IN THE SUPREME COURT OF FLORIDA

IN RE: STANDARD JURY INSTRUCTIONS IN CRIMINAL CASES REPORT 2015-01 **CASE NO.: SC15-**

_____/

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 #	Title
Proposal 1	**1.5**	**Questioning in Capital Trials (Death Penalty)**
Proposal 2	**7.8**	**Driving Under the Influence Manslaughter**
Proposal 3	**7.8(a)**	**Boating Under the Influence Manslaughter**
Proposal 4	**11.1**	**Sexual Battery —Victim Less than 12 Years of Age**
Proposal 5	**11.2**	**Sexual Battery —Victim 12 Years of Age or Older — Great Force or Deadly Weapon**
Proposal 6	**11.3**	**Sexual Battery — Under Specified Circumstances**
Proposal 7	**11.4**	**Sexual Battery**
Proposal 8	**11.5**	**Solicitation of a Child to Engage in an Act that Constitutes Sexual Battery by a Person in Familial or Custodial Authority**
Proposal 9	**11.6**	**Engaging in an Act Which Constitutes Sexual Battery Upon or With a Child 12 Years of Age or Older but Younger than 18 Years of Age by a Person in Familial or Custodial Authority**
Proposal 10	**11.6(a)**	**Engaging in an Act Which [Constitutes Sexual Battery] [Injured the Sexual Organ of Another in an Attempt to Commit Sexual Battery] by a Person in Familial or Custodial Authority Upon a Person Less than 12 Years of Age**

Proposal 11	**20.3**	**Welfare Fraud — Failure to Disclose a Material Fact**
Proposal 12	**20.4**	**Welfare Fraud — Aiding or Abetting**
Proposal 13	**20.5**	**Welfare Fraud — Change in Circumstances**
Proposal 14	**20.6**	**Welfare Fraud — [Food Assistance Identification Card] [Authorization] [Certificate of Eligibility for Medical Services] [Medicaid Identification Card]**
Proposal 15	**20.7**	**Welfare Fraud — Administrator Misappropriating**
Proposal 16	**20.8**	**Welfare Fraud — Administrator Failure to Disclose**
Proposal 17	**20.9**	**Welfare Fraud — Receiving Unauthorized Payments**
Proposal 18	**20.10**	**Welfare Fraud — Filing Without Crediting**
Proposal 19	**20.11**	**Welfare Fraud — Billing in Excess**
Proposal 20	**20.12**	**Welfare Fraud — Filing for Services Not Rendered**
Proposal 21	**22.16**	**[Setting up] [Promoting] [Playing at] a Game of Chance for Money, Thing of Value, or Under the Pretext of a Sale, Gift, or Delivery**

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.

PROPOSAL #1: INSTRUCTION 1.5

The initial idea for a standard jury instruction at the start of a death penalty trial came from Assistant Public Defender Steven Been, who sent the Committee an instruction that had been used in one of his trials. (See Appendix B.) The Committee decided Mr. Been's proposal was too long and member Mr. Rick Combs was assigned to pare it down.

At the next meeting, the Committee unanimously approved the streamlined proposal from Mr. Combs. His proposal explained that the charging document is called an indictment, that the indictment is not evidence, that there will be a guilt

phase and that there may be a penalty phase, that sentencing is the responsibility of the court but that the judge must give great weight to the jury recommendation, and the proposal then emphasized that jurors must be willing to follow the law.

The proposal was published in the January 1, 2015, issue of The Florida Bar *News*. The Committee received comments from the Florida Public Defender's Association (FPDA), the Florida Association of Criminal Defense Lawyers (FACDL), and Mr. Been. (See Appendix B.)

The FPDA stated that the proposed instruction tries to solve a problem that does not exist and that a standard instruction is unnecessary in that it goes to matters best handled on a case-by-case basis. The FPDA then argued that the proposal was too narrowly focused, that jurors' attitudes towards a life sentence were as important as their attitudes about a death sentence, that questioning of jurors should not be limited to their attitudes affecting cause challenges, and that the inquiry into the jurors' ability to follow the law must be broader. The FPDA then suggested alternative language.

The Committee disagreed with the FPDA about the wisdom of having a standard instruction for capital voir dire. The Committee also thought that many of the points brought out in the FPDA comment would be addressed by lawyers during the jury questioning. But in response to the FPDA and the other comments discussed below, the Committee did revise its proposal a bit. For example, the Committee agreed with some of the FPDA's alternative language. The Committee changed "The State is seeking the punishment of death in this case" to "The State is seeking a death sentence in this case." The Committee also deleted some contradictory language that was in the published proposal about there being no right answers but that a truthful answer was a right answer. But the Committee did not agree to change "…the proceedings are divided into two parts" to "…the trial is divided into two parts." The Committee also did not agree to change "trial phase" to "guilt phase." Finally, the Committee agreed with the FPDA that there should be some language about the jurors' feelings. As a result, the Committee added: "It is important for the parties and for the Court to know any feelings, opinions, views, or attitudes that may affect, in any way, your assessment of the facts."

The FACDL commented that the published proposal was incomplete because it failed to provide a sufficient explanation about how the case would be conducted; failed to discuss aggravating and mitigating factors; and failed to indicate that the State has the burden of proof. The FACDL also suggested some alternative language. The Committee unanimously disagreed with the FACDL. One of the Committee's goals for this standard instruction was to keep it short by giving jurors just a brief overview of the process. With that in mind, the Committee unanimously thought it was a mistake for the judge to begin discussing

aggravating and mitigating factors and that it would be better to have the judge instruct more in depth on that topic during the final instructions.

The Committee also reviewed comments from Mr. Steven Been, who stated that the published proposal's emphasis on following the law was inappropriate, particularly because a key purpose of voir dire in a death penalty case is to find out what jurors feel about the death penalty. Mr. Been also laid out six factors that should be accomplished with a standard instruction for capital voir dire. The Committee agreed with some of Mr. Been's list but not all. For example, the Committee's final proposal includes – "...it is important to give answers that are honest and complete. It is important for the parties and for the Court to know any feelings, opinions, views, or attitudes that may affect, in any way, your assessment of the facts." But, as mentioned above, the Committee did not agree that this instruction should get into any details about aggravators and mitigators. Instead, the Committee's proposal states: "During the penalty phase, the jury considers the two possible sentences the law allows and provides an advisory verdict to the court."

The Committee's final proposal in Appendix A passed unanimously.

