NEVADA PATTERN JURY INSTRUCTIONS

CRIMINAL

FROM THE NEVADA SUPREME COURT'S
STATEWIDE CRIMINAL RULES COMMITTEE
CRIMINAL JURY INSTRUCTIONS SUBCOMMITTEE



NEVADA
PATTERN CRIMINAL JURY
INSTRUCTIONS

Nevada Supreme Court

Nevada Statewide Criminal Rules Committee

Criminal Jury Instructions Subcommittee

DISCLAIMER AND INFORMATION

These pattern jury instructions are intended to address the elements of crimes and contours of the criminal law that a jury will apply to the facts. They are designed to instruct a jury what must be proven for a party to prevail.

The subcommittee authored and edited the instructions from an objective point of view, with a central focus upon being as party-neutral as possible.

These pattern instructions are not intended as an exhaustive listing of the elements of all crimes in Nevada or all possible legal principles that might apply in a specific criminal case. They represent a Nevada statewide compilation of what is believed to likely be the most frequently used crime elements and legal principles. The facts and circumstances of specific criminal trials may, and frequently will, warrant the inclusion of additional instructions addressing legal principles or matters that do not appear in this compilation for the charge to be "accurate, clear, and complete."[1] A legally accurate proposed jury instruction should not be rejected solely because it is not included in this compilation.[2]

In almost all instances, the legal principles and legal definitions represented in these instructions are those that appear in a statute or have been addressed in a decision of the Nevada Supreme Court or Court of Appeals. This should not be taken as a disapproval or rejection of reliance upon extra-jurisdiction case law or legal sources. In fact, the Nevada Supreme Court frequently consults and relies upon extra-jurisdiction sources. It simply represents an editorial decision that the formulation of additional appropriate jury instructions based upon extra-jurisdiction legal sources is best left to the trial courts and counsel based upon the facts and circumstances of each particular case.

These model instructions have been formulated utilizing the language provided by the Legislature in the relevant statutes, and the language employed by the Nevada Supreme Court interpreting the law. This, however, should not be taken as a mandate that the model formulation must be used "as is." These instructions are models. They are intended to direct practitioners and judges to the law that applies to a particular case. They are intended to be stock instructions consistent with prevailing statutory and decisional case law available at the time of this compilation and are not substitutes for the individual research and adaptation that may be necessary in a specific case. Trial courts and practitioners should not solely rely upon these stock instructions, but are also encouraged to tailor individual instructions to the facts and circumstances of each case, as they deem appropriate.

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[1] *Crawford v. State*, 121 Nev. 744, 121 P.3d 582 (2005).

[2] *See* NRS 175.161(3) ("Either party may present to the court any written charge, and request that it be given. If the court believes that the charge is pertinent and an accurate statement of the law, *whether or not the charge has been adopted as a model jury instruction*, it must be given."). (emphasis added)

The Nevada Supreme Court has emphasized that "jury instructions should be crafted with an eye toward the particular facts of each case and should not simply be lifted from form books, other cases, and the like."[3]

[3] *Jackson v. State,* 117 Nev. 116, 121, 17 P.3d 998, 1001 (2001). *See also Runion v. State*, 116 Nev. 1041, 1051, 13 P.3d 52, 59 (2000) ("The district courts should tailor instructions to the facts and circumstances of a case, rather than simply relying on 'stock' instructions."); *Guidry v. State*, 138 Nev. Adv. Op. 39, 510 P.3d 782, 788–89 (2022) ("along with the duty to correctly instruct the jury on relevant general principles of law, the trial court 'has the correlative duty to refrain from instructing on principles of law which not only are irrelevant to the issues raised by the evidence but also have the effect of confusing the jury or relieving it from making findings on relevant issues.'") (quoting *Gonzalez v. State,* 131 Nev. 991, 997-98, 366 P.3d 680, 684 (2015)); *Crawford v. State*, 121 Nev. 744, 121 P.3d 582 (2005) ("Jurors should neither be expected to be legal experts nor make legal inferences with respect to the meaning of the law; rather, they should be provided with applicable legal principles by accurate, clear, and complete instructions specifically tailored to the facts and circumstances of the case.").

INTRODUCTION AND ACKNOWLEDGEMENTS

It should be noted, several unsuccessful efforts in the past 30 years have been made to publish a book on Nevada Pattern Criminal Jury Instructions. No thorough compilation and update has been performed since the late Honorable Justice, then District Judge, Myron Leavitt prepared an informal notebook of instructions and organization he was credited with providing that only a few judges and practitioners around the State had available as a model. However, much of the law and language that was applicable many years ago unfortunately does not apply today, and the notebook was outdated and not maintained.

Three previous ill-fated criminal jury instruction committees were attempted statewide in the late 1980s, 1990s and 2000s, which had commenced this project. In 1993, the well-respected late Washoe District Judge N. Patrick Flanagan passionately attempted to chair a statewide committee to undertake this assignment to no avail. Nevada was one of three States not to have pattern criminal jury instructions compiled into a manual.[1] I was a member on each of those criminal jury instruction committees during those unsuccessful attempts as a criminal defense attorney representative, which lost energy over time and never completed this daunting task.

On January 23, 2015, pursuant to ADKT 0491, I was appointed by Order of the Nevada Supreme Court to be a member of the Statewide Rules of Criminal Procedure. It was decided at the inaugural April 27, 2015 work group meeting of the Committee, as co-chaired by then Nevada Supreme

[1] Emily Dryer, Chelsea Stace,& Adrian Viesca, *Statewide Rules of Criminal Procedure: A 50 State Review*, 1 Nev. L.J. Forum 1 (2017) at 32-33.

Court Justices Douglas and Cherry, that a Criminal Jury Instruction subcommittee would be formed. As a result of the fact I suggested that topic, I was volunteered to be Chair. With the help of my then college senior intern, later law clerk and now attorney, Jacee Broadway, we requested and compiled all of the jury instructions that were being used throughout the State as "stock instructions" at the time, culling and compiling the instructions to avoid duplication, including the "Leavitt instructions" for organizational assistance.

From 2015 to 2023, the Criminal Jury Instruction work group has met 46 times. The meetings ranged from 2-6 hours with an all-day retreat to present this publication to the Nevada Judiciary and trial practitioners.

Throughout the years of service there have been designated work group participants who are deserving of recognition. These subcommittee members have contributed to meetings at various times:

Luke Prengaman, now Court of Appeals Judge Deborah Westbrook,[2] Judge, now Justice Lidia Stiglich, Judge Connie Steinheimer, Judge Todd Young , Judge Nancy Porter, Regina Bradley, Scott Coffee, Mazie Pusich, Jessica Walsh, Howard Brooks and William Waters.

Special recognition to my Law Clerks Alison Gansert, Pierron Tackes, Regina Bradley, Jacee Broadway and Logan Williams who, during their respective tenures, in addition to their work for the Court, attended the meetings and compiled each instruction after the working group edited the instructions.

Washoe County Chief Deputy District Attorney Luke Prengaman is to be credited with rewriting, editing and providing the initial legal authority for each and every instruction prior to subcommittee editing. Like the

[2] Judge Westbrook represented the Clark County Public Defenders office during her service on the Criminal Jury Instruction work group prior to her election to the Court of Appeals.

Leavitt instructions before us, prior to editing, the modern compilation of statewide instructions should be called the “Prengaman instructions.” Mr. Prengaman was an original member of the subcommittee in 2015 and saw this project through to completion, attending, preparing and participating in all meetings as the state prosecution representative including, the last editorial read through meeting held in January 2023.

As well, this project could not have been possible without the dedicated efforts of Administrative Office of the Courts representative to the Criminal Jury Instruction subcommittee work group, Jamie Gradick. She worked tirelessly, without complaint, as the subcommittee’s liaison with the Nevada Supreme Court and work group secretary, taking the note history of each meeting since April 2015. With very few exceptions she attended and took the official notes every meeting.

I thank all of those who have contributed to this project. Your perseverance, energy and dedication created this much needed Nevada Pattern Criminal Jury Instruction manual.

Sincerely,

Washoe County District Judge Scott Freeman,

Member, Commission on Statewide Rules of Criminal Procedure

Chair, Working Group Sub Committee presenting Model Nevada Criminal Jury Instructions

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0.00: RULE NRCP 17 PRE VOIR-DIRE INSTRUCTION

At this time the Clerk will read the information [indictment] which is a statement of the charges against the Defendant.

[INFORMATION READ]

Ladies and Gentlemen, as I will discuss further during my questioning of you, every person charged with the commission of a crime is presumed innocent.

0.01: PRELIMINARY INSTRUCTION

You have been selected as the jury in this case, and I will now take a few minutes to talk to you about what to expect in this trial. My comments are intended to serve as an introduction to the trial. At the end of the trial I will give you more detailed instructions in writing, and those instructions will control your deliberations.

0.02: CRIMINAL CASE RULES

This is a criminal case, and there are two basic rules you must keep in mind.

First, the Defendant is presumed innocent unless and until proven guilty beyond a reasonable doubt. The Defendant is not required to present any evidence or prove his or her innocence. The law never imposes upon a Defendant in a criminal case the burden of calling any witnesses or introducing any evidence.

Second, to convict, the State must prove beyond a reasonable doubt the crime was committed, and the Defendant is the person who committed the crime.

0.03: DUTY OF THE JURY

It will be your duty to decide from the evidence to be presented whether the Defendant is guilty or not guilty. You are the sole judges of the facts. You will decide what the facts are from the evidence which will be presented. The evidence will consist of testimony of witnesses and documents and other things received into evidence as exhibits. You must apply the facts to the law which I shall give you and in that way reach your verdict. It is important you perform your duty of determining the facts diligently and conscientiously, for ordinarily there is no way of correcting an erroneous determination of facts by the jury.

You should not take anything I may say or do during the trial as indicating my opinion as to how you should decide the case or to influence you in any way in your determination of the facts.

0.04: CREDIBILITY OF WITNESSES

In deciding the facts of this case you may have to decide which witnesses to believe and which witnesses not to believe. You may believe everything a witness says, only part of it, or none of it.

In considering the weight or value of the testimony of any witness, you may consider the appearance, attitude, and behavior of the witness when testifying, and a number of other things, including: the witness's ability to see, hear, or know of the things the witness testifies to; the quality of the witness's memory; the inclination of a witness to speak truthfully; whether or not the witness has any interest in the outcome of the case or any motive, bias, or prejudice; whether the witness is contradicted by anything the witness said or wrote before the trial; and, how reasonable the witness's testimony is when considered with other evidence which you believe.

In deciding whether or not to believe a witness, keep in mind that people sometimes forget things. You need to consider whether a contradiction is an innocent lapse of memory or an intentional falsehood, and that may depend on whether it has to do with an important fact or only a small detail.

The weight or value of evidence does not necessarily depend on the number of witnesses testifying for one side. You must consider all the evidence and you may decide the testimony of a smaller number of witnesses on one side has more weight or value than that presented by the larger number of witnesses on the other side.

If you believe that any witness willfully testified falsely about a material fact in the case, you may disregard the whole of the evidence of any such witness or any portion that is not proved by other evidence.

However, you should bear in mind that discrepancies in a witness's testimony or between his or her testimony and that of others, if there are any, do not necessarily mean that you should disbelieve the witness, as failure of recollection is a common experience and innocent misrecollection is not uncommon. You are all certainly aware of the fact that two persons witnessing the same incident often will see or hear it differently.

Also, in considering a discrepancy in a witness's testimony, you should consider whether such discrepancy concerns an important fact or only a trivial detail.

0.05: DIRECT AND CIRCUMSTANTIAL EVIDENCE

There are two kinds of evidence: direct and circumstantial. Direct evidence is direct proof of a fact, such as testimony of an eyewitness. Circumstantial evidence is indirect evidence, proof of a chain of facts from which you could find that another fact exists, even though it has not been proved directly. Such evidence may consist of any acts, declarations, or circumstances admitted in evidence tending to prove the commission of a crime. You are entitled to consider both kinds of evidence. The law permits you to give equal weight to both, but it is for you to decide how much weight to give to any evidence.

[By way of example, if you wake up in the morning and see the ground, the sidewalks, and the streets are all wet and water is running down the gutters, you may decide from those facts that it rained during the night. This would be an example of circumstantial evidence. It is proof of one or more facts from which you can find another fact. However, if you are awake during the night and saw the rain fall, that would be direct evidence, something you personally saw.]

0.06: WHAT IS NOT EVIDENCE

Certain things are NOT evidence and you must not consider them as evidence in deciding the facts of this case: statements and arguments by the attorneys; questions and objections of the attorneys; testimony I instruct you to disregard; and anything you may see or hear while court is not in session. These things are not evidence.

