jerri.Collins@flcourts18.org

**CERTIFICATE OF FONT COMPLIANCE**

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

HONORABLE JERRI L. COLLINS

Chair, Committee on Standard Jury

Instructions in Criminal Cases

Florida Bar Number #886981

Jerri.Collins@flcourts18.org