PROPOSAL #2: INSTRUCTION 7.8

The Committee requests the Court amend the standard Driving Under the Influence Manslaughter instruction because of 2014 legislation. Specifically, last year's legislature amended s. 316.193(3)(c)3, Fla. Stat. from "unborn quick child" to "unborn child" and added a definition for "unborn child" to s. 775.021(5)(e), Fla. Stat. (Both statutes are in Appendix C.) Accordingly, the Committee proposes to make the instruction consistent with the existing statutes by deleting the word "quick" and by adding the new definition of "unborn child." (Note: Other changes are simply stylistic corrections.)

The proposal passed unanimously and was published in the January 1, 2015 issue of The Florida Bar *News*. No comments were received.

Upon post-publication review, the Committee added as a "*Give if applicable*" the following sentence from s. 775.021(5)(b), Fla. Stat.: "Driving Under the Influence Manslaughter does not require the State to prove that the defendant knew or should have known that (victim) was pregnant or that the defendant intended to cause the death of the unborn child." The vote to add this sentence was 7-3. The Committee then agreed to file the proposal with the Court.

PROPOSAL #3: INSTRUCTION 7.8(a)

The Committee requests the Court amend the standard Boating Under the Influence Manslaughter instruction in order to make it consistent with the other standard BUI instructions. Specifically, the Second District held in *State v. Davis*,

110 So. 3d 27 (Fla. 2d DCA 2013) that it was not necessary for the state to prove that a vessel was subject to a license tax for operation in order to prove that the defendant was operating a vessel. After the *Davis* opinion was issued, BUI instructions 28.14 – 28.17 were amended, however the Committee forgot to amend the BUI Manslaughter instruction.

The proposal to delete the words "that is subject to a license tax for operation" from the BUI Manslaughter instruction passed the Committee unanimously and the proposal was published in The Florida Bar *News* on January 1, 2015. No comments were received.

Upon post-publication review, the Committee realized that the BUI Manslaughter instruction should be consistent with the DUI Manslaughter instruction because s. 775.021(5), Fla. Stat., criminalizes a BUI that causes or contributes to causing the death of an unborn child. Accordingly, the Committee added "unborn child" in brackets in element #3 and then defined "unborn child" consistent with s. 775.021(5)(e), Fla. Stat. By a 7-3 vote, the Committee also added as a "*Give if applicable*" the following from s. 775.021(5)(b), Fla. Stat.: "Boating Under the Influence Manslaughter does not require the State to prove that the defendant knew or should have known that (victim) was pregnant or that the defendant intended to cause the death of the unborn child." (Note: Other changes were simply stylistic corrections.) The Committee then agreed to send the revised proposal to the Court.

NOTE FOR SEXUAL BATTERY PROPOSALS 11.1-11.6(a)

The Committee filed proposals for the standard sexual battery instructions in March 2014, which the Court recently promulgated in SC14-465. Soon after the filing of those proposals, the 2014 legislature revised the sexual battery statutes (see s. 794.011, Fla. Stat., in Appendix C). Accordingly, the proposals in this report reflect revisions due to changes to the statutes and some new ideas from the Committee.

The changes will be discussed in more detail below, but they generally consist of four types. First, the Committee thought the instructions would read better for the defendant's act to be listed as the first element. Second, the Committee added a number of italicized headings in order to direct judges and lawyers to particular statutes or case law. Third, many of the boxes of lesser-included instructions were re-titled to list the highest offense covered by that particular instruction and then the necessary lesser-included offenses were expanded. Fourth, the Committee added a number of new thoughts to the Comment sections because the sexual battery statutes have become very complicated and raise a host of issues.

PROPOSAL #4: INSTRUCTION 11.1

The first proposed change is to the statutory cite at the top of Instruction 11.1 which will make it clearer that the instruction covers (1) sexual battery upon a victim less than 12 where the defendant is under 18 years of age and (2) sexual battery upon a victim less than 12 where the defendant is 18 or older.

The second change is to re-order the elements of the crime. The reason for the revision is that the Committee decided the instruction reads better if the defendant's act is listed as the first element, followed by the ages of the victim and defendant.

Within renumbered elements 1b and 1d, the Committee added an italicized reference stating: "The definition of 'an object' includes a finger." The reference is supported by *Lakey v. State*, 113 So. 2d 90 (Fla. 5th DCA 2013) and was added because there has been confusion in some cases involving a defendant's finger having union, not penetration, with a victim's vagina. See for example, *Garcia v. State,* 143 So. 3d 1105 (Fla. 2d DCA 2014). Since in most sex crimes cases, the object is a finger, the Committee thought that italicized notes to the judge would be helpful.

The Committee added the words "At the time of the offense" before the ages of the victim and the defendant to make it clear that the ages are relevant at the time the defendant committed the criminal act.

The Committee then added an italicized heading to show that s. 794.011(1)(h), Fla. Stat., captures the provision that sexual battery does not include an act done for a bona fide medical purpose. Also, the cite to *Lakey v. State* supports the idea that an object includes a finger.

Major changes are proposed for the lesser-included offense box. Under the existing instruction, the heading at the top of the lesser-included box is for both the capital felony and the life felony covered by this instruction. The difference is that the capital felony is for defendants who are 18 years of age or over and the life felony is for defendants under the age of 18. There now exists only one Category One crime — misdemeanor battery — in the box of lesser-included offenses.

The Committee believes the current lesser-included offense box may create problems because if the state charged the capital felony, then the next lesser-included crime should probably be the life felony. In other words, if the state charged that the defendant was 18 years of age or older at the time of the criminal act, then a necessary lesser included offense should probably be that the defendant was not 18 years of age or older at the time of the criminal act. (Note: This new idea is discussed more fully below.)

Accordingly, the heading in the box of lesser-included offenses was changed to reflect the crime of capital sexual battery and the life felony was listed as the first necessary lesser-included offense.

If the age of the defendant makes one crime a lesser-included offense, then the age of the victim should also. Thus the next lesser crime is when the defendant is 18 or over, but the victim is not under the age of 12 (and is 12 or older but less than 18). Going in order, the next lesser is when the defendant is 18 or older, but the victim is not under the age of 12 and is not under the age of 18. The next lesser is when the defendant is not 18 or older and the victim is not under the age of 12.