Remember, evidence is only the sworn testimony by a witness while court is in session, documents, and other things received into evidence as exhibits.

0.07: RULINGS ON OBJECTIONS

There are rules of law which control what can be received into evidence. When an attorney asks a question or offers an exhibit into evidence and the attorney on the other side thinks that it is not permitted by the rules, the attorney may object. If I overrule the objection, the question may be answered or the exhibit received. If I sustain the objection, the question cannot be answered and the exhibit cannot be received. When I sustain an objection to a question, ignore the question and do not guess what the answer might have been. Sometimes I may order evidence stricken from the record and tell you to disregard or ignore such evidence. This means that when you are deciding the case, you must not consider the evidence which I have told you to disregard.

It is the duty of an attorney to object to evidence which the attorney believes may not be permitted under the rules. You should not be prejudiced in any way against the attorney who makes objections on behalf of the party the attorney represents. Also, I may find it necessary to admonish an attorney, and if I do, you should not be prejudiced toward the attorney or client because I have found it necessary to admonish the attorney.

0.08: NOT TO BE CONCERNED WITH PUNISHMENT

Your function is to decide whether the Defendant is guilty or not guilty of the charge(s) against him or her. You are not to concern yourself in any way with the punishment which the Defendant might receive if you should find the Defendant guilty. If and only if you find the Defendant guilty, then it is the duty of the court to pronounce punishment.

But see NRS 175.552.

0.09: CONDUCT OF THE JURY

Except for discussing the case with your fellow jurors during your final deliberations:

Do not communicate with anyone in any way and do not let anyone else communicate with you in any way about the case or its merits. This includes discussing the case in person, in writing, by phone or electronic means, via email, text messaging, or any internet chat room, blog, website, or other feature. This applies to communicating with your family members, your employer, and the media or press. If you are asked or approached in any way about your jury service or anything about this case, you must respond that you have been ordered not to discuss the matter.

Do not read, watch, or listen to any news or media accounts or commentary about the case. Do not do any research, such as consulting dictionaries, searching the internet or using other reference materials. No juror is to make an investigation on his or her own, test a theory of the case on his or her own, re-create any aspect of the case on his or her own, or in any other way try to learn about the case on his or her own.

Bowman v. State, 132 Nev. 757, 387 P.3d 202 (2016).

0.10: ADMONISHMENT AT EACH ADJOURNMENT

During this recess (or break) you must not:

(1) discuss or communicate with anyone, including fellow jurors, in any way regarding the case or its merits- either by voice, phone, email, text, internet, or other means of communication or social media;

(2) read, watch, or listen to any news or media accounts or commentary about the case;

(3) do any research, such as consulting dictionaries, using the internet, or using reference materials;

(4) make any investigation, test a theory of the case, re-create any aspect of the case, or in any other way investigate or learn about the case on your own;

(5) form or express any opinion regarding the case until it is submitted to you.

NRS 175.401; *Bowman v. State,* 132 Nev. 757, 387 P.3d 202 (2016); Nevada Rules of Criminal Procedure 17.11.

0.11: TRANSCRIPTS NOT AVAILABLE TO JURY

At the end of the trial, you will have to make your decision based on what you recall of the evidence. You will not have a written transcript to consult, and it is difficult and time consuming for the reporter[recorder] to read[play back] lengthy testimony. I urge you to pay close attention to the testimony as it is given.

If you wish, you may take notes to help you remember what the witnesses said. If you do take notes, please keep them to yourself until you and your fellow jurors go to the jury room to decide the case. Do not let note taking distract you so that you do not hear other answers by witnesses. You should rely upon your own memory of what was said and not be overly influenced by the notes of other jurors.

Do not make up your mind about what the verdict should be until after you have retired to the jury room to finally decide the case and you and your fellow jurors have discussed the evidence. It is important that you keep an open mind.

0.12: PERSONAL KNOWLEDGE OF JUROR

A juror may not declare to a fellow juror any fact relating to this case of which the juror has personal knowledge. If any juror discovers during the trial or after the jury has retired that the juror or any other juror has personal knowledge of any fact in the case, the juror shall disclose such situation to me in the absence of the other jurors. This means if you learn during the course of the trial that you have personal knowledge of any fact in the case, you must declare that fact to me. You may communicate to the court through one of the [bailiffs/marshals/sheriffs].

0.13: CONDUCT OF ATTORNEYS

During the course of this trial, the attorneys for both sides and all court personnel, other than the [bailiff/marshal/sheriff], are not permitted to converse with members of the jury. These individuals are not being antisocial, they are bound by ethics and the law not to talk to you; to do so might contaminate your verdict.

0.14: OUTLINE OF TRIAL

The trial will proceed in the following manner:

The prosecuting attorney will make an opening statement, which is an outline to help you understand what the State expects to prove. Next, the Defendant's attorney may, but does not have to, make an opening statement. Opening statements serve as an introduction to the evidence and to what the party making the statement intends to prove. What is said in opening statements is not evidence. The State will then present its evidence, and counsel for the Defendant may cross-examine the witnesses. Following the State's case, the Defendant may present evidence, and the prosecuting attorney may cross-examine the witnesses. However, as I have said, the Defendant is not obligated to present any evidence.

After all the evidence has been presented, I will instruct you on the law. After the instructions on the law have been read to you, each side has the opportunity to present oral argument. What is said in closing argument is not evidence. Because the State has the burden of proving the Defendant guilty beyond a reasonable doubt, the State has the right to open and close the arguments.

After the arguments have been completed, you will retire to deliberate on your verdict.

1.00: DUTY AS JURORS

MEMBERS OF THE JURY:

It is now my duty as judge to instruct you in the law that applies to this case. It is your duty as jurors to follow these instructions and to apply the rules of law to the facts as you find them from the evidence.

You must not be concerned with the wisdom of any rule of law stated in these instructions. Regardless of any opinion you may have as to what the law ought to be, it would be a violation of your duty to base a verdict upon any other view of the law than that given in these instructions of the Court.

1.01: CONSIDER INSTRUCTIONS AS A WHOLE

If in these instructions, any rule, direction or idea is repeated or stated in varying ways, no emphasis thereon is intended by me and none may be inferred by you. For that reason, you are not to single out any certain sentence or any individual point or instruction and ignore the others, but you are to consider all the instructions as a whole and to regard each in the light of all the others.

The order in which the instructions are given has no significance as to their relative importance.

South Pacific Co. v. Watkins, 83 Nev. 471, 492-93, 435 P.2d 498, 512 (1967); *State v. Lewis*, 59 Nev. 262, 91 P.2d 820, 823 (1939).

1.02: NO JUDICIAL INFLUENCE

If, during this trial, I have said or done anything which has suggested to you that I am inclined to favor the position of either party, you must not be influenced by any such suggestion.

I have not expressed, nor intended to express, nor have I intended to intimate, any opinion as to which witnesses are or are not worthy of belief, what facts are or are not established, or what inference should be drawn from the evidence. If any expression of mine has seemed to indicate an opinion relating to any of these matters, I instruct you to disregard it.

South Pacific Co. v. Watkins, 83 Nev. 471, 492-93, 435 P.2d 498, 512 (1967).

1.03: INFORMATION [INDICTMENT] NOT EVIDENCE

An [information/indictment] is a formal method of accusing a Defendant of a crime and is not itself evidence of guilt. The Defendant in this matter, [Defendant's name], is being tried upon an [information/indictment] charging the Defendant with:

[import charge(s) from charging document, e.g.:

COUNT 1. MURDER WITH THE USE OF A DEADLY WEAPON, a violation of NRS 200.010 and NRS 200.030 and NRS 193.165, a felony, committed as follows:

That the said Defendant on the 25th day of July A.D., 2014, or thereabout, within the County of Washoe, State of Nevada, did willfully, unlawfully, and with malice aforethought, deliberation and premeditation, kill and murder JANE JOHNSON, a human being, by means of shooting JANE JOHNSON multiple times in the chest, thereby inflicting mortal injuries upon JANE JOHNSON from which she died on July 9, 2014.]

To the charge(s) stated in the [Information/Indictment], the Defendant pled ["NOT GUILTY"]["NOT GUILTY BY REASON OF INSANITY"].

1.04: LESSER INCLUDED OFFENSES

The offense of [greater crime] necessarily includes the lesser offense(s) of [lesser-included crime]. The Defendant may only be convicted of one of these offenses.

You should first fully and carefully examine the evidence as it applies to [greater crime]. If you unanimously agree that the Defendant is guilty of [greater crime], then you should sign the appropriate verdict form and request the bailiff to return you to court.

If you cannot agree that the Defendant is guilty of [greater crime], you should then fully and carefully examine the evidence as it applies to [lesser-included crime]. If you unanimously agree that the Defendant is guilty of [lesser-included crime], then you should sign the appropriate verdict form and ask the bailiff to return you to court.

The Defendant, of course, can be found Not Guilty of both of the offenses enumerated.

NRS 175.501; *Green v. State*, 119 Nev. 545-49, 80 P.3d 93, 95-97 (2003). This instruction is given "where elements of the greater offense include all the elements of the lesser offense because it is the very nature of the greater offense that it could not have been committed without the defendant having intent and doing the acts which constitute the lesser offense." Examples include, but are not limited to: kidnapping and false imprisonment; sale of controlled substances and possession of controlled substances; battery with a deadly weapon and battery. *Lisby v. State*, 82 Nev. 183, 188, 414 P.2d 592, 595 (1966).

1.05: JOINT OPERATION OF ACT AND INTENT

In every crime there must exist a union, or joint operation of act and intent [or criminal negligence], and the burden is upon the prosecution to prove both act and intent beyond a reasonable doubt.

NRS 193.190; *Powell v. State*, 113 Nev. 258, 262 n.6, 934 P.2d 224, 227 n.6 (1997).

1.06: BURDEN OF PROOF

Every person charged with the commission of a crime shall be presumed innocent until the contrary is proved, and the burden rests upon the prosecution to establish every element of the crime with which the Defendant is charged beyond a reasonable doubt. If there is reasonable doubt as to the Defendant's guilt, then you must find the Defendant not guilty.

A reasonable doubt is one based on reason. It is not mere possible doubt, but is such a doubt as would govern or control a person in the more weighty affairs of life. If the minds of the jurors, after the entire comparison and consideration of all the evidence, are in such a condition that they can say they feel an abiding conviction of the truth of the charge, there is not a reasonable doubt. Doubt to be reasonable must be actual, not mere possibility or speculation.

NRS 175.191; NRS 175.211.

1.07: DECIDE GUILT OF DEFENDANT ONLY

You are here to determine whether the Defendant is guilty or not guilty from the evidence in this case. You are not called upon to determine whether any other person is guilty or not guilty. So, if the evidence in this case convinces you beyond a reasonable doubt of the Defendant's guilt, you should so find, even though you may believe one or more persons are also guilty.

Guy v. State, 108 Nev. 770, 839 P.2d 578 (1992).

1.08: WHAT IS NOT EVIDENCE

The evidence you may consider consists of the testimony of the witnesses, the exhibits admitted in evidence, and stipulations.

Certain things are not evidence. Arguments and statements by the attorneys are not evidence. The attorneys are not witnesses. What they say in their opening statements, closing arguments, and at other times is intended to help you interpret the evidence, but it is not evidence. If the facts as you remember them from the evidence differ from the way the attorneys have stated them, your memory of them controls.

Questions and objections by the attorneys are not evidence. Attorneys have a duty to their clients to object when they believe a question is improper under the rules of evidence. You should not be influenced by the objection or by my ruling on it. When the Court has sustained an objection to a question you are to disregard the question and may draw no inference from the wording of it or speculate as to what the witness would have said if permitted to answer.

Anything that I have excluded from evidence, or ordered stricken and instructed you to disregard, is not evidence and must not be considered.

Heinen v. Heinen, 64 Nev. 527, 538-39, 186 P.2d 770, 775 (1949).

1.09: EVIDENCE - LIMITED PURPOSE GIVEN UPON REQUEST

During the trial, certain evidence was admitted for a limited purpose. You can consider this evidence only for the limited purpose for which it was admitted, and for no other purpose. The weight to be given this evidence is for you to decide.

The limited purpose evidence admitted in this case includes evidence that [insert example]. You may consider that evidence only for the following purpose[s] [_____].

NRS 47.110; for NRS 48.045 cases *see* Instruction 2.02; *Tavares v. State*, 117 Nev. 725, 30 P.3d 1128 (2001).

