

IN THE SUPREME COURT OF FLORIDA

IN RE: STANDARD JURY

INSTRUCTIONS IN CRIMINAL CASES
REPORT 2016-03

CASE NO.: SC16-

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

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

RECEIVED, 05/10/2016 09:58:47 AM, Clerk, Supreme Court

	<u>Instruction #</u>	<u>Title</u>
Proposal 1	2.08	Submitting Case to Jury (Jimmy Ryce)
Proposal 2	3.13	Submitting Case to Jury (Criminal)
Proposal 3	20.13	Fraudulent Use or Possession with Intent to Fraudulently Use Personal Identification Information
Proposal 4	20.14	Harassment by Use of Personal Identification Information
Proposal 5	20.15	Fraudulent Use of Personal Identification Information of a [Minor] [Person Sixty Years of Age or Older]
Proposal 6	20.16	Fraudulent Use of Personal Identification Information of a [Minor] [Person Sixty Years of Age or Older] by a Parent, Guardian, or Person who Exercised Custodial Authority
Proposal 7	20.17	Fraudulent Use or Possession with Intent to Fraudulently Use Personal Identification Information Concerning a [Deceased Individual] [Dissolved Business Entity]
Proposal 8	20.18	[Fraudulent Creation of] [Fraudulent Use of] [Possession with Intent to Fraudulently Use] Counterfeit Personal Identification Information
Proposal 9	20.21	Fraudulent Use of Personal Identification Information of a [Disabled Adult] [Public Servant] [Veteran] [First Responder] [State Employee] [Federal Employee]

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. All proposals were published in the January 1, 2016 issue of *The Florida Bar News*. No comments were received.

PROPOSAL #1: INSTRUCTION 2.08

Instruction 2.08 is entitled “Submitting Case to Jury” and is used solely in Involuntary Civil Commitment of Sexually Violent Predator (“Jimmy Ryce”) cases. The only substantive change is to add a sentence in the section pertaining to jury questions to the judge. The proposal, which came from Collier County Circuit Judge Lauren Brodie, is to add the following sentence: “**If you have voted, do not disclose the actual vote in the note.**” Support for this new sentence is suggested in *Scoggins v. State*, 691 So. 2d 1185 (Fla. 4th DCA 1997), in which the Fourth District Court stated that knowing the numerical divisions within the jury may lead the trial judge to interact inappropriately with the jurors.

The only other change to the body of the instruction is to delete the unnecessary brackets in alternatives a and b, which pertain to the jury's ability to view exhibits.

The Committee vote for these changes was unanimous. No comments were received from publication. Post-publication, the vote was unanimous to send the proposal in Appendix A to the Court.

PROPOSAL #2: INSTRUCTION 3.13

Instruction 3.13, which is entitled “Submitting Case to Jury,” is the counterpart in the criminal instructions to Instruction 2.08 (see Proposal #1). The main substantive change is to add a sentence in the section pertaining to jury questions to the judge. The proposal, which came from Collier County Circuit Judge Lauren Brodie, is to add: “**If you have voted, do not disclose the actual vote in the note.**” Support for the new sentence is suggested by *Scoggins v. State*, 691 So. 2d 1185 (Fla. 4th DCA 1997).

The only other changes to the body of the instruction are (1) to relocate the instructions to jurors regarding “communication rules” from the fourth paragraph to the end of the second paragraph and (2) to delete the unnecessary brackets in alternatives a and b, which pertain to the jury's ability to view exhibits.

The Committee vote for these changes was unanimous. No comments were received from publication. Post-publication, the vote was unanimous to send the proposal in Appendix A to the Court.

INITIAL NOTE FOR PROPOSALS #3—#9

The Committee revised the standard “Criminal Use of Personal Identification Information” instructions because of changes made by the 2015 Legislature to section 817.568, Florida Statutes (Chapter 2015-166). In the 2015 version of section 817.568, Florida Statutes, the Legislature replaced the word “individual” with the word “person” throughout the statutes. By doing so, the Committee needed to provide a definition of “person,” which is defined in section 817.568(1)(e), Florida Statutes. That statutory definition of “person” refers to section 1.01(3), Florida Statutes, which is the definition the Committee used. In addition, in some parts of the statutes, the Legislature added the term “dissolved business entity,” in response to which the Committee inserted in the appropriate instruction. Other changes are discussed below.

PROPOSAL #3: INSTRUCTION 20.13

In order to better track the statute, the Committee changed the name of the crime in section 817.568(2), Florida Statutes, from “Fraudulent Use or Possession of Personal Identification Information” to “Fraudulent Use or Possession with Intent to Fraudulently Use Personal Identification Information.” The Committee added “knowingly” to the definition of “willfully” for consistency with the definition of “willfully” in many other standard jury instructions. The Committee changed “individual” to “person” to track the 2015 statute and defined “person” as discussed above. The only other changes were to add some italicized statutory citations and to update the Comment section. The proposal passed unanimously and was published. No comments were received. Upon post-publication review, the Committee substituted an unbolded “(victim)” for the bolded “**victim**” in section 817.568(10), Florida Statutes, so that the judge would not read the word “victim” to the jury. The vote was unanimous to send the proposal in Appendix A to the Court.