The Committee notes that the definition of "sexual activity" in the Lewd and Lascivious statute (s. 800.04(1)(a), Fla. Stat.) mirrors the definition of sexual battery in s. 794.011(1)(h), Fla. Stat. Accordingly, the crime of Lewd or Lascivious Battery in s. 800.04(4)(a)1, where the defendant engages in sexual activity with a victim is the same as the defendant engaging in a sexual battery with that victim, except the victim is not under the age of 12.

A more difficult issue for the Committee was deciding if the Lewd or Lascivious Battery in s. 800.04(4)(a)2, Fla. Stat., should be in the Category 1 box. That crime is committed when a defendant encourages, forces, or entices any person less than 16 years of age to engage in sadomasochistic abuse, sexual bestiality, prostitution, or any other act involving sexual activity. Ultimately, the Committee decided to take what it thought was the safest course by putting it in Category 1 but adding a note in the Comment section (discussed below).

Under the Committee's proposal, there would be a number of lesser-included offenses between Capital Sexual Battery and Misdemeanor Battery. The Committee recognizes the existing box of lesser-included offenses has not presented problems so far, perhaps because the ages of the defendant and victim at the time of the defendant's act are not in dispute in most cases. With that in mind, the Committee added a note in the Comment section that the parties might agree to pare down the lesser-included offenses in cases where ages are not in dispute.

The Committee also recognizes that it has significantly expanded the Category One list of necessary lesser-included offenses. Some members argued that the varying ages of the victim and the defendant should lead the Committee to list those other crimes in Category 2. But the Committee was persuaded by two arguments. First, in a Grand Theft case, the State alleges that the stolen property had a value of $300 or more. If that alleged value turns out to be supported by the evidence, then the stolen property cannot have a value of less than $300. Yet Petit Theft is a necessary lesser-included offense of Grand Theft and jurors can find that a misdemeanor theft was committed even if the only evidence was that the stolen property was worth $300 or more. Somewhat similarly, if an element of the crime was that the defendant was over the age of 18 when he or she committed a sexual

battery, then it would seem that a lesser offense would be that the defendant was not over the age of 18. Second, the Committee was concerned about *State v. Abreau*, 363 So. 2d 1063 (Fla. 1978), in which the Court stated that the failure to instruct on a lesser included offense one-step removed from the crime of conviction was per se reversible error.

In sum, the Committee was not certain that its new list of Category 1 offenses was correct, but the Committee thought it was taking the safer course by adding more crimes in Category 1. The Committee also thought, however, that there is also a risk that a court will reverse a conviction on the theory that the State did not allege that the defendant was a certain age or that the victim was a certain age and so a certain lesser-included offense should not have been given. Nevertheless, the Committee's conclusion was that appellate courts appear to be in favor of the giving of lesser-included offenses, and thus there is a greater risk of a reversal from the failure to instruct on a lesser-included offense that should have been given, rather than a risk of reversal from the giving of an instruction on a lesser-included offense that should not have been given.

Separately, the existing standard instruction lists Solicitation by a Person in Familial Authority as a Category 2 offense. The Committee notes that any crime can be a Category 2 offense depending on the charging document and the evidence. Given that, the Committee thought the Category 2 box should contain only those crimes that are commonly added by the state to the main charge. The Committee did not think the crime of Solicitation by a Person in Familial Authority would be added to most charging documents for Sexual Battery upon a Person Under the Age of 12 and thus proposes to delete it from the Category 2 list. However, the Committee did add the crime of Battery covered in s. 784.03(1)(a)2, Fla. Stat. (intentionally causing bodily harm), in Category 2.

Finally, the Committee added some comments that it thought would be helpful.

First, as already noted, the Committee thought that if ages are not in dispute, the parties could agree to pare down the Category One offenses.

Second, the Committee thought that there should be an explanation that it is unclear whether Lewd and Lascivious Battery in s. 800.04(4)(a)2, Fla. Stat., is a necessary lesser-included offense. But if so, the judge should instruct only on "sexual activity" and not "sadomasochistic abuse, sexual bestiality or prostitution," unless those acts were charged.

Third, the Committee pointed out that in s. 794.011(8)(c), Fla. Stat., the legislature created a similar crime to the sexual batteries covered by this instruction with one additional element — that the defendant was in a position of familial or custodial authority.

Fourth, the Committee pointed out that there could be a number of other sex-related crimes in Category 2 depending on the charging document and the evidence.

Fifth, the Committee directed practitioners to Instructions 11.16 and 11.16(a) if the State charged the defendant qualified as a dangerous sexual felony offender.

The changes were approved unanimously by the Committee and were published in the January 1, 2015 issue of The Florida Bar *News*. No comments were received.

Final Note: It was only upon post-publication review that the Committee realized that the Lewd or Lascivious Battery in s. 800.04(4)(a)1, Fla. Stat., should be in Category 1. The vote to add that crime as a Category 1 lesser-included offense and to send the proposal to the Court was unanimous.

PROPOSAL #5: INSTRUCTION 11.2

This instruction covers s. 794.011(3), Fla. Stat.; a sexual battery where the defendant either a) used or threatened to use a deadly weapon or b) used physical force likely to cause serious personal injury. The Committee's initial revision was to rearrange the order of the elements so that the defendant's act is listed first and the age of the victim at the time of the offense is listed as the last element.

The Committee also added an italicized note explaining "an object includes a finger" to element 1b for the reason explained above. Additionally, statutory cites or case law cites were added in italics to support various definitions and other instructions of law.

Significant changes are again proposed for the lesser-included offense box. Under the existing standard instruction, the first necessary lesser-included offense is the Sexual Battery in s. 794.011(5), Fla. Stat. However, s. 794.011(6)(a), Fla. Stat., states that the sexual batteries in s. 794.011(5)(a)–(5)(c), Fla. Stat., are included in any sexual battery charge under s. 794.011(3), Fla. Stat. Accordingly, the Committee listed the Sexual Batteries in 794.011(5)(a)–(5)(c), Fla. Stat., as the first three necessary lesser-included offenses. Upon post-publication review, the Committee also realized that the two Lewd or Lascivious Batteries should be listed in Category 1 and that there should be a note in the Comment section that sadomasochistic abuse, sexual bestiality, and prostitution should not be given as part of the Lewd or Lascivious Battery instruction unless charged. The last Category 1 lesser is the misdemeanor Battery in s. 784.03(1)(a)1, Fla. Stat., which covers an intentional touching without consent.