1.10: DIRECT AND CIRCUMSTANTIAL EVIDENCE

If you are satisfied of the Defendant's guilt beyond a reasonable doubt, it matters not whether your judgment of guilt is based upon direct evidence or upon indirect and circumstantial evidence or upon both.

In making that decision, you must consider all the evidence in the light of reason, common sense, and experience.

You should not be concerned with the type of evidence but rather the relative convincing force of the evidence.

Crane v. State, 88 Nev. 684, 504 P.2d 12 (1972).

1.11: CREDIBILITY OF A WITNESS

To the jury alone belongs the duty of weighing the evidence and determining the credibility of the witnesses. The degree of credit due a witness should be determined by his or her character, conduct, manner upon the stand, fears, bias, impartiality, reasonableness or unreasonableness of the statements he or she makes, and the strength or weakness of his or her recollections, viewed in the light of all the other facts in evidence.

If the jury believes that any witness has willfully testified falsely about a material fact in the case, the jury may disregard the whole of the evidence of any such witness or any portion that is not proved by other evidence.

Burns v. State, 88 Nev. 215, 219, 495 P.2d 602, 604 (1972); *Barron v. State*, 105 Nev. 767, 774 n.3, 783 P.2d 444, 449 n.3 (1989); *State v. Martel*, 32 Nev. 395, 108 P. 1097, 1097–98 (1910); *Bolden v. State*, 97 Nev. 71, 73, 624 P.2d 20, 20 (1981).

1.12: NUMBER OF WITNESSES

You should not decide any issue merely by counting the number of witnesses who have testified on the opposing sides. The final test in weighing conflicting testimony is the relative convincing force of the evidence and not the relative number of witnesses who have testified on different sides of an issue.

Brown v. State, 107 Nev. 164, 166, 807 P.2d 1379, 1380-81 (1991); *Dixon v. Miller*, 43 Nev. 280, 184 P.2d 926, 929 (1919).

1.14: COMMON SENSE AND JUDGMENT

Although you are to consider only the evidence in the case in reaching a verdict, you must bring to the consideration of the evidence your everyday common sense and judgment as reasonable persons. Thus, you are not limited solely to what you see and hear as the witnesses testify. You may draw reasonable inferences which are justified by the evidence, keeping in mind that such inferences should not be based on speculation or guess.

A verdict may never be influenced by sympathy, passion, prejudice, or public opinion. Your decision should be the product of sincere judgment and sound discretion in accordance with these rules of law.

Meyer v. State, 119 Nev. 554, 568, 80 P.3d 447, 458 (2003); *Nevius v. State*, 101 Nev. 238, 250, 699 P.2d 1053, 1061 (1985); *Lewis v. Sea Ray Boats, Inc.*, 119 Nev. 100, 105, 65 P.3d 245, 248 (2003); *State v. Hall*, 54 Nev. 213, 13 P.2d 624, 633 (1932); *Maestas v. State,* 128 Nev. 124, 275 P.3d 74 (2012); *Sherman v. State*, 114 Nev. 998, 1011, 965 P.2d 903, 912 (1998).

2.00: EXPERT WITNESSES

A witness who has special knowledge, skill, experience, training, or education in a particular science, profession, or occupation is an expert witness. An expert witness may give an opinion as to any matter in which the witness is skilled.

You should consider such expert opinion and weigh the reasons, if any, given for it. You are not bound, however, by such an opinion. Give it the weight to which you deem it entitled, whether that be great or slight, and you may reject it, if in your judgment, the reasons given for it are unsound.

The opinions of experts are to be considered by you in connection with all the other evidence in the case. The same rules apply to expert witnesses that apply to other witnesses in determining the weight or value of such testimony.

NRS 50.275; *State v. Bourdlais*, 70 Nev. 233, 253; 265 P.2d 761 (1954); *State v. Watts*, 52 Nev. 453, 290 P. 732 (1930).

2.01: OTHER BAD ACT INSTRUCTION

Evidence that the Defendant committed offenses other than that for which he or she is on trial, if believed, was not received and may not be considered by you to prove that he or she is a person of bad character, or to prove that he or she has a disposition to commit such crimes, wrongs, or acts. Rather, such evidence was received and may be considered by you only for the limited purpose of proving the Defendant's [motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, or accident]. You must weigh this evidence in the same manner as you do all other evidence in this case.

NRS 48.045(2); *Beck v. State*, 105 Nev. 910, 784 P.2d 983 (1989); *Berner v. State*, 104 Nev. 695, 765 P.2d 1144 (1988); *Kimberly v. State*, 104 Nev. 336, 757 P.2d 1326 (1988); *Allan v. State*, 92 Nev. 318, 549 P.2d 1402 (1976); *Tavares v. State*, 117 Nev. 725, 30 P.3d 1128 (2001).

2.02: PRIOR FELONY CONVICTION OF WITNESSES

The fact that a witness has been convicted of a felony, if such be a fact, may be considered by you only for the purpose of determining the credibility of that witness. The fact of such a conviction does not necessarily destroy or impair the witness's credibility. It is one of the circumstances that you may take into consideration in weighing the testimony of such a witness.

NRS 50.095; *Harris v. State*, 106 Nev. 667, 799 P.2d 1104 (1990).

2.03: TESTIMONY OF AN INFORMER

You have heard testimony that a witness has received [benefits, compensation, etc.] from the State in connection with this case. You should examine such witness's testimony with greater caution than that of other witnesses. In evaluating the testimony, you should consider the extent to which it may have been influenced by the receipt of [benefits, compensation, etc.]. This does not mean that you may arbitrarily disregard such testimony, but you should give it the weight to which you find it to be entitled after examining it with care and caution and in light of all the evidence in this case.

The fact that a witness was given an inducement in exchange for his or her cooperation may be considered by you only for the purpose of determining the credibility of that witness. The existence of such an inducement does not necessarily destroy or impair the credibility of the witness. It is one of the circumstances that you may take into consideration in weighing the testimony of such a witness.

Crowe v. State, 84 Nev. 358, 367-68, 441 P.2d 90, 95-96 (1968); *Gonzalez v. State*, 131 Nev. 991, 366 P.3d 680, 686 n.1 (2015); *James v. State*, 105 Nev. 873, 784 P.2d 965 (1989).

2.04: DEFENDANT NEED NOT TESTIFY [ONLY IF OFFERED BY THE DEFENDANT]

It is a constitutional right of a Defendant in a criminal trial that he or she may not be compelled to testify. You must not draw any inference of guilt from the fact that he or she does not testify, nor should this fact be discussed by you or enter into your deliberations in any way.

NRS 175.181; *Carter v. Kentucky*, 450 U.S. 288, 101 S.Ct. 1112, 67 L.Ed 2d 241 (1981); *McNeeley v. State*, 81 Nev. 663, 409 P.2d 135 (1965); *Franklin v. State*, 98 Nev. 266, 646 P.2d 543 (1982).

2.05: JURY DETERMINES VOLUNTARINESS OF STATEMENT

Statements the Defendant made during a police interview have been admitted in evidence. Such statements may be confessions, which are acknowledgements of guilt, admissions, which are acknowledgements of the existence of facts that tend to incriminate the Defendant, or neither. If you determine any statement of the Defendant made during the interview to be a confession or admission, you must first determine if the statement was voluntarily made.

A confession or admission is not voluntary if it was coerced by physical intimidation or psychological pressure such that the Defendant's capacity for self-determination was critically impaired and his or her will was overborne at the time he or she made the confession or admission. Coercive police activity is a necessary predicate to finding that a confession or admission is not voluntary, and there must be a link between the coercive conduct and the Defendant's confession or admission. A confession or admission is not rendered involuntary by moral or psychological pressures to confess emanating from sources other than police coercion.

In making a decision about the voluntariness of a confession or admission, you should consider all of the evidence about the statement, including the circumstances under which the Defendant may have made it. Factors to be considered in determining whether a confession or admission was voluntary include [the youth of the accused; his or her lack of education or his or her low intelligence; the lack of any advice of constitutional rights; the length of the detention; the repeated and prolonged nature of questioning; and the use of physical punishment such as the deprivation of food or sleep].

Colorado v. Connelly, 479 U.S. 157, 170, 107 S.Ct. 515, 523-524 (1986); *Dewey v. State*, 123 Nev. 483, 492, 169 P.3d 1149, 1154-1155 (2007); *Passama v. State*, 103 Nev. 212, 214, 735 P.2d 321, 323 (1987); *Chambers v. State*, 113 Nev. 974, 981, 944 P.2d 805, 809 (1997); *Allan v. State*, 118 Nev. 19, 24, 38 P.3d 175, 178 (2002); *Sonner v. State*, 112 Nev. 1328, 1337-38, 930 P.2d 707, 714 (1996); *Marshall v. State*, 91 Nev. 517, 518, 539 P.2d 116, 117 (1975).

2.06: BURDEN OF PROVING VOLUNTARINESS OF A CONFESSION

The State has the burden of proving, by a preponderance of the evidence, that a Defendant's confession or admission to the police was voluntarily made. To prove something by the preponderance of the evidence is to prove that it is more likely true than not true. This is a lesser burden than proof beyond a reasonable doubt.

If you determine a confession or admission of the Defendant was not voluntary, you may not consider it for any purpose. If you determine a confession of the Defendant was voluntary, you may consider it like any other testimony or evidence in the case.

Sanchez v. State, 103 Nev. 166, 170, 734 P.2d 726 (1987); *Quiriconi v. State*, 96 Nev. 766, 616 P.2d 1111 (1980); *Brown v. State*, 107 Nev. 164, 807 P.2d 1379 (1991); *Tomarchio v. State*, 99 Nev. 572, 575-76 (1983); *Lavallee v. Delle Rose*, 410 U.S. 690, 93 S.Ct. 1203 (1973); *Passama v. State*, 103 Nev. 212, 214, 735 P.2d 321, 323 (1987).

2.07: TESTIMONY OF AN ACCOMPLICE

A conviction shall not be had on the testimony of an accomplice unless the accomplice is corroborated by other evidence which, in itself, and without the aid of the testimony of the accomplice, tends to connect the Defendant with the commission of the offense; and corroboration shall not be sufficient if it merely shows the commission of the offense or the circumstances thereof. Therefore, if you find from the evidence that [name of witness] was an accomplice in committing [the crime charged], you may consider his or her testimony only if you find that it was corroborated by other evidence in the case.

[Use for specific intent crime][An accomplice is one who is liable to the prosecution for the identical offense charged against the defendant on trial. A person is liable for the commission of [the crime charged] if he or she does any act to assist another person in committing the acts constituting the offense, whether he or she is present or absent when the offense is committed, or if he or she directly or indirectly counsels, encourages, hires, commands, induces, or otherwise procures another to commit the acts constituting the offense with the specific intent that [the charged crime] be committed.]

[Use for general intent crime][An accomplice is one who is liable to the prosecution for the identical offense charged against the defendant on trial. A person is liable for the commission of [the crime charged] if he or she does any act to assist another person in committing the acts constituting the offense, whether he or she is present or absent when the offense is committed, or if he or she directly or indirectly counsels, encourages, hires, commands, induces, or otherwise procures another to commit the acts constituting the offense and:

(1) the person either has the intent that the charged crime be committed or;

(2) the charged crime is a reasonably foreseeable consequence of the undertaking assisted.]

"Corroboration" refers to evidence supplementary to that given by the accomplice and tending to strengthen or confirm it. Corroboration need not come from a single fact or circumstance, but may be found from several circumstances in combination. You may take into account reasonable inferences from evidence independent of an accomplice's testimony. The evidence necessary to corroborate an accomplice need not in itself be sufficient to establish the Defendant's guilt, so long as it tends to connect the Defendant with the commission of the offense. However, the corroboration shall not be sufficient if it merely shows the commission of the offense or the circumstances thereof.

NRS 175.291; *LaPena v. Sheriff*, 91 Nev. 692, 694-96, 541 P.2d 907, 909-10 (1975); *State v. Hilbish*, 59 Nev. 469, 97 P.2d 435, 438 (1940); *Cheatham v. State*, 104 Nev. 500, 505, 761 P.2d 419, 423 (1988); *Ramirez-Garza v. State*, 108 Nev. 376, 378-379, 832 P.2d 392, 393 (1992); *Cutler v. State*, 93 Nev. 329, 334, 566 P.2d 809, 812 (1977); *Lopez v. State*, 105 Nev. 68, 77 n.8, 769 P.2d 1276, 1282 n.8 (1989); NRS 195.020; *Sharma v. State*, 118 Nev. 648, 652, 56 P.3d 868, 870 (2002); *Bolden v. State*, 121 Nev. 908, 124 P.3d 191 (2005)(*overruled on other grounds*); *Nelson v. State*, 123 Nev. 534, 549, 170 P.3d 517, 527 (2007).