PROPOSAL #4: INSTRUCTION 20.14

This instruction covers the crime in section 817.568(4), Florida Statutes. The only changes were to add “knowingly” to the definition of “willfully;” to replace “individual” with “person;” to define the word “person;” to add italicized statutory citations above certain terms; and to move an italicized note about an enhanced penalty into the Comment section. The proposal passed unanimously and was published. No comments were received. Upon post-publication review, the vote was unanimous to send the proposal in Appendix A to the Court.

PROPOSAL #5: INSTRUCTION 20.15

This instruction covers the crime in section 817.568(6), Florida Statutes. The Committee added the words “At the time” in element 2 to better link the act of the defendant with the age of the victim. The Committee also replaced the word “individual” with the word “person” in the definition of “personal identification information” in light of the 2015 statutory change. As discussed above, the Committee added the appropriate statutory definition of “person.” The proposal passed unanimously and was published. No comments were received. Upon post-publication review, the vote was unanimous to send the proposal in Appendix A to the Court.

PROPOSAL #6: INSTRUCTION 20.16

This instruction covers the crime in section 817.568(7), Florida Statutes. The Committee added the words “At the time” in element 2 to better link the defendant’s act with the age of the victim. The Committee also replaced the word “individual” with the word “person” in the definition of “personal identification information” in light of the 2015 statutory change. As discussed above, the Committee added the appropriate statutory definition of “person.” The proposal passed unanimously and was published. No comments were received. Upon post-publication review, the vote was unanimous to send the proposal in Appendix A to the Court.

PROPOSAL #7: INSTRUCTION 20.17

This instruction covers the crime in section 817.568(8), Florida Statutes. The Committee changed the name of the crime to track the statute (which now includes “dissolved business entities.”) The Committee deleted the words “without authorization” in element 1 because those words are not in the statute. The Committee added the words “At the time” in element 2 to better link the defendant’s act with the status of victim as being deceased or as being a dissolved business entity. The word “knowingly” was added to the definition of “willfully” for consistency with other instructions. The definition of “authorization” is deleted because that word is not in the statute. Because the statute refers to a “deceased individual,” the Committee added the definition of “individual” in section 817.568(1)(d), Florida Statutes. The Committee proposes to amend the definition of “personal identification information” to refer to a “specific person or dissolved business entity” because this instruction pertains to dissolved business entities. Finally, in the sections of the instruction addressing penalties, the Committee proposes to use (in brackets) “deceased individual” or “dissolved business entity” in order to capture the statute. Other than the addition of a few italicized statutory citations for certain terms, there are no other proposed changes. The proposal passed unanimously and was published. No comments were received. Upon post-

publication review, the Committee substituted an unbolded “(victim)” for the bolded “**victim**” in section 817.568(10), Florida Statutes, so that the judge would not read the word “victim” to the jury. The vote was unanimous to send the proposal in Appendix A to the Court.

PROPOSAL #8: INSTRUCTION 20.18

This instruction covers the crime in section 817.568(9), Florida Statutes. The Committee changed the name of the crime to track the statute. The Committee also added the word “fraudulently” to element one in order to require the State to prove the defendant possessed with the intent to fraudulently use counterfeit or fictitious personal identification information. The word “knowingly” was added to the definition of “willfully” for consistency with the other instructions. The definition of “authorization” is deleted because that word is not in the statute. The word “person” is substituted for “individual” in the definition of “personal identification information” and the word “person” is defined as discussed above. Finally, the Committee moved an italicized note about an enhanced penalty into the Comment section. The proposal passed unanimously and was published. No comments were received. Upon post-publication review, the vote was unanimous to send the proposal in Appendix A to the Court.

PROPOSAL #9: INSTRUCTION 20.21

This instruction covers the crime in section 817.568(11), Florida Statutes. The Committee added the words “At the time” in element 2 to better link the defendant’s act with the status of victim. The word “person” is substituted for “individual” in the definition of “personal identification information.” The word “person” was not defined in this instruction because the instruction pertains to disabled adults, veterans, public employees, etc. and not to firms, associations, or children. The proposal passed unanimously and was published. No comments were received. Upon post-publication review, the Committee realized it needed to change the definition of “public servant” because the Legislature promulgated a new definition of “public servant” in section 838.014, Florida Statutes. (See Chapter 2016-151.) The vote was unanimous to send the proposal in Appendix A 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 10th day of May, 2016.

s/ Judge F. Rand Wallis
The Honorable F. Rand Wallis
Chair, Supreme Court Committee on
Standard Jury Instructions in Criminal Cases
Fifth District Court of Appeal
300 South Beach Street
Daytona Beach, Florida 32114
Florida Bar Number: 980821
WallisR@flcourts.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/ Judge F. Rand Wallis
The Honorable F. Rand Wallis
Chair, Supreme Court Committee on
Standard Jury Instructions in Criminal
Cases
Fifth District Court of Appeal
300 South Beach Street
Daytona Beach, Florida 32114
Florida Bar Number: 980821
WallisR@flcourts.org