The misdemeanor Battery in s. 784.03(1)(a)2, Fla. Stat., was listed in Category 2 because that crime (intentionally causing bodily harm) is not necessarily included unless charged.

In keeping with its latest practice, the Committee thought it best to delete all possible sex-related crimes in Category 2 but to add a note in the Comment section that states there could be a host of sex-related crimes that could be lesser crimes depending on the charging document and the evidence. The non-sex-related Category 2 crimes are listed in descending order of severity. Finally, notes were added to the Comment section that explain the lesser-included box, point out that there are other standard instructions if the state is charging that the defendant qualifies as a dangerous sexual offender, and highlight that there may be a special finding required if the state intends to use the new sentencing multiplier for adult on minor sex offenses that is now in s. 921.0024(1)(b), Fla. Stat.

The changes were approved unanimously by the Committee and were published in the January 1, 2015 issue of The Florida Bar *News*. No comments were received. Upon post-publication review, the Committee again voted unanimously to file the proposal with the Court.

PROPOSAL #6: INSTRUCTION 11.3

The Committee needed to revise this instruction because the 2014 legislature revised s. 794.011(4), Fla. Stat., by differentiating certain sexual battery crimes based on the age of the defendant and the age of the victim.

The initial changes are to the title of the crime and to the statutory cite directly underneath the title. Because the sexual battery covered by this instruction had to be committed under certain specified circumstances, the Committee proposes to make the title: "**SEXUAL BATTERY — UNDER SPECIFIED CIRCUMSTANCES**." Directly underneath, the statutory cite would be to "s. 794.011(4)(a), (4)(b), (4)(c), and (4)(d), Fla. Stat."

Consistent with the other sexual battery proposals, the Committee listed the defendant's act as element #1. The age of the victim was moved to element #4.

The Committee added in italics "*The definition of "an object" includes a finger*" in element 1b for the reason outlined above.

A change was made to the re-numbered element #2b; "**on** (victim)" was added so that the instruction matches the statute.

The new elements 4a and 4b reflect the possible ages of the victim.

The new elements 5a and 5b reflect the possible ages of the defendant.

The Committee then added italicized cites to either statutes or case law to support various definitions and other instructions of law. One of those new instructions pertains to s. 794.011(9), Fla. Stat., which deals with acquiescence to a person reasonably believed to be in a position of authority or control. This amendment generated a comment from the Florida Association of Criminal Defense Lawyers (FACDL), which will be discussed below.

The Committee next added a new section to cover s. 775.0862, Fla. Stat., which is an enhancement for cases where the defendant was an authority figure at a school and the victim was a student at the school.

The Committee proposes to move the reference to the multiple perpetrator enhancement statute into the Comments section.

In the Category One lesser-included offense box, the Committee again proposes significant revisions because of the differing ages of the defendant and victim. The heading in the lesser-included box is changed to s. 794.011(4)(a), Fla. Stat., which occurs when the defendant is 18 years of age or older and the victim is 12 years of age or older but younger than 18. The immediate next lesser of s. 794.011(4)(a), Fla. Stat., is s. 794.011(4)(b), Fla. Stat., which occurs when both the defendant and victim are 18 years of age or older. The next lesser is covered by s. 794.011(4)(c), Fla. Stat., which occurs when the defendant is younger than 18 and the victim is 12 or older. The next lesser is simple Sexual Battery but the Committee put an asterisk next to it and the asterisk is explained in the Comment section. The Comment section highlights that due to s. 794.011(6)(b)–(6)(e), Fla. Stat., the offenses in s. 794.011(5)(a)–(5)(d), Fla. Stat. are lesser-included crimes of the sexual batteries in s. 794.011(4)(a)–(4)(d), Fla. Stat. (In other words, (5)(a) is a lesser of (4)(a); (5)(b) is a lesser of (4)(b), etc.) Upon post-publication review, the Committee realized that Lewd or Lascivious Batteries should also be listed in Category 1 and that there should be a note that sadomasochistic abuse, sexual bestiality, and prostitution should not be given as part of the lesser instruction unless charged. The last Category 1 lesser is the misdemeanor Battery in s. 784.03(1)(a)1, Fla. Stat., which covers an intentional touching without consent.

In the Category Two box, the Committee again proposes to delete all sex-related crimes but to add a note in the comment section that there are many possible sex-related Category Two lesser-included offenses depending on the charging document and the evidence. The non-sex-related Category Two offenses are then listed in descending order. The misdemeanor Battery in Category Two is for s. 784.03(1)(a)2, Fla. Stat., which is the intentional causing of bodily harm.

The Comment section includes the explanations of the asterisks in the lesser-included offense box, the note about there being many possible sex-related lesser-included crimes, a new note about other standard instructions that cover the Dangerous Sexual Felony enhancement, a re-located note about the multiple perpetrators enhancement and a new note that explains Instruction 11.3 can be used as a template if s. 794.011(4)(d), Fla. Stat., is charged. However, s. 794.011(4)(d), Fla. Stat., covers a sexual battery on a person over the age of 12, without the victim's consent, without using physical force likely to cause serious personal injury, but the defendant has been previously convicted of certain enumerated offenses. Most of the enumerated offenses can be proven to the judge at a

sentencing hearing because of the recidivism exception in *Apprendi v. New Jersey*, 530 U.S. 466 (2000). But for the priors of kidnapping and false imprisonment, there are additional facts in the statute (victim was a minor and the defendant committed a sex crime on the minor during the course of the kidnapping or false imprisonment). Those facts are not likely to be included in a judgment and sentence for kidnapping or false imprisonment and thus they are likely needed to be proven to the jury in order for s. 794.011(4)(d), Fla. Stat., to apply.

All votes were unanimous and the proposal was published in the January 1, 2015 edition of The Florida Bar *News*. One comment was received from FACDL who argued that the term "acquiescence" is vague and could result in a reduction of the state's burden of proof. FACDL suggested that the Committee provide a definition of "acquiescence" and pointed out that the definition could not be "consent." (See Appendix B.) Upon post-publication review, the Committee did not think it could provide its own definition without legal support and voted unanimously to track the statute and leave the term "acquiescence" undefined in the standard instruction. The vote was unanimous to send the proposal to the Court.

PROPOSAL #7: INSTRUCTION 11.4

Instruction 11.4 covers the core crime of Sexual Battery, but the 2014 legislature revised the statute by creating different penalties based on the ages of the victim and the defendant. Accordingly, the Committee needed to revise this standard instruction to make it consistent with the new statute.