2.08: ACCOMPLICE DISTRUST

The testimony of an accomplice ought to be viewed with distrust. This does not mean that you may arbitrarily disregard such testimony, but you should give to it the weight to which you find it to be entitled after examining it with care and caution and in light of all the evidence in the case.

Gonzalez v. State, 131 Nev. 991, 999, 366 P.3d 680, 686 (2015); *Riley v. State*, 110 Nev. 638, 653, 878 P.2d 272, 282 (1994).

2.09: GOOD CHARACTER OF DEFENDANT

Evidence of the Defendant's character as to those traits which ordinarily would be involved in the commission of a crime such as that charged in this case is relevant to the question of the Defendant's guilt or innocence because it may be reasoned that a person of good character as to such traits would not be likely to commit the crime of which the Defendant is charged.

Good character, when considered in connection with other evidence in the case, may generate a reasonable doubt sufficient to justify you in acquitting the Defendant.

Beddow v. State, 93 Nev. 619 (1977); *Emerson v. State*, 98 Nev. 158, 643 P.2d 1212 (1982); *Barron v. State*, 105 Nev. 767, 783 P.2d 444 (1989).

2.10: IDENTIFICATION TESTIMONY

Identification testimony is an expression of belief by the witness. Its value depends on the opportunity the witness had to observe the offender at the time of the offense and to make a reliable identification later.

In appraising the identification testimony of a witness, you may consider the following: the opportunity of the witness to view the criminal and the time of the crime; the witness's degree of attention; the accuracy of his or her prior description of the criminal; the level of certainty demonstrated at the confrontation; and the time between the crime and the confrontation.

Manson v. Braithwaite, 432 U.S. 98, 114 (1977); *Gaitor v. State*, 106 Nev. 785, 801 P.2d 1372 (1990).

2.11: NO POSITIVE ID NEEDED OF PERPETRATOR

It is not necessary that the identification of the Defendant as the perpetrator of the crime may be made positively or in a manner free from inconsistencies. It is the function of the jury to pass upon the strength or weakness of the identification and the uncertainties of the witness in giving his or her testimony.

Identity of the Defendant as the perpetrator of the offense must be proved beyond a reasonable doubt.

If you have a reasonable doubt whether the Defendant was the person who committed the offense, you must acquit him or her.

Collins v. State, 88 Nev. 436, 488 P.2d 544 (1971); *Williams v. State*, 93 Nev. 405, 566 P.2d 417 (1977).

2.12: DEFENDANT'S PRESENCE DURING TRIAL

The Defendant may waive his or her presence during the trial. You are not to consider the Defendant's non-appearance during the proceedings of this trial as evidence of his or her guilt or innocence.

NRS 178.388; *Hanley v. State*, 83 Nev. 461 (1967).

2.13: SEPARATE CONSIDERATION

It is your duty to give separate, personal consideration to the case of each individual Defendant. When you do so, you should analyze what the evidence shows with respect to that individual, leaving out of consideration entirely any evidence admitted solely against some other Defendant or Defendants. Each Defendant is entitled to have his or her case determined from his or her own acts and statements and the other evidence in the case which may be applicable to him or her.

2.14: SEPARATE CONSIDERATION - MULTIPLE CHARGES

Each charge should be considered separately. The fact that you may find the Defendant guilty or not guilty of one of the charges should not control your verdict as to the other charge. You must give separate consideration to the evidence as to each charge.

2.15: SEPARATE CONSIDERATION – MULTIPLE CHARGES AND DEFENDANTS

Each charge, and any evidence pertaining to it, should be considered separately. Also, the case of each Defendant should be considered separately and individually. The fact that you may find one or both of the Defendants guilty or not guilty of any of the crimes charged should not control your verdict as to any other crime or any other Defendant. You must give separate consideration to the evidence as to each Defendant.

3.00: AIDING AND ABETTING – GENERAL INTENT CRIME

Where two or more persons are accused of committing a crime together, guilt may be established without proof that each person did every act constituting the offense charged.

A person is liable for the commission of an offense if he or she directly commits the acts constituting the offense; if he or she aids and abets another person in committing the acts constituting the offense, whether he or she is present or absent when the offense is committed; or if he or she directly or indirectly counsels, encourages, hires, commands, induces, or otherwise procures another to commit the acts constituting the offense.

In order to hold a Defendant liable for aiding and abetting another person or persons in committing an offense, the State must prove, beyond a reasonable doubt, that each element of the offense was committed, and that the Defendant did some act to encourage or assist in the commission of the offense. The State is not required, however, to prove precisely which participant actually committed the crime and which participants aided and abetted.

A person aids and abets in the commission of [general intent crime] if:

(1) he or she does any act to assist another in committing; or directly or indirectly counsels, encourages, hires, commands, induces, or otherwise procures another to commit;

(2) the acts which constitute the elements of [the general intent crime];

(3) before or during the crime; and

(4) he or she either has the intent that the acts constituting the offense be accomplished; or the offense is a reasonably foreseeable consequence of the undertaking aided and abetted.

NRS 195.020; *Sharma v. State*, 118 Nev. 648, 652, 56 P.3d 868, 870 (2002); *Bolden v. State*, 121 Nev. 908, 124 P.3d 191 (2005); *Nelson v. State*, 123 Nev. 534, 549, 170 P.3d 517, 527 (2007).

3.01: AIDING AND ABETTING – SPECIFIC INTENT CRIME

Where two or more persons are accused of committing a crime together, guilt may be established without proof that each person did every act constituting the offense charged.

A person is liable for the commission of an offense if he or she directly commits the acts constituting the offense; if he or she aids and abets another person in committing the acts constituting the offense, whether he or she is present or absent when the offense is committed; or if he or she directly or indirectly counsels, encourages, hires, commands, induces, or otherwise procures another to commit the acts constituting the offense.

In order to hold a Defendant liable for aiding and abetting another person or persons in committing an offense, the State must prove, beyond a reasonable doubt, that each element of the offense was committed, and that the Defendant did some act to encourage or assist in the commission of the offense. The State is not required, however, to prove precisely which participant actually committed the crime and which participants aided and abetted.

A person aids and abets in the commission of [specific intent crime] if:

(1) he or she either;

(a) does any act to assist another in committing; or

(b) directly or indirectly counsels, encourages, hires, commands, induces, or otherwise procures another to commit;

(2) the acts which constitute the elements of [the specific intent crime];

(3) before or during the crime;

(4) with the intent that [the particular crime] be accomplished.

NRS 195.020; *Sharma v. State*, 118 Nev. 648, 652, 56 P.3d 868, 870 (2002); *Bolden v. State*, 121 Nev. 908, 124 P.3d 191 (2005); *Nelson v. State*, 123 Nev. 534, 549, 170 P.3d 517, 527 (2007).

3.02: MERE PRESENCE AT THE SCENE

Mere presence at the scene of the crime and knowledge that a crime is being committed are not sufficient to establish that the Defendant aided and abetted the crime, unless you find beyond a reasonable doubt the Defendant was a participant and not merely a knowing spectator.

Brooks v. State, 103 Nev. 611, 747 P.2d 893 (1987); *Winston v. Sheriff*, 92 Nev. 616, 555 P.2d 1234 (1976); *Curtis D. v. State*, 98 Nev. 272, 646 P.2d 547 (1982).

3.03: ACCESSORY AFTER THE FACT – FELONY

An accessory to the crime of [felony charged] is any person who has knowledge that an offender has committed the crime of [felony charged] or is liable to arrest for the crime, and who thereafter does any of the following with the intent that the offender may avoid or escape from arrest, trial, conviction, or punishment:

(1) destroys or conceals material evidence; or

(2) aids in the destruction or concealment of material evidence; or

(3) harbors or conceals the offender.

The spouse [or domestic partner] of the offender, however, is not liable to punishment as an accessory. [A "domestic partner" is a person who is in a domestic partnership that is registered with the Secretary of State and for which the Secretary of State has issued a Certificate of Registered Domestic Partnership, and that has not been legally terminated.]

NRS 195.030; NRS 195.040; NRS 122A.100; NRS 122A.300.

3.04: ACCESSORY AFTER THE FACT – GROSS MISDEMEANOR

An accessory to the crime of [gross misdemeanor charged] is any person who has knowledge that an offender has committed the crime of [gross misdemeanor charged] or is liable to arrest for the crime, and who thereafter does any of the following with the intent that the offender may avoid or escape from arrest, trial, conviction, or punishment:

(1) destroys or conceals material evidence; or

(2) aids in the destruction or concealment of material evidence; or

(3) harbors or conceals the offender.

The spouse [domestic partner, brother, sister, parent, grandparent, child, or grandchild] of the offender, however, is not liable to punishment as an accessory. [A "domestic partner" is a person who is in a domestic partnership that is registered with the Secretary of State and for which the Secretary of State has issued a Certificate of Registered Domestic Partnership, and that has not been legally terminated.]

NRS 195.030; NRS 195.040; NRS 122A.100; NRS 122A.300.

3.05: FLIGHT OF DEFENDANT

The flight of a person after the commission of a crime is not sufficient in and of itself to establish that person's guilt. However, if flight is proved, it may be considered by you in light of all other evidence in deciding the question of guilt.

The essence of flight embodies the idea of deliberately going away with consciousness of guilt and for the purpose of avoiding apprehension or prosecution.

Whether or not evidence of flight shows a consciousness of guilt and the significance to be attached to such a circumstance are matters for your deliberation.

McGuire v. State, 86 Nev. 262, 468 P.2d 12 (1970); *Weber v. State*, 121 Nev. 554, 581-82, 119 P.3d 107, 126 (2005); *Walker v. State*, 113 Nev. 853, 870, 944 P.2d 762, 773 (1997); *Stiegler v. State*, 125 Nev. 1081, 281 P.3d 1222 (2009).

3.06: ATTEMPT – ELEMENTS

An "attempt" is an act done with the intent to commit a crime, and tending, but failing to accomplish it. The elements of attempted [charged crime] are the following:

(1) The Defendant intended to commit [charged crime];

(2) The Defendant performed some act toward the commission of [charged crime]; and

(3) The Defendant failed to consummate commission of [charged crime].

Mere preparation to commit a crime, such as by devising or arranging the means necessary for the commission of the offense, is insufficient to constitute an attempt. The act done must be a direct step or movement toward the present commission of the crime, although it need not amount to the commission of an actual element of the crime. When the intent to commit the crime is clearly shown, there need only be slight acts in furtherance of the crime to constitute an attempt.

NRS 193.330; *Sharma v. State*, 118 Nev. 648, 652, 56 P.3d 868, 870 (2002); *Curry v. State*, 106 Nev. 317, 319-20, 792 P.2d 396, 397-98 (1990); *Moffett v. State*, 96 Nev. 822, 824-25, 618 P.2d 1223, 1224-25 (1980); *Stephens v. Sheriff, Clark Cty.*, 93 Nev. 338, 339, 565 P.2d 1007, 1008 (1977); *Beddow v. State*, 93 Nev. 619, 622, 572 P.2d 526, 528 (1977); *Van Bell v. State*, 105 Nev. 352, 353–54, 775 P.2d 1273, 1274 (1989); *Darnell v. State,* 92 Nev. 680, 681–82, 558 P.2d 624, 625–26 (1976); *Larsen v. State*, 86 Nev. 451, 453–54, 470 P.2d 417, 418–19 (1970).

3.07: ATTEMPT – FACTUAL IMPOSSIBILITY

Even though the actual commission of a crime is impossible because of circumstances unknown to the Defendant, he or she is guilty of an attempt to commit the crime if he or she has the specific intent to commit the offense, and under the circumstances as he or she reasonably sees them, he or she does any act that would be a direct step or movement toward consummating the offense he or she intends to commit.

NRS 193.330; *Sharma v. State*, 118 Nev. 648, 652, 56 P.3d 868, 870 (2002); *Curry v. State*, 106 Nev. 317, 319-20, 792 P.2d 396, 397-98 (1990); *Moffett v. State*, 96 Nev. 822, 824-25, 618 P.2d 1223, 1224-25 (1980); *Stephens v. Sheriff, Clark Cty.*, 93 Nev. 338, 339, 565 P.2d 1007, 1008 (1977); *Beddow v. State*, 93 Nev. 619, 622, 572 P.2d 526, 528 (1977); *Van Bell v. State*, 105 Nev. 352, 353-54, 775 P.2d 1273, 1274 (1989); *Darnell v. State,* 92 Nev. 680, 681-82, 558 P.2d 624, 625-26 (1976); *Larsen v. State*, 86 Nev. 451, 453-54, 470 P.2d 417, 418-19 (1970).

3.08: ATTEMPT – ABANDONMENT OF CRIMINAL SCHEME

A person who attempts to commit a crime is liable for their attempt even if, after taking a direct step towards committing the intended crime, he or she abandoned further efforts to complete the crime, and even if the failure to complete the crime was due to an intervention or interruption by someone or something beyond his or her control. On the other hand, if a person freely and voluntarily abandons his or her plans before taking a direct step toward committing the offense, then that person is not guilty of attempting the crime.

NRS 193.330; *Sharma v. State*, 118 Nev. 648, 652, 56 P.3d 868, 870 (2002); *Curry v. State*, 106 Nev. 317, 319-20, 792 P.2d 396, 397-98 (1990); *Moffett v. State*, 96 Nev. 822, 824-25, 618 P.2d 1223, 1224-25 (1980); *Stephens v. Sheriff, Clark Cty.*, 93 Nev. 338, 339, 565 P.2d 1007, 1008 (1977); *Beddow v. State*, 93 Nev. 619, 622, 572 P.2d 526, 528 (1977); *Van Bell v. State*, 105 Nev. 352, 353–54, 775 P.2d 1273, 1274 (1989); *Darnell v. State,* 92 Nev. 680, 681–82, 558 P.2d 624, 625–26 (1976); *Larsen v. State*, 86 Nev. 451, 453–54, 470 P.2d 417, 418–19 (1970).

3.09: CONSPIRACY – GENERAL INTENT CRIME

A conspiracy is an agreement between two or more persons for an unlawful purpose.

A person who knowingly does any act to further the object of a conspiracy, or otherwise participates therein, is criminally liable as a conspirator. The act or declaration of one conspirator pursuant to or in furtherance of the common design of the conspiracy is therefore the act or declaration of all conspirators. If one member of a conspiracy commits an offense in furtherance of the conspiracy, each member who knowingly participated in the conspiracy has also, under the law, committed the offense, even if he or she was not present at the time the offense was committed, if he or she participated with the intent that the offense be committed or the crime was a reasonably foreseeable consequence of the undertaking.

A person is therefore liable for [general intent crime] as a conspirator if he or she:

(1) enters into an express or implied agreement;
(2) with another person or persons;
(3) to commit the unlawful acts that constitute the elements of [offense];
(4) he or she either;
    (a) has the intent that the acts constituting the offense be accomplished, or
    (b) the offense is a reasonably foreseeable consequence of the undertaking, even if it was not intended as part of the original plan; and
(5) any member or members of the conspiracy thereafter commit [the offense].

Nelson v. State, 123 Nev. 534, 549, 170 P.3d 517, 527 (2007); *Bolden v. State,* 121 Nev. 908, 912-923, 124 P.3d 191, 194-201 (2005); *Garner v. State,* 116 Nev. 770, 780, 6 P.3d 1013, 1020 (2000); *Thomas v. State,* 114 Nev. 1127, 1143, 967 P.2d 1111, 1122 (1998).

3.10: CONSPIRACY – SPECIFIC INTENT CRIME

A conspiracy is an agreement between two or more persons for an unlawful purpose.

A person who knowingly does any act to further the object of a conspiracy, or otherwise participates therein, is criminally liable as a conspirator. The act or declaration of one conspirator pursuant to or in furtherance of the common design of the conspiracy is therefore the act or declaration of all conspirators. If one member of a conspiracy commits an offense in furtherance of the conspiracy, each member who knowingly participated in the conspiracy with the intent that the offense be committed has also, under the law, committed the offense, even if he or she was not present at the time the offense was committed.

A person is therefore liable for [specific intent crime] as a conspirator if he or she:

(1) enters into an express or implied agreement;
(2) with another person or persons;
(3) to commit the acts that constitute [the offense];
(4) with the specific intent that [the offense] be accomplished; and
(5) any member or members of the conspiracy thereafter commit [the offense].

Nelson v. State, 123 Nev. 534, 549, 170 P.3d 517, 527 (2007); *Bolden v. State*, 121 Nev. 908, 912-923, 124 P.3d 191, 194-201 (2005); *Garner v. State*, 116 Nev. 770, 780, 6 P.3d 1013, 1020 (2000); *Thomas v. State*, 114 Nev. 1127, 1143, 967 P.2d 1111, 1122 (1998).

3.11: CONSPIRACY MAY BE PROVED BY CIRCUMSTANTIAL EVIDENCE

It is not necessary in proving a conspiracy to show a meeting of the alleged conspirators or the making of an express or formal agreement. The formation and existence of a conspiracy may be inferred from all circumstances tending to show the common intent and may be proved in the same way as any other fact may be proved, either by direct testimony of the fact or by circumstantial evidence, or by both direct and circumstantial evidence.

3.12: WITHDRAWAL FROM CONSPIRACY

If one member of a conspiracy withdraws from the agreement before an overt act in furtherance of the conspiracy's target crime(s) has been committed by any member of the conspiracy, the withdrawing member is not responsible for the future crime(s) of his or her co-conspirator(s).

Withdrawal from a conspiracy requires the following elements:

(1) that the Defendant completely withdrew from the agreement. A partial or temporary withdrawal is not enough;

(2) that the Defendant took affirmative steps, inconsistent with the objectives of the conspiracy, to disavow or to defeat the objectives of the conspiracy;

(3) that the Defendant made a reasonable effort to communicate those acts to his co-conspirators or that he or she disclosed the scheme to law enforcement authorities; and

(4) that the Defendant withdrew before any member of the group committed an overt act in furtherance of the conspiracy.

An affirmative step would include an act that is inconsistent with the purpose of the conspiracy and is communicated in a way that is reasonably likely to reach the other members. But some affirmative step is required. A mere cessation of activity in the conspiracy, or just avoiding the other members of the group, is not sufficient to establish withdrawal.

Smith v. United States, 568 U.S. 106, 133 S. Ct. 714, 718-21 (2013); *United States v. Lova*, 807 F.2d 1483, 1493 (9th Cir. 1987); *United States v. Krasn*, 614 F.2d 1229, 1236 (9th Cir. 1980); *States v. Basey*, 613 F.2d 198, 202 (9th Cir. 1979), cert. denied, 446 U.S. 919 (1980).

3.13: CONCLUSION OF A CONSPIRACY

A conspiracy to commit a crime does not end until the completion of the crime. The conspiracy continues until the co-conspirators have successfully gotten away and concealed the crime.

Crew v. State, 100 Nev. 38, 46, 675 P.2d 986 (1984); *Foss v. State*, 92 Nev. 163, 167, 547 P.2d 688 (1976).

3.14: CORROBORATIVE EVIDENCE

Corroborative evidence is evidence of some act or fact related to the offense which, if believed, by itself and without aid, interpretation or direction from the testimony of the accomplice tends to connect the Defendant with the commission of the offense charged.

However, it is not necessary that the corroborative evidence be sufficient in itself to establish every element of the offense charged, or that it corroborate every fact to which the accomplice testifies.

In determining whether an accomplice has been corroborated, you must first assume the testimony of the accomplice has been removed from the case. You must then determine whether there is any remaining evidence which tends to connect the Defendant with the commission of the offense.

If there is not such independent evidence which tends to connect the Defendant with the commission of the offense, the testimony of the accomplice is not corroborated.

If there is such independent evidence which you believe, then the testimony of the accomplice is corroborated.

NRS 175.291; *Ramirez-Garza v. State*, 108 Nev. 376, 832 P.2d 392 (1992).

3.15: MERE ASSOCIATION

Mere association alone is insufficient to corroborate the testimony of an accomplice. Association between an accomplice and the accused is a fact or circumstance which may be combined with other facts or circumstances to provide the necessary corroboration of the accomplice's testimony which is required by law.

Lapena v. Sheriff, Clark County, 91 Nev. 692, 541 P.2d 907 (1975).

3.16: CORROBORATION FROM OTHER EVIDENCE

The corroboration of the testimony of an accomplice required by law may not be supplied by the testimony of any of his or her accomplices but must come from other evidence.

Lapena v. Sheriff, Clark County, 91 Nev. 692, 541 P.2d 907 (1975).

3.17: TESTIMONY OF VICTIM OF SEXUAL OFFENSE NEED NOT BE CORROBORATED

There is no requirement that the testimony of a victim of [a] sexual offense[s] be corroborated, and the victim's testimony, standing alone, if believed beyond a reasonable doubt, is sufficient to sustain a verdict of guilty.

Vega v. State, 126 Nev. 332, 342–43, 236 P.3d 632, 639 (2010); *Gaxiola v. State*, 121 Nev. 638, 647, 119 P.3d 1225, 1231–32 (2005); *State v. Gomes*, 112 Nev. 1473, 1481, 930 P.2d 701, 706 (1996); *Washington v. State*, 112 Nev. 1067, 1073, 922 P.2d 547, 551 (1996); *Rembert v. State*, 104 Nev. 680, 681–82, 766 P.2d 890, 891 (1988).

4.00: FAILURE TO REACH VERDICT (WILKINS INSTRUCTION)

The verdict must represent the considered judgment of each juror. In order to return a verdict, it is necessary that each juror agree thereto. Your verdict must be unanimous.

It is your duty as jurors to consult with one another and to deliberate with a view to reaching an agreement, if you can do so without violence to individual judgment. Each of you must decide the case for yourself, but you must do so only after an impartial consideration of the evidence with your fellow jurors.

In the course of your deliberations, do not hesitate to reexamine your own views and change your opinion if you are convinced it is erroneous, but do not surrender your honest conviction as to the weight or effect of evidence solely because of the opinion of your fellow jurors or for the mere purpose of returning a verdict.

You are not partisans. You are judges – judges of the facts. Your sole interest is to ascertain the truth from the evidence in this case.

Wilkins v. State, 96 Nev. 367, 373 n.2, 609 P.2d 309, 313 n.2 (1980); *Allen v. U.S.*, 164 U.S. 492 (1896).

4.01: SELECTING FOREPERSON

When you retire to consider your verdict, you must select one of your number to act as the foreperson who will preside over your deliberations and will be your spokesperson here in court.

During your deliberations, you will have all the exhibits which were admitted into evidence at the trial and in this hearing, written instructions, and verdict forms which have been prepared for your convenience.

Your verdict must be unanimous. As soon as you have agreed upon a verdict, have it signed and dated by the foreperson and return with it to this room.

4.02: NO DISCUSSION OF PUNISHMENT

In arriving at a verdict in this case as to whether the Defendant is guilty or not guilty, the subject of penalty or punishment is not to be discussed or considered by you and should in no way influence your verdict. Your duty is to determine whether the Defendant is guilty or not guilty.

Moore v. State, 88 Nev. 74, 75-76, 493 P.2d 1035, 1036 (1972); *Valdez v. State*, 124 Nev. 1172, 1187, 196 P.3d 465, 476 (2008); For first degree murder, *see* Instruction 6.19.

4.03: ARGUMENT OF COUNSEL

Now you will listen to the arguments of counsel who will endeavor to aid you in reaching a proper verdict by refreshing in your minds the evidence and by showing the application thereof to the law. Whatever counsel may say, you will bear in mind that it is your duty to be governed in your deliberations by the evidence as you understand it, and remember it to be, and the law as given to you in these instructions, with the sole, fixed, and steadfast purpose of doing equal and exact justice between the Defendant and the State of Nevada.

NRS 175.161.

4.04: VERDICT OF ACQUITTAL BY COURT

When the Court deems the evidence insufficient to warrant a conviction of an offense charged, it may advise the jury to acquit the Defendant of that charge, but the jury is not bound by such advice.

In this case, I advise the jury to acquit the Defendant of [charges and counts]. [My advice to acquit the Defendant of these charges does not extend to any lesser included or lesser related offense(s) of these counts.]

NRS 175.381.

5.00: ALIBI

The Defendant has introduced evidence to show that he or she was not present at the time and place of the commission of the crime charged in the [information or indictment].

The State has the burden of proving beyond a reasonable doubt the Defendant's presence at that time and place.

If, after consideration of all the evidence, you have a reasonable doubt that the Defendant was present at the time the crime was committed, you must find the defendant not guilty.

Duckett v. State, 104 Nev. 6, 752 P.2d 752 (1988).