The initial changes are to the title and to the statutory cite directly underneath the title. Because this instruction covers varying ages, the title was changed to "**SEXUAL BATTERY"** and the cite underneath was changed to "s. 794.011(5)(a), (5)(b), (5)(c), and (5)(d), Fla. Stat."

The age of the victim was moved from element #1 to element #3.

The new element 1b includes in italics "*The definition of "an object" includes a finger"* for the reason mentioned above.

Elements 3a and 3b reflect the possible ages of the victim.

New elements 4a and 4b reflect the possible ages of the defendant.

The Committee then added italicized cites to either statutes or case law to support various definitions and instructions of law.

The Committee next added a new section to cover s. 775.0862, Fla. Stat., which is an enhancement for cases where the defendant was an authority figure at a school and the victim was a student at the school.

The Committee proposes to move the reference to the multiple perpetrator enhancement statute into the comment section.

In the Category One lesser-included offense box, the Committee again proposes revisions because of the differing ages of the defendant and the victim.

The heading in the lesser-included box is changed to s. 794.011(5)(a), Fla. Stat., which occurs when the defendant is 18 years of age or older and the victim is 12 years of age or older but younger than 18. The immediate next lesser of s. 794.011(5)(a), Fla. Stat. is s. 794.011(5)(b), Fla. Stat., which occurs when both the defendant and victim are 18 years of age or older. The next lesser is covered by s. 794.011(5)(c), Fla. Stat., which occurs when the defendant is younger than 18 and the victim is 12 or older. The next lesser is Lewd or Lascivious Battery, which the Committee amended upon post-publication to include s. 800.04(4)(a)2, Fla. Stat. (the forcing of a person less than 16 to engage in any act of sexual activity). Finally, the next Category 1 lesser is the Battery in s. 784.03(1)(a)1, Fla. Stat., which is an intentional touching against the will of the victim.

In the Category Two box, the Committee again proposes to delete all sex-related crimes but to add a note in the comment section that there are many possible sex-related Category Two lesser-included offenses depending on the charging document and the evidence. The non-sex-related Category Two offenses are then listed in descending order. The misdemeanor Battery in Category Two is for s. 784.03(1)(a)2, Fla. Stat., which covers the intentional causing of bodily harm.

The Comment section includes the explanation of the asterisk in the lesser-included offense box, the note about there being many possible sex-related lesser-included crimes, a new note about other standard instructions that cover the Dangerous Sexual Felony enhancement, a re-located note about the multiple perpetrators enhancement, and a new note that explains Instruction 11.4 can be used as a template if s. 794.011(5)(d), Fla. Stat. is charged. However, s. 794.011(5)(d), Fla. Stat. covers a sexual battery on a person over the age of 12, without the victim's consent, without using physical force likely to cause serious personal injury, but the defendant has been previously convicted of certain enumerated offenses. Most of the enumerated offenses can be proven to the judge at a sentencing hearing because of the recidivism exception in *Apprendi v. New Jersey*, 530 U.S. 466 (2000). But for the priors of kidnapping and false imprisonment, there are additional facts in the statute (victim was a minor and the defendant committed a sex crime on the minor during the course of the kidnapping or false imprisonment). Those facts are not likely to be included in a judgment and sentence for kidnapping or false imprisonment and thus they are likely needed to be proven to the jury in order for s. 794.011(5)(d), Fla. Stat. to apply.

All votes were unanimous and the proposal was published in the January 1, 2015, edition of The Florida Bar *News*. No comments were received. Upon post-publication review, the Committee voted unanimously to send the proposal to the Court.

PROPOSAL #8: INSTRUCTION 11.5

This instruction covers the crime in s. 794.011(8)(a), Fla. Stat., which is soliciting a person less than 18 years old to engage in an act which constitutes sexual battery by a person in familial or custodial authority.

The first proposed change of significance is to delete the words "under the age of 18" in the title because the word "child" already covers that concept. The next change is to re-order the elements so that the act of the defendant is listed as element #1, the age of the victim is listed as element #2, and the defendant's relationship to the victim is element #3. Within element #1, the Committee thought the instruction would be more easily understood if the word "solicited" were substituted for the options of "commanded, encouraged, hired, requested, or tried to induce" and then the word "solicited" was defined later in the instruction in accordance with the definition used in s. 777.04(2), Fla. Stat. Also within element #1, the Committee thought the instruction would read better if the jurors were told that the element was: "(Defendant) solicited (victim) to engage in a sexual battery" and then the term "sexual battery" was defined.

After the definition of "sexual battery" was inserted, the next change was to add the words "of Solicitation" in the sentence about it not being necessary for a sexual battery to actually take place for the crime to be completed. The reason for the change was that the Committee thought the sentence would be more easily understood by making it clear that the crime referred to a solicitation.

The next set of changes were simply italicized cites to either statutes or case law which provide support for the instruction. The enhancement section for the defendant being an authority figure at the school where the victim attends was also added. In the Comment section, the Committee added references to a) other instructions that cover the dangerous sexual felony offender enhancement and b) the new adult-on-minor sentencing multiplier.

All votes were unanimous and the proposal was published in the January 1, 2015 edition of The Florida Bar *News*. No comments were received.

Upon post-publication review, the Committee realized that one option within Lewd or Lascivious Battery (encouraging or enticing a person under 16 to engage in sexual activity) was a necessary lesser-offense of this crime. Therefore, the Committee deleted the sentence about there being no lesser included crime and added a new table and an explanation for the asterisk in the Comment section. The Committee voted unanimously to send the proposal to the Court.

PROPOSAL #9 – INSTRUCTION 11.6

This instruction covers the crime in s. 794.011(8)(b), Fla. Stat., Engaging in an Act Which Constitutes Sexual Battery Upon or With a Child 12 Years of Age or Older but Younger than 18 Years of Age by a Person in a Familial or Custodial

Authority. Accordingly, the first change is to ensure that the title at the top of the instruction matches the statute. The next change is to re-order the elements so that the act of the defendant is listed as element #1, the age of the victim is listed as element #2, and the defendant's relationship to the victim is element #3. Within element #1, the Committee's changes are designed so that the instruction almost exactly tracks the statute with; "(Defendant) engaged in any act which constituted sexual battery" and then "sexual battery" is defined later.

For element #1b, the Committee added the italicized note about a finger being an object to help avoid confusion in cases involving a defendant's finger having union, not penetration, with a victim's vagina.