5.01: ENTRAPMENT

The Defendant has raised the affirmative defense of entrapment. Entrapment encompasses two elements: (1) governmental instigation, meaning an opportunity to commit a crime presented by the State; (2) to a person not predisposed to commit the crime.

When the Defendant produces evidence of governmental instigation, the State must prove beyond a reasonable doubt that the Defendant was predisposed to commit the crime.

The following five, non-exhaustive factors are relevant to determine whether the Defendant was predisposed to commit the crime:

(1) the Defendant's character,
(2) who first suggested the criminal activity,
(3) whether the Defendant engaged in the activity for profit,
(4) whether the Defendant demonstrated reluctance, and
(5) the nature of the government's inducement.

Of these five factors, the most important is whether the Defendant demonstrated reluctance which was overcome by the government's inducement.

DePasquale v. State, 104 Nev. 338, 340, 757 P.2d 367, 368 (1988); *State v. Colosimo*, 122 Nev. 950, 957–58, 142 P.3d 352, 357 (2006); *Foster v. State*, 116 Nev. 1088, 1093, 13 P.3d 61, 64–65 (2000); *Miller v. State*, 121 Nev. 92, 97, 110 P.3d 53, 57 (2005).

5.02: ENTRAPMENT – ADDITIONAL CONSIDERATIONS

The affirmative defense of entrapment only comes into play when the government's deception actually implants the criminal design in the mind of the Defendant.

If you believe that the government, in good faith and solely for the purpose of detecting or discovering crime or offenses, furnished an opportunity or aided or encouraged its commission by the Defendant, and that the Defendant had the requisite criminal intent to commit the crime, then there is no entrapment.

Hill v. State, 95 Nev. 327, 331, 333, 594 P.2d 699, 702-03 (1979).

5.03: SELF-DEFENSE – *RUNION* INSTRUCTION SERIES

The killing or attempted killing of another person in self-defense is justified and not unlawful when the person who does the killing or attempts to kill actually and reasonably believes:

(1) That there is imminent danger that the assailant will either kill him or her or cause him or her great bodily injury; and

(2) That it is absolutely necessary under the circumstances for him or her to use in self-defense force or means that might cause the death of the other person, for the purpose of avoiding death or great bodily injury to himself or herself.

Runion v. State, 116 Nev. 1041, 13 P.3d 52 (2000); [This series of model Runion instructions is intended to be used in cases where murder is charged, and self-defense is at issue. These instructions should be tailored to the facts and circumstances of the case. These instructions may also be used for other types of crimes, and should be modified accordingly.]

5.03(a): SELF-DEFENSE – *RUNION* INSTRUCTION SERIES

A bare fear of death or great bodily injury is not sufficient to justify a killing. To justify taking the life of another in self-defense, the circumstances must be sufficient to excite the fears of a reasonable person placed in a similar situation. The person killing must act under the influence of those fears alone and not in revenge.

NRS 200.130; *Runion v. State*, 116 Nev. 1041, 13 P.3d 52 (2000).

5.03(b): SELF-DEFENSE – *RUNION* INSTRUCTION SERIES

An honest but unreasonable belief in the necessity for self-defense does not negate malice and does not reduce the offense from murder to manslaughter.

Runion v. State, 116 Nev. 1041, 13 P.3d 52 (2000).

5.03(c): SELF-DEFENSE – *RUNION* INSTRUCTION SERIES

The right of self-defense is not available to an original aggressor, that is a person who has sought a quarrel with the design to force a deadly issue and thus through his fraud, contrivance or fault, to create a real or apparent necessity for making a felonious assault.

However, where a person without voluntarily seeking, provoking, inviting, or willingly engaging in a difficulty of his or her own free will, is attacked by an assailant, he or she has the right to stand his or her ground and need not retreat when faced with the threat of deadly force.

Runion v. State, 116 Nev. 1041, 13 P.3d 52 (2000).

5.03(d): SELF-DEFENSE – *RUNION* INSTRUCTION SERIES

Actual danger is not necessary to justify a killing in self-defense. A person has a right to defend from apparent danger to the same extent as he or she would from actual danger. The person killing is justified if:

(1) He or she is confronted by the appearance of imminent danger which arouses in his or her mind an honest belief and fear that he or she is about to be killed or suffer great bodily injury; and

(2) He or she acts solely upon these appearances and his or her fear and actual beliefs; and

(3) A reasonable person in a similar situation would believe himself or herself to be in like danger.

Runion v. State, 116 Nev. 1041, 13 P.3d 52 (2000).

5.03(e): SELF-DEFENSE – *RUNION* INSTRUCTION SERIES

The killing is justified even if it develops afterward that the person killing was mistaken about the extent of the danger.

Runion v. State, 116 Nev. 1041, 13 P.3d 52 (2000).

5.03(f): SELF-DEFENSE – *RUNION* INSTRUCTION SERIES

If evidence of self-defense is present, the State must prove beyond a reasonable doubt that the Defendant did not act in self-defense. If you find that the State has failed to prove beyond a reasonable doubt that the Defendant did not act in self-defense, you must find the Defendant not guilty.

Runion v. State, 116 Nev. 1041, 13 P.3d 52 (2000).

5.04: DURESS

The Defendant has raised the affirmative defense of duress.

This means that the Defendant is not guilty of a crime if [he or she proves by a preponderance of the evidence] he or she falls into the following class of persons who are not liable to punishment:

(1) persons who committed the act or made the omission charged;
(2) under threats or menaces sufficient to show;
(3) that they had reasonable cause to believe, and did believe;
(4) that if they refused, their lives would be endangered or they would suffer great bodily harm.

NRS 194.010(a); *Browning v. State*, 120 Nev. 347, 361, 91 P.3d 39, 49 (2004); *Rosemond v. United States*, 572 U.S. 65, 134 S. Ct. 1240, 1254, 188 L. Ed. 2d 248 (2014); The Nevada Supreme Court has not addressed the burden of proof for this affirmative defense. However, this Committee recommends that in most cases, the defendant will need to establish duress by a preponderance of the evidence. See generally, *Dixon v. United States*, 548 U.S. 1, 6-8, 126 S. Ct. 2437, 2441-42 (2006). However, the bracketed language should be omitted and the jury should be instructed as to the State's burden of proof in cases where the nature of the mens rea would require the government to disprove the existence of duress beyond a reasonable doubt. *See Dixon*, 548 U.S. at 6 n.4, 126 S. Ct. at 2441 n.4.

5.05: DEFENSE OF OTHERS (VS. POLICE)

An individual can lawfully exert force against a police officer in the defense of others under the following circumstances only:

(1) Where the individual has witnessed a police officer's unlawful and excessive use of force; and
(2) Where the individual being rescued is facing imminent and serious bodily harm at the hands of the police officer.

An individual acting in defense of another against a police officer may only use that force reasonably necessary to remove the threat of imminent serious bodily harm to that other person.

Baston v. State, 113 Nev. 669, 676, 941 P.2d 478, 483 (1997).

5.06: CULPABLE NEGLIGENCE – DEFINED [ACCIDENT INSTRUCTION]

A person is not liable to punishment for an act committed through misfortune or by accident, when it appears that there was no evil design, intention or culpable negligence.

"Culpable negligence" exists where there are facts and circumstances that would put an ordinary prudent person on notice that an act or course of action is dangerous, yet the person fails to take the proper precautions which a person of ordinary prudence would have used under the circumstances, and the harm results.

NRS 194.010(7); *Mathews v. State*, 134 Nev. 512, 518, 424 P.3d 634, 640 (2018); *State v. Lewis*, 59 Nev. 262, 91 P.2d 820, 824 (1939); *Black's Law Dictionary* (7th Ed. 1999), 1056-1057.

6.00: MURDER DEFINED

Murder is the unlawful killing of a human being, with malice aforethought, either express or implied. The unlawful killing may be effected by any of the various means by which death may be occasioned.

NRS 200.010; *Collman v. State*, 116 Nev. 687, 723, 7 P.3d 426 (2000).

6.01: DEGREES OF MURDER

Murder is divided into two degrees.

Murder of the first degree is murder which is (1) willful, deliberate, and premeditated or (2) committed in the perpetration or attempted perpetration of the felony crime of [charged felony].

Murder of the second degree is all other kinds of murder.

NRS 200.030(1)(a-b); NRS 200.030(2).

6.02: MALICE AFORETHOUGHT

Malice aforethought, as used in the definition of murder, means the intentional doing of a wrongful act without legal cause or excuse, or what the law considers adequate provocation. The condition of mind described as malice aforethought may arise, not alone from anger, hatred, revenge or from particular ill will, spite or grudge toward the person killed, but may also result from any unjustifiable or unlawful motive or purpose to injure another, which proceeds from a heart fatally bent on mischief, or with reckless disregard of consequences and social duty.

[Malice aforethought may be inferred from the intentional use of a deadly weapon in a deadly and dangerous manner.]

"Aforethought" does not imply deliberation or the lapse of considerable time. It only means the required mental state must precede rather than follow the act.

Crawford v. State, 121 Nev. 744, 752, 121 P.3d 582, 587 (2005); *Guy v. State*, 108 Nev. 770, 776-77, 839 P.2d 578, 582-83 (1992); *Hern v. State*, 97 Nev. 529, 532, 635 P.2d 278, 280 (1981); *Ogden v. State*, 96 Nev. 258, 262-63, 607 P.2d 576, 578-79 (1980); *Scott v. State*, 92 Nev. 552, 554-55, 554 P.2d 735, 737 (1976); *Moser v. State*, 91 Nev. 809, 812, 544 P.2d 424, 426 (1975).

6.03: MALICE DEFINED

Express malice is that deliberate intention to unlawfully take away the life of a fellow creature, which is manifested by external circumstances capable of proof.

Malice may be implied when no considerable provocation appears or when all the circumstances of the killing show an abandoned and malignant heart.

NRS 200.020; *Cordova v. State*, 116 Nev. 664, 666-67, 6 P.3d 481, 482-83 (2000); *Leonard v. State*, 117 Nev. 53, 78, 17 P.3d 397, 413 (2001).

6.04: DEFINITIONS OF WILLFULNESS, DELIBERATION, AND PREMEDITATION

Murder of the first degree is murder which is perpetrated by means of any kind of willful, deliberate, and premeditated killing. All three elements – willfulness, deliberation, and premeditation – must be proven beyond a reasonable doubt before an accused can be convicted of first-degree murder.

Willfulness is the intent to kill. There need be no appreciable space of time between formation of the intent to kill and the act of killing.

Deliberation is the process of determining upon a course of action to kill as a result of thought, including weighing the reasons for and against the action and considering the consequences of the action.

A deliberate determination may be arrived at in a short period of time. But in all cases the determination must not be formed in passion, or if formed in passion, it must be carried out after there has been time for the passion to subside and deliberation to occur. A mere unconsidered and rash impulse is not deliberate, even though it includes the intent to kill.

Premeditation is a design, a determination to kill, distinctly formed in the mind by the time of the killing.

Premeditation need not be for a day, an hour, or even a minute. It may be as instantaneous as successive thoughts of the mind. For if the jury believes from the evidence that the act constituting the killing has been preceded by and has been the result of premeditation, no matter how rapidly the act follows the premeditation, it is premeditated.

The law does not undertake to measure in units of time the length of the period during which the thought must be pondered before it can ripen into an intent to kill which is truly deliberate and premeditated. The time will vary with different individuals and under varying circumstances.

The true test is not the duration of time, but rather the extent of the reflection. A cold, calculated judgment and decision may be arrived at in a short period of time, but a mere unconsidered and rash impulse, even though it includes an intent to kill, is not deliberation and premeditation as will fix an unlawful killing as murder of the first degree.

[This instruction may be presented as one instruction or separated into multiple instructions.]

Byford v. State, 116 Nev. 215, 236-37, 994 P.2d 700, 714-15 (2000); *Payne v. State*, 81 Nev. 503, 508-09, 406 P.2d 922, 925-26 (1965); *Moser v. State*, 91 Nev. 809, 812, 544 P.2d 424, 426 (1975); *Washington v. State*, 132 Nev. 655, 376 P.3d 802, 808 (2016).

6.05: INTENT TO KILL

The intention to kill may be ascertained or deduced from the facts and circumstances of the killing, such as the use of a weapon calculated to produce death, the manner of its use, and the attendant circumstances characterizing the act.

Dearman v. State, 93 Nev. 364, 566 P.2d 407 (1977).

6.06: ATTACK UPON A GROUP

During an attack upon a group, a Defendant's intent to kill need not be directed at any one individual. It is enough if the intent to kill is directed at the group.