The next set of changes were simply italicized cites to either statutes or case law that provide support for the instruction. The enhancement section for the defendant being an authority figure at the school where the victim attends was also added.

The Committee again concluded that significant changes should be made to the box of lesser-included offenses because of the varying ages in the sexual battery statutes. The sexual batteries in s. 794.011(5)(a)–(5)(c) are the first three lesser offenses and are listed in descending order of severity. Then the Lewd or Lascivious Batteries in s. 800.04(4)(a), Fla. Stat., are listed (along with an explanation for the asterisk in the comment section). The misdemeanor battery of intentional touching against the will is the last lesser-included offense in Category 1.

In Category 2, the Committee deleted any sex-related crime and added a comment that states there are sex-related crimes that could be Category 2 offenses depending on the charging document and the evidence. The non-sex-related Category 2 offenses are listed in descending order and the misdemeanor Battery of intentionally causing bodily harm is one of those crimes listed in Category 2.

In the Comment section, the Committee added a note about the possibility of the parties paring down the Category 1 offenses if ages are not in dispute. Also, references were added to a) other instructions that cover the dangerous sexual felony offender enhancement and b) the new adult-on-minor sentencing multiplier.

All votes were unanimous and the proposal was published in the January 1, 2015 edition of the Bar *News*. No comments were received. Upon post-publication review, the Committee voted unanimously to send the proposal to the Court.

PROPOSAL #10 – INSTRUCTION 11.6(a)

In 2014, the legislature created s. 794.011(8)(c), Fla. Stat., which mirrors s. 794.011(2)(a) and (2)(b), Fla. Stat., except for the additional element that the defendant was in a position of familial or custodial authority to the victim. The Committee did not think this crime would be charged often because it makes little

sense for the state to take on the burden of proving an extra element when there is no increase in penalty. But for purposes of completeness, the Committee created an instruction for s. 794.011(8)(c), Fla. Stat., that mirrors Instruction 11.1, except for the additional element.

The Committee tracked the title of the crime from the statute and then put all the possible variations of sexual battery (or an attempt to commit sexual battery that injures the sexual organs of the victim) in element #1. The relationship between the defendant and the victim is element #2. The age of the victim is element #3. The possible ages of the defendant are in elements #4a and #4b.

The Committee then added a number of italicized headings with statutory cites or case law cites to provide support for various parts of the proposed standard instruction. s. 794.011(1)(h), Fla. Stat. captures the provision that sexual battery does not include an act done for a bona fide medical purpose. The cite to *Lakey v. State* captures the idea that an object includes a finger. s. 794.021, Fla. Stat., covers the law that states ignorance of the victim's age or the defendant's bona fide belief of the victim's age is not a defense. s. 794.011(8), Fla. Stat., supports the instruction that consent is not a defense.

The heading for the box of lesser-included offenses was made the most serious crime covered by this instruction, which is the defendant being 18 years of age or older. Then, s. 794.011(2)(a) and (2)(b), Fla. Stat., were listed as the first two lesser-included offenses because they have just one less element (defendant does not have to be in a position of familial or custodial authority to victim). Then the Committee listed the other crime covered in this instruction because it pertains to the defendant being younger than 18. Then, the next lesser offenses are the sexual batteries in s. 794.011(5)(a)–(5)(c), Fla. Stat., followed by the Lewd or Lascivious Batteries, followed by the misdemeanor battery of intentional touching against the will.

The Category 2 offenses were then listed in descending order of severity.

Finally, the Committee added some comments that it thought would be helpful. The Committee pointed out that the Category 1 lesser-included offenses could be pared down if ages were not in dispute. The Committee explained the asterisk in the Category 1 box for Lewd or Lascivious Battery. The Committee explained that there could be a host of other sex-related crimes in Category 2. The Committee also directed practitioners to Instructions 11.16 and 11.16(a) if the State also charged the defendant qualified as a dangerous sexual felony offender.

All changes were approved unanimously by the Committee and were published in the January 1, 2015 issue of The Florida Bar *News*. No comments were received. Upon post-publication review, the Committee voted unanimously to send the proposal to the Court.

PROPOSAL #11 – INSTRUCTION 20.3

The 2014 legislature changed the welfare fraud statute (see s. 414.39, Fla. Stat. in Appendix C) which led the Committee to update the standard instructions.

Instruction #20.3 covers s. 414.39(1)(a), Fla. Stat., which is failing (and fraudulently) to disclose a material fact used to determine benefits. Element #3 in the existing instruction could be construed to mean that the defendant had to receive benefits in order to violate the statute. The Committee did not agree with that interpretation because the plain language of the statute does not require that the defendant receive benefits. Therefore, the Committee reduced the elements in the instruction to two elements, the first being that the defendant knowingly failed to disclose a material fact by false statement, misrepresentation, etc. and the second element is that the fact was used or was to be used to determine benefits from a state or federally funded public assistance program. Next, the Committee added the varying values in s. 414.39(5), Fla. Stat. followed by the definition of the value of the benefit (which is based on s. 414.39(5)(e), Fla. Stat.). The definition of "fraud" in s. 414.39(5)(f), Fla. Stat. was added and the definition of "attempt" was deleted because that word is not used in the instruction. Finally, an italicized cite to s. 414.39(7), Fla. Stat. was added above the "repayment is not a defense" section, and the inferences in s. 414.39(8)(a) and (8)(b), Fla. Stat., were added.

The Committee passed the instruction unanimously. It was published in The Florida Bar *News* on January 1, 2015.

Comments were received from the Florida Public Defenders Association (FPDA) and the Florida Association of Criminal Defense Lawyers (FACDL). (See Appendix B.) Both groups argued that a juror may conclude that because repayment is not a defense, the fact of repayment might be deemed not relevant. The defense groups argued that the fact of repayment may be relevant to the issue of whether the funds were obtained "knowingly." As such, the commenters proposed: "**However, if you find that the defendant repaid all, or any part, of the funds received, you may consider the repayment in deciding whether the defendant acted knowingly, or instead by mistake or accident**." Upon post-publication review, the Committee unanimously disagreed with these suggestions. The Committee thought it highly unlikely that there would be a trial where the defendant repaid some or all of the money and would be arguing that he or she did not act "knowingly" and the fact of repayment helps prove that. The Committee thought that if such an instance were to occur, the defense could ask for a special instruction. The Committee did vote unanimously, however, to replace the italicized word "Defense" with an italicized "Give if applicable." The vote was also unanimous to send the proposal to the Court.

Note: The comments about repayment not a defense section and the Committee's response apply to all the Welfare Fraud proposals.

PROPOSAL #12 – INSTRUCTION 20.4

This instruction covers s. 414.39(1)(c), Fla. Stat., which is aiding and abetting someone who violates s. 414.39(1)(a) or (1)(b), Fla. Stats. The existing instruction requires the state to prove that the defendant received benefits but that is not in the plain language of the statute. Thus, the Committee reduced the number of elements to one, which covers knowingly aiding or abetting another person in failing to disclose the things mentioned in s. 414.39(1)(a) or (1)(b), Fla. Stats.

Next, the Committee added the varying values in s. 414.39(5), Fla. Stat. followed by the definition of the value of the benefit (which is based on s. 414.39(5)(e), Fla. Stat.). The definition of "fraud" in s. 414.39(5)(f), Fla. Stat. was added and the definition of "attempt" was deleted because that word is not used in the instruction. Finally, an italicized cite to s. 414.39(7), Fla. Stat. was added above the "repayment is not a defense" section, and the inferences in s. 414.39(8)(a) and (8)(b), Fla. Stat., were added.

The Committee passed the instruction unanimously. It was published in The Florida Bar *News* on January 1, 2015. The comments from the FPDA and FACDL and the Committee's response were discussed above. Upon post-publication review, the vote was unanimous to send the proposal to the Court.

PROPOSAL #13 – INSTRUCTION 20.5

This instruction covers s. 414.39(1)(b), Fla. Stat., which is failing to disclose a change in circumstances in order to receive benefits that the person is not entitled to receive. The existing standard instruction can be interpreted to require the state to prove that the defendant received those benefits. Because the Committee did not think that was an element in the statute, the Committee deleted element #2 and reworded element #1 to track the statute.

Next, the Committee added the varying values in s. 414.39(5), Fla. Stat. followed by the definition of the value of the benefit (which is based on s. 414.39(5)(e), Fla. Stat.). The definition of "fraud" in s. 414.39(5)(f), Fla. Stat. was added and the definitions of "fraudulent," "aid or abet," and "attempt" were deleted because those words are not used in the instruction. Finally, an italicized cite to s. 414.39(7), Fla. Stat., was added above the "repayment is not a defense" section, and the inferences in s. 414.39(8)(a) and (8)(b), Fla. Stat. were added.

The Committee passed the instruction unanimously. It was published in The Florida Bar *News* on January 1, 2015. The comments from the FPDA and FACDL and the Committee's response were discussed above. Upon post-publication review, the vote was unanimous to send the proposal to the Court.

PROPOSAL #14 – INSTRUCTION 20.6

This instruction covers s. 414.39(2), Fla. Stat. The Committee changed the title of the instruction and element #1 to track the statute.

The statute also requires that the defendant perform the criminal act (use, transfer, acquire, attempt to use or transfer or acquire) the benefit "in any manner not authorized by law." To capture this part of the statute, the Committee added a sentence that reads: **The law requires** *(insert the appropriate law pertaining to the relevant item).*

Next, the Committee added the varying values in s. 414.39(5), Fla. Stat., followed by the definition of the value of the benefit (which is based on s. 414.39(5)(e), Fla. Stat.). An italicized cite to s. 414.39(7), Fla. Stat. was added above the "repayment is not a defense" section. Also, the statutory idea that "the return of authorization or identification is not a defense" was added as an option. Finally, the inferences in s. 414.39(8)(a) and (8)(b), Fla. Stat., were added.

The Committee passed the instruction unanimously. It was published in The Florida Bar *News* on January 1, 2015. The comments from the FPDA and FACDL and the Committee's response were discussed above. Upon post-publication review, the vote was unanimous to send the proposal to the Court.

PROPOSAL #15 – INSTRUCTION 20.7

This instruction covers s. 414.39(3)(a) and (3)(b), Fla. Stat. Those provisions cover a) an administrator aiding a misappropriation or doing it himself or attempting to misappropriate, and b) an administrator knowingly failing to disclose fraudulent activity. Under the existing scheme in the standard jury instructions, Instruction 20.7 covers the misappropriation part of the statute and Instruction 20.8 covers the knowing failure to disclose part of the statute.

Additionally, because there was no elegant way to put the two subsections together for an administrator aiding or misappropriating, the Committee thought it best to separate the elements for s. 414.39(3)(a), Fla. Stat. from the elements for s. 414.39(3)(b), Fla. Stat. The first subsection covers a variety of public assistance benefits while the second subsection pertains to food assistance benefits.

The Committee thought three elements would capture the misappropriation aspect of s. 414.39(3)(a), Fla. Stat. The first element is that the defendant had duties related to public assistance. The second element is that by virtue of his or her position, the defendant had been entrusted with or gained possession of some public assistance. The third element is that the defendant misappropriated or attempted to misappropriate or aided someone in the misappropriation of the benefit.

The Committee thought that two elements could capture the misappropriation aspect of s. 414.39(3)(b), Fla. Stat. The first element is that the

defendant had duties related to public assistance. The second element is that the defendant misappropriated or attempted to misappropriate or aided in the misappropriation of food assistance benefits.

Next, the Committee added the varying values in s. 414.39(5), Fla. Stat., followed by the definition of the value of the benefit (which is based on s. 414.39(5)(e), Fla. Stat.). The Committee then added definitions for "fraud," "aid or abet," and "knowingly." These definitions came from either a statute or other jury instructions.

An italicized cite to s. 414.39(7), Fla. Stat. was added above the "repayment is not a defense" section. Also, the statutory idea that "the return of authorization or identification is not a defense" was added as an option. Finally, the inferences in s. 414.39(8)(a) and (8)(b), Fla. Stat. were added.

The Committee passed the instruction unanimously. It was published in The Florida Bar *News* on January 1, 2015. The comments from the FPDA and FACDL and the Committee's response were discussed above. Upon post-publication review, the vote was unanimous to send the proposal to the Court.

PROPOSAL #16 – INSTRUCTION 20.8

As mentioned previously, Instruction 20.8 covers the part in s. 414.39(3)(a), Fla. Stat., regarding the administrator failing to disclose. The Committee made slight revisions to the elements section to ensure that the elements tracked the pertinent parts of the statute.