Ewell v. State, 105 Nev. 897, 899, 785 P.2d 1028, 1029 (1989); *Ochoa v. State*, 115 Nev. 194, 197-200, 981 P.2d 1201, 1203-1205 (1999).

6.07: TRANSFERRED INTENT

Where a person unlawfully attempts to kill a certain person, but by mistake or inadvertence kills or injures a different person, the crime committed is the same as though the intended victim had been killed or injured.

Sharma v. State, 118 Nev. 648, 656-57, 56 P.3d 868, 873 (2002); *Ochoa v. State*, 115 Nev. 194, 197-200, 981 P.2d 1201, 1203-1205 (1999); *McCaskill v. State*, 127 Nev. 1158, 373 P.3d 940 (2011).

6.08: MURDER BY ALTERNATIVE THEORIES

The [Information/Indictment] alleges alternative theories of MURDER OF THE FIRST DEGREE, as allowed by law. In addition to willful, deliberate, premeditated murder, the [Information/Indictment] alleges the [Defendant(s)] committed the murder by means of [insert alternative theories here] [e.g. felony murder, lying in wait etc.].

NRS 200.030; *Collman v. State*, 116 Nev. 687, 714-715, 717 n.13, 7 P.3d 426, 443-444, 445 n.13 (2000); *Moser v. State*, 91 Nev. 809, 812-13, 544 P.2d 424, 426-27 (1975); *Hernandez v. State*, 124 Nev. 978, 985 n.14, 194 P.3d 1235, 1239 n.14 (2008); *Grigsby v. State*, 127 Nev. 1138, 373 P.3d 918 (2011).

6.09: FELONY MURDER

Whenever death occurs during the perpetration or attempted perpetration of certain felonies, the killing constitutes MURDER OF THE FIRST DEGREE. The offense of [insert felony listed in NRS 200.030(1)(b)] is such a felony, and therefore a killing which is committed in the perpetration or attempted perpetration of a [insert felony listed in NRS 200.030(1)(b)] is First Degree Murder. This is the felony murder rule.

For the felony murder alternative, the State is not required to prove that the killing was committed with malice, premeditation, or deliberation. An unlawful killing of a human being, whether intentional, unintentional, or accidental, which is committed in the perpetration or attempted perpetration of [insert felony listed in NRS 200.030(1)(b)] is first degree murder.

Therefore, the elements of FELONY MURDER OF THE FIRST DEGREE, as alleged in this case are:

(1) The Defendant did willfully and unlawfully;
(2) Perpetrate or attempt to perpetrate the crime of [insert felony listed in NRS 200.030(1)(b)]; and
(3) The killing occurred in the perpetration or attempted perpetration of the [insert felony listed in NRS 200.030(1)(b)].

NRS 200.030(1)(b); *Sanchez-Dominguez v. State*, 130 Nev. 85, 89, 318 P.3d 1068, 1072 (2014); *Rose v. State*, 127 Nev. 494, 500, 255 P.3d 291, 295 (2011); *State v. Contreras*, 118 Nev. 332, 334-337, 46 P.3d 661, 662-664 (2002); *State v. Fouquette*, 67 Nev. 505, 529-30, 221 P.2d 404, 417 (1950); *Crawford v. State*, 121 Nev. 744, 748-749, 756, 121 P.3d 582, 585-586, 590 (2005).

6.10: FELONY MURDER – PERPETRATION DEFINED

As applied to Felony Murder, the term "perpetration" includes not only the acts that constitute the elements of [insert charged felony or felonies, e.g., Burglary, Invasion of the Home], but also encompasses acts beyond the statutory elements of that felony to include all acts following and connected to the attempted or completed crime that form in reality a part of the same occurrence. Thus, the "perpetration" of a [insert charged felony or felonies, e.g., Burglary, Invasion of the Home] does not end the moment all of the statutory elements of the felony are complete. Instead, the duration of felony-murder liability can extend beyond the termination of the felony itself if the killing and the felony are linked to or part of the series of incidents so as to be part of one continuous transaction.

["Perpetration" may include the flight of the perpetrator from the scene of the offense until the perpetrator reaches a temporary place of safety.]

Sanchez-Dominguez v. State, 130 Nev. 85, 89, 318 P.3d 1068, 1072 (2014); *Payne v. State*, 81 Nev. 503, 506-507, 406 P.2d 922, 924-925 (1965).

6.11: MURDER BY MEANS OF LYING IN WAIT

Murder perpetrated by means of lying in wait is murder of the first degree.

The elements necessary to constitute lying in wait are watching, waiting, and concealment from the person killed with the intention of inflicting serious bodily injury upon such person or of killing such person. Nothing requires that the lying in wait exist for or consume any particular period of time before the act which causes the death. It is only necessary that the act causing death be preceded by and the outgrowth of the lying in wait.

Where a killing is accomplished after lying in wait, the State is not required to prove premeditation or deliberation. The killing constitutes murder of the first degree so long as it was committed with malice, either express or implied.

NRS 200.030; *Collman v. State*, 116 Nev. 687, 714-715, 717 n.13, 7 P.3d 426, 443-444, 445 n.13 (2000); *Moser v. State*, 91 Nev. 809, 812-13, 544 P.2d 424, 426-27 (1975); *Hernandez v. State*, 124 Nev. 978, 985 n.14, 194 P.3d 1235, 1239 n.14 (2008); *Grigsby v. State*, 127 Nev. 1138, 373 P.3d 918 (2011).

6.12: MURDER BY TORTURE

Murder perpetrated by means of torture is murder of the first degree.

Torture involves a calculated intent to inflict pain for revenge, extortion, persuasion or for any sadistic purpose and intent to inflict pain beyond the killing itself. In the case of a killing by torture, it is not enough to prove that the killing was by a means that incidentally caused pain and suffering to the victim. It must be proven that in killing the victim, the Defendant specifically intended to inflict pain for revenge, extortion, persuasion or for any sadistic purpose.

If the State has proven that a killing was accomplished by means of torture, the State is not required to prove intent to kill, premeditation, or deliberation. The killing constitutes murder of the first degree so long as it was committed with malice, either express or implied.

NRS 200.030; *Hernandez v. State*, 118 Nev. 513, 532, 50 P.3d 1100, 1113 (2002); *Collman v. State*, 116 Nev. 687, 714-715, 717 n.13, 7 P.3d 426, 443-444, 445 n.13 (2000); *Hernandez v. State*, 124 Nev. 978, 985 n. 14, 194 P.3d 1235, 1239 n.14 (2008).

6.13: SECOND DEGREE FELONY MURDER

The [Information/Indictment] alleges alternative theories of Second Degree Murder. It alleges that [victim's name]'s death resulted from the Defendant's perpetration of the felony crime of [insert felony not listed in NRS 200.030(1)(b)].

Whenever death occurs as an immediate and direct result of the perpetration of a non-assaultive, inherently dangerous felony, and the felony crime is not one of those felonies which would cause the killing to constitute First Degree Felony Murder, the killing is Second Degree Murder.

Therefore, the elements of Second Degree Felony Murder in this case are:

(1) The Defendant did willfully and unlawfully commit the felony crime of [insert felony not listed in NRS 200.030(1)(b)];
(2) The felony committed was inherently dangerous, meaning death or injury was a directly foreseeable consequence of the felony based upon the manner in which it was committed;
(3) The felony committed was not assaultive in nature; and
(4) There was an immediate and direct causal relationship between the felony and [victim's name]'s death, meaning death resulted from the Defendant's actions without the intervention of some other source or agency.

A felony is "assaultive in nature" if it involves a threat of immediate violent injury based upon the manner in which it was committed.

In regard to the Second-Degree Felony Murder alternative, the State is not required to prove that the killing was intentional. The State is not required to prove that the killing was premeditated or deliberate. The State is only required to prove the elements listed above.

Rose v. State, 127 Nev. 494, 500–503, 255 P.3d 291, 295–298 (2011); *Labastida v. State*, 115 Nev. 298, 307, 986 P.2d 443, 448–49 (1999); *Ramirez v. State*, 126 Nev. 203, 207-208, 208 n.2, 235 P.3d 619, 622, 622 n.2 (2010).

6.14: MANSLAUGHTER DEFINED

Manslaughter is the unlawful killing of a human being, without malice express or implied, and without any mixture of deliberation.

Manslaughter must be voluntary, upon a sudden heat of passion, caused by a provocation apparently sufficient to make the passion irresistible, or involuntary, in the commission of an unlawful act, or a lawful act without due caution or circumspection.

NRS 200.040.

6.15: VOLUNTARY MANSLAUGHTER

In cases of voluntary manslaughter, there must be a serious and highly provoking injury inflicted upon the person killing, sufficient to excite an irresistible passion in a reasonable person, or an attempt by the person killed to commit a serious personal injury on the person killing.

The killing must be the result of that sudden, violent impulse of passion supposed to be irresistible, for, if there should appear to have been an interval between the assault and provocation given for the killing, sufficient for the voice of reason and humanity to be heard, the killing shall be attributed to deliberate revenge and punished as murder.

NRS 200.050; NRS 200.060.

6.16: MURDER AND VOLUNTARY MANSLAUGHTER DISTINGUISHED

The distinction between murder and voluntary manslaughter is that murder requires malice while voluntary manslaughter does not.

When the act causing the death, though unlawful, is done upon a sudden heat of passion caused by a provocation apparently sufficient to make the passion irresistible, the offense is voluntary manslaughter. In such a case (even if an intent to kill exists) the law is that malice, which is an essential element of murder, is absent.

To establish that a killing is murder and not voluntary manslaughter, the burden is on the State to prove beyond a reasonable doubt each of the elements of murder and that the act which caused the death was not done in a heat of passion as defined in these instructions.

Crawford v. State, 121 Nev. 744, 121 P.3d 582 (2005).

6.17: VOLUNTARY MANSLAUGHTER - HEAT OF PASSION (PHYSICAL CONTACT NOT REQUIRED)

The serious and highly provoking injury which causes the sudden heat of passion for purposes of voluntary manslaughter need not be a direct physical assault on the accused and can occur without direct physical contact.

Roberts v. State, 102 Nev. 170, 174, 717 P.2d 1115, 1717(1986); *Schoels v. State*, 114 Nev. 981, 966 P.2d 735(1998).

6.18: INVOLUNTARY MANSLAUGHTER

Involuntary manslaughter is the killing of a human being, without any intent to do so, in the commission of an unlawful act, or in the commission of a lawful act which probably might produce such a consequence in an unlawful manner.

However, where the involuntary killing occurs in the commission of an unlawful act, which, in its consequences, naturally tends to destroy the life of a human being, the offense is murder.

NRS 200.070.

6.19: LESSER INCLUDED (*GREEN* STEP-DOWN INSTRUCTION)

The [Information/Indictment] in this case charges Open Murder, which includes the offense of Murder in the First Degree and also necessarily includes the lesser included offenses of Murder in the Second Degree, Voluntary Manslaughter and Involuntary Manslaughter. The Defendant may only be convicted of one of these offenses.

You should first examine the evidence as it applies to Murder in the First Degree. If you unanimously agree that the Defendant is guilty of Murder in the First Degree, you should sign the appropriate Verdict form and request the bailiff to return you to court.

If you are unable to agree that the Defendant is guilty of Murder in the First Degree, you should then examine the evidence as it applies to Murder in the Second Degree. If you unanimously agree that the Defendant is guilty of Murder in the Second Degree, you should sign the appropriate Verdict form and ask the bailiff to return you to court.

If you cannot unanimously agree that the Defendant is guilty of Murder in the Second Degree, then you should examine the evidence as it applies to Voluntary Manslaughter. If you unanimously agree that the Defendant is guilty of the crime of Voluntary Manslaughter, you should sign the appropriate Verdict form and request the bailiff to return you to court.

If you cannot unanimously agree that the Defendant is guilty of Voluntary Manslaughter, then you should examine the evidence as it applies to Involuntary Manslaughter. If you unanimously agree that the Defendant is guilty of the crime of Involuntary Manslaughter, you should sign the appropriate Verdict form and request the bailiff to return to court.

The Defendant, of course, can be found Not Guilty of all the offenses enumerated.

NRS 175.501; *Green v. State*, 119 Nev. 542, 545-49, 80 P.3d 93, 95-97 (2003).

6.20: JURY NOT TO CONSIDER PUNISHMENT UNLESS FIRST DEGREE MURDER

In arriving at a verdict in this case as to whether the Defendant is guilty or not guilty, the subject of penalty or punishment is not to be discussed or considered by you and should in no way influence your verdict.

If your verdict is murder in the first degree, you may, at a later hearing, consider the subject of penalty or punishment.

NRS 175.552; *Moore v. State*, 88 Nev. 74, 75-76, 493 P.2d 1035, 1036 (1972); *Valdez v. State*, 124 Nev. 1172, 1187, 196 P.3d 465, 476 (2008).

If not Murder in the First Degree, refer back to instruction 4.02.

6.21: EXCUSABLE HOMICIDE BY MISADVENTURE

Excusable homicide by misadventure occurs when a person is doing a lawful act, without any intention of killing, yet through misfortune or by accident kills another, as where a person is at work with an ax and the head flies off and kills a bystander.

If a killing constitutes excusable homicide by misadventure, the Defendant is entitled to a verdict of not guilty.

NRS 200.180; *McCraney v. State*, 110 Nev. 250, 254-55, 871 P.2d 922, 925 (1994).

6.22: ATTEMPTED MURDER (USE ONLY WHEN NO ADDITIONAL CHARGE OF MURDER IN CASE)

An "attempt" is an act or acts done with the intent to commit a crime, and tending, but failing to accomplish it. The elements of attempted murder are the following:

(1) The Defendant acted with specific intent to kill unlawfully another person;
(2) The Defendant performed some act toward committing the killing; and
(3) The Defendant failed to consummate commission of the killing.

Mere preparation to commit a crime, such as by devising or arranging the means necessary for the commission of the offense, is insufficient to constitute an attempt. The act done must be a direct movement toward the present commission of the crime, although it need not amount to the commission of an actual element of the crime. When the intent to commit the crime is clearly shown, there need only be slight acts in furtherance of the crime to constitute an attempt.

Even though the actual commission of a crime is impossible because of circumstances unknown to the Defendant, he or she is guilty of an attempt to commit the crime if he or she has the specific intent to commit the offense, and under the circumstances as he or she reasonably sees them, he or she does any act that would be a direct movement toward consummating the offense he or she intends to commit.

A person who attempts to commit a crime is liable even if, after taking a direct movement towards committing the intended crime, he or she abandoned further efforts to complete the crime, and even if the failure to complete the crime was due to an intervention or interruption by someone or something beyond his or her control. On the other hand, if a person freely and voluntarily abandons his or her plans before taking a direct movement toward committing the offense, then that person is not guilty of attempting the crime.

NRS 193.330; *Washington v. State*, 132 Nev. 655, 663, 376 P.3d 802, 809 (2016); *Valdez v. State*, 124 Nev. 1172, 1196-97, 196 P.3d 465, 481-82 (2008); *Sharma v. State*, 118 Nev. 648, 652, 56 P.3d 868, 870 (2002); *Curry v. State*, 106 Nev. 317, 319-20, 792 P.2d 1223, 1224-5 (1980); *Stephens v. Sheriff, Clark Cty.*, 93 Nev. 338, 339, 565 P.2d 1007, 1008 (1977); *Beddow v. State*, 93 Nev. 619, 622, 572 P.2d 526, 528 (1977); *Van Bell v. State*, 105 Nev. 352, 353-54, 775 P.2d 1273, 1274 (1989); *Darnell v. State*, 92 Nev. 680, 681-82, 558 P.2d 624, 625-26 (1976); *Larsen v. State*, 86 Nev. 451, 453-54, 470 P.2d 417, 418-19 (1970).

6.23: ATTEMPTED MURDER – (USE WHEN MURDER AND ATTEMPTED MURDER CHARGED)

An "attempt" is an act done with the intent to commit a crime, and tending, but failing to accomplish it. The elements of attempted murder are the following:

(1) The Defendant acted with express malice, that is, with the deliberate intention unlawfully to kill another person;
(2) The Defendant performed some act toward committing the killing; and
(3) The Defendant failed to consummate commission of the killing.

Attempted murder cannot be committed with implied malice; it requires specific intent to kill. Premeditation and deliberation, however, are not elements of attempted murder.

Mere preparation to commit a crime, such as by devising or arranging the means necessary for the commission of the offense, is insufficient to constitute an attempt. The act done must be a direct movement toward the present commission of the crime, although it need not amount to the commission of an actual element of the crime. When the intent to commit the crime is clearly shown, there need only be slight acts in furtherance of the crime to constitute an attempt.

Even though the actual commission of a crime is impossible because of circumstances unknown to the Defendant, he or she is guilty of an attempt to commit the crime if he or she has the specific intent to commit the offense, and under the circumstances as he or she reasonably sees them, he or she does any act that would be a direct movement toward consummating the offense he or she intends to commit.

A person who attempts to commit a crime is liable even if, after taking a direct movement towards committing the intended crime, he or she abandoned further efforts to complete the crime, and even if the failure to complete the crime was due to an intervention or interruption by someone or something beyond his or her control. On the other hand, if a person freely and voluntarily abandons his or her plans before taking a direct movement toward committing the offense, then that person is not guilty of attempting the crime.

NRS 193.330; *Washington v. State*, 132 Nev. 655, 663, 376 P.3d 802, 809 (2016); *Keys v. State*, 104 Nev. 736, 739-42, 766 P.2d 270, 272-74 (1988); *Sharma v. State*, 118 Nev. 648, 652, 56 P.3d 868, 870 (2002); *Curry v. State*, 106 Nev. 317, 319-20, 792 P.2d 1223, 1224-5 (1980); *Moffett v. State*, 96 Nev. 822, 824-25, 618 P.2d 1223, 1224-25 (1980); *Stephens v. Sheriff, Clark Cty.*, 93 Nev. 338, 339, 565 P.2d 1007, 1008 (1977); *Beddow v. State*, 93 Nev. 619, 622, 572 P.2d 526, 528 (1977); *Van Bell v. State*, 105 Nev. 352, 353-54, 775 P.2d 1273, 1274 (1989); *Darnell v. State*, 92 Nev. 680, 681-82, 558 P.2d 624, 625-26 (1976); *Larsen v. State*, 86 Nev. 451, 453-54, 470 P.2d 417, 418-19 (1970).

6.24: INTENT MAY BE INFERRED

Intent may be proved by circumstantial evidence. The prosecution is not required to present direct evidence of a Defendant's state of mind as it existed during the commission of a crime.

While witnesses may see and hear and thus be able to give direct evidence of what a Defendant does or fails to do, there can be no eyewitness account of a state of mind with which the acts were done or omitted, but what a Defendant does or fails to do may indicate intent or lack of intent to commit the offense charged. You may infer the existence of a particular state of mind from the circumstances disclosed by the evidence.

In determining the issue as to intent, you are entitled to consider any statements made and acts done or omitted by the accused, and all facts and circumstances in evidence which may aid in the determination of state of mind.

NRS 193.200; *Briano v. State*, 94 Nev. 422, 425, 581 P.2d 5, 7-8 (1978); *Valdez v. State*, 124 Nev. 1172, 1197, 196 P.3d 465, 481 (2008); *Sharma v. State*, 118 Nev. 648, 659, 56 P.3d 868, 874 (2002); *Moser v. State,* 91 Nev. 809, 812, 544 P.2d 424, 426 (1975); *Dearman v. State*, 93 Nev. 364, 367, 566 P.2d 407, 409 (1977); *Cooper v. State*, 94 Nev. 744, 745, 587 P.2d 1318, 1319 (1978); *Manning v. Warden*, 99 Nev. 82, 83-84, 659 P.2d 847, 848 (1983); *Powell v. State*, 113 Nev. 258, 262, 934 P.2d 224, 227 (1997); *State v. Rhodig*, 101 Nev. 608, 611, 707 P.2d 549, 551 (1985); *Larsen v. State*, 86 Nev. 451, 453, 470 P.2d 417, 418 (1970); *Leonard v. State*, 117 Nev. 53, 75, 17 P.3d 397, 411 (2001); *Wilson v. State*, 85 Nev. 88, 90, 450 P.2d 360, 361-62 (1969); *Grant v. State*, 117 Nev. 427, 435, 24 P.3d 761, 766 (2001); *Miranda v. State*, 101 Nev. 562, 568, 707 P.2d 1121, 1125 (1985).

6.25: PENALTY INSTRUCTIONS NON-DEATH – FIRST DEGREE

It is now my duty as judge to instruct you in the law that applies to this penalty hearing. It is your duty as jurors to follow these instructions and to apply the rules of law to the facts as you find them from the evidence.

You must not be concerned with the wisdom of any rule of law stated in these instructions. Regardless of any opinion you may have as to what the law ought to be, it would be a violation of your oath to base a verdict upon any other view of the law than that given in the instructions of the Court.

6.25(a): CONSIDER INSTRUCTIONS AS A WHOLE

If in these instructions, any rule, direction or idea is repeated or stated in varying ways, no emphasis thereon is intended by me and none may be inferred by you. For that reason, you are not to single out any certain sentence or any individual point or instruction and ignore the others, but you are to consider all the instructions as a whole and to regard each in the light of all the others.

The order in which the instructions are given has no significance as to their relative importance.

South Pacific Co. v. Watkins, 83 Nev. 471, 492-93, 435 P.2d 498, 512 (1967); *State v. Lewis*, 59 Nev. 262, 91 P.2d 820, 823 (1939).

6.25(b): PENALTY

The trial jury shall fix the punishment for every person convicted of murder of the first degree.

The jury shall fix the punishment at:

(1) A definite term of fifty years, with eligibility for parole beginning when a minimum of twenty years has been served; or,

(2) Life imprisonment with the possibility of parole, with eligibility for parole beginning when a minimum of twenty years has been served; or,

(3) Life imprisonment without the possibility of parole.

6.25(c): PENALTY DEFINED

A prison term of fifty years with eligibility for parole beginning when a minimum of twenty years has been served does not mean that the Defendant would be paroled after twenty years but only that he or she would be eligible for parole after that period of time.

Life imprisonment with the possibility of parole is a sentence to life imprisonment which provides that the Defendant would be eligible for parole after a period of twenty years. This does not mean that he or she would be paroled after twenty years but only that he or she would be eligible for parole after that period of time.

Life imprisonment without the possibility of parole means exactly what it says, that the Defendant shall not be eligible for parole.

6.25(d): PENALTY EVIDENCE

In the penalty hearing, evidence may be introduced relative to the offense, and any other evidence that bears on the Defendant's character.

6.25(e): EVIDENCE CONSIDERED

In the penalty hearing, additional evidence may be presented relative to the offense, Defendant or victim. In determining the appropriate penalty to be imposed in this case, you may consider all evidence introduced during the trial as well as the evidence admitted during the penalty hearing.

6.25(f): GUILT OR INNOCENCE NOT TO BE DETERMINED

In your deliberation you may not discuss or consider the subject of guilt or innocence of a Defendant, as that issue has already been decided. Your duty is confined to a determination of the punishment to be imposed.

6.25(g): CREDIBILITY OF A WITNESS

To the jury alone belongs the duty of weighing the evidence during this penalty phase, and determining the credibility of the witnesses. The degree of credit due a witness should be determined by his or her character, conduct, manner upon the stand, fears, bias, impartiality, reasonableness or unreasonableness of the statements he or she makes, and the strength or weakness of his or her recollections, viewed in the light of all the other facts in evidence.

If the jury believes that any witness has willfully testified falsely about a material fact during this penalty phase, the jury may disregard the whole of the evidence of any such witness or any portion that is not proved by other evidence.

6.25(h): DELIBERATIONS

During your deliberations, you will have all the exhibits which were admitted into evidence at the trial and in this hearing, written instructions, and verdict forms which have been prepared for your convenience.

Your verdict must be unanimous. As soon as you have agreed upon a verdict, have it signed and dated by the foreperson and return with it to this room.

6.25(i): ARGUMENT OF COUNSEL

Now you will listen to the arguments of counsel who will endeavor to aid you in reaching a proper verdict by refreshing in your minds the evidence and by showing the application thereof to the law. Whatever counsel may say, you will bear in mind that it is your duty to be governed in your deliberations by the evidence as you understand it, and remember it to be, and the law as given to you in these instructions, with the sole, fixed, and steadfast purpose of doing equal and exact justice between the Defendant at the State of Nevada.

GIVEN:_____

NRS 175.161.

7.00: DUTY OF JURORS DEATH PENALTY IS SOUGHT – INTRODUCTION

It is now my duty as judge to instruct you in the law that applies to this penalty hearing. It is your duty as jurors to follow these instructions and to apply the rules of law to the facts as you find them from the evidence.

You must not be concerned with the wisdom of any rule of law stated in these instructions, regardless of any opinions you may have as to what the law is or ought to be.

7.01: DUTY OF JURORS

Although you are to consider only the evidence in the