Next, the Committee added the varying values in s. 414.39(5), Fla. Stat. followed by the definition of the value of the benefit (which is based on s. 414.39(5)(e), Fla. Stat.). The Committee then added definitions for "fraud" and "aid or abet." These definitions came from a statute or other jury instructions.

An italicized cite to s. 414.39(7), Fla. Stat. was added above the "repayment is not a defense" section. Also, the statutory idea that "the return of authorization or identification is not a defense" was added as an option. Finally, the inferences in s. 414.39(8)(a) and (8)(b), Fla. Stat., were added.

The Committee passed the instruction unanimously. It was published in The Florida Bar *News* on January 1, 2015. The comments from the FPDA and FACDL and the Committee's response were discussed above. Upon post-publication review, the vote was unanimous to send the proposal to the Court.

PROPOSAL #17 – INSTRUCTION 20.9

This instruction covers s. 414.39(1)(c), Fla. Stat., which is the receipt or attempt to receive or the aiding of another in the receipt of unauthorized public assistance benefits. The Committee made slight revisions to the sole element in order to ensure that the element tracked the statute. Next, the Committee added the

varying values in s. 414.39(5), Fla. Stat. followed by the definition of the value of the benefit (which is based on s. 414.39(5)(e), Fla. Stat.). The Committee then deleted the definition for "fraudulently" because that word is not used in the instruction but definitions for "aid or abet" and "attempt" were added. These definitions came from other jury instructions. An italicized cite to s. 414.39(7), Fla. Stat. was added above the "repayment is not a defense" section. Also, the statutory idea that "the return of authorization or identification is not a defense" was added as an option. Finally, the inferences in s. 414.39(8)(a) and (8)(b), Fla. Stat., were added.

The Committee passed the instruction unanimously. It was published in The Florida Bar *News* on January 1, 2015. The comments from the FPDA and FACDL and the Committee's response were discussed above. Upon post-publication review, the vote was unanimous to send the proposal to the Court.

PROPOSAL #18 – INSTRUCTION 20.10

This instruction covers s. 414.39(4)(b), Fla. Stat., which is the filing of a claim for benefits without crediting the assistance program without crediting the assistance received from social security, or other sources. The first change was to make the statutory cite at the top of the instruction s. 414.39(4)(b), Fla. Stat. The existing element did not need to be revised but the Committee did add the varying values in s. 414.39(5), Fla. Stat. followed by the definition of the value of the benefit (which is based on s. 414.39(5)(e), Fla. Stat.). The Committee also added an italicized cite to s. 414.39(7), Fla. Stat. above a new "repayment is not a defense" section. Finally, the inferences in s. 414.39(8)(a) and (8)(b), Fla. Stat. were added.

The Committee passed the instruction unanimously. It was published in The Florida Bar *News* on January 1, 2015. The comments from the FPDA and FACDL and the Committee's response were discussed above. Upon post-publication review, the vote was unanimous to send the proposal to the Court.

PROPOSAL #19 – INSTRUCTION 20.11

This instruction covers the part of s. 414.39(4)(a), Fla. Stat. that pertains to the billing of public assistance in excess of that allowed by law. The existing element did not need to be revised but the Committee did add the varying values in s. 414.39(5), Fla. Stat. The Committee also added an italicized cite to s. 414.39(7), Fla. Stat. above a new "repayment is not a defense" section.

The Committee passed the instruction unanimously. It was published in The Florida Bar *News* on January 1, 2015. The comments from the FPDA and FACDL and the Committee's response were discussed above. Upon post-publication review, the vote was unanimous to send the proposal to the Court.

PROPOSAL #20 – INSTRUCTION 20.12

This instruction covers the part s. 414.39(4)(a), Fla. Stat., that covers the filing, attempted filing, or adding someone in the filing for a claim for services to a recipient of public assistance benefits for services which were false, not rendered, or for unauthorized items or services. The existing element did not need to be revised but the Committee did add the varying values in s. 414.39(5), Fla. Stat., followed by the definition of the value of the benefit (which is based on s. 414.39(5)(e), Fla. Stat.). The Committee also added an italicized cite to s. 414.39(7), Fla. Stat., above a new "repayment is not a defense" section and the inferences in s. 414.39(8)(a) and (8)(b), Fla. Stat.

The Committee passed the instruction unanimously. It was published in The Florida Bar *News* on January 1, 2015. The comments from the FPDA and FACDL and the Committee's response were discussed above. Upon post-publication review, the vote was unanimous to send the proposal to the Court.

PROPOSAL #21 – INSTRUCTION 22.16

The proposal for a new Instruction 22.16 is for s. 849.11, Fla. Stat. (see Appendix C.) The idea for a standard instruction for this crime and the proposal itself came from Assistant State Attorney Joe Cocchiarella in Orange County who suggested that a standard instruction was needed. The statute looks simple but is actually a bit tricky to understand. After debate, the Committee agreed with Mr. Cocchiarella that there are three elements:

a) (Defendant) **[set up] [promoted] [played at] a game of chance.**

b) (Defendant) **did so [by lot] [with [dice] [cards] [numbers] [hazards] [any gambling device]].**

c) (Defendant) **did so:**

a. for the disposal of money or other thing of value; or

b. [under the pretext of a sale, gift, or delivery] [or] [for any right, share, or interest thereof].

The Committee did not believe there were any necessarily lesser-included offenses but did put Attempt in Category 2.

The Committee passed the instruction unanimously. It was published in The Florida Bar *News* on January 1, 2015. No comments were received. Upon post-publication review, the Committee voted unanimously to file the proposal with 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 25th day of February, 2014.

s/ Jerri L. Collins
The Honorable Jerri L. Collins
Chair, Supreme Court Committee on
Standard Jury Instructions in Criminal Cases
Seminole County Courthouse
301 N. Park Avenue
Sanford, FL 32772
Florida Bar Number #886981
Jerri.Collins@flcourts18.org

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 the Honorable Julianne Holt at holtj@pd13.state.fl.us; to Assistant Public Defender Steven Been at steve.been@flpd2.com; to Assistant Public Defender Richard Summa at Richard.summa@flpd2.com; to Luke Newman at luke@lukenewmanlaw.com; and to William Ponall at ponallb@criminaldefenselaw.com, this 25th day of February, 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
HONORABLE JERRI L. COLLINS
Chair, Committee on Standard Jury
Instructions in Criminal Cases
Florida Bar Number #886981
Jerri.Collins@flcourts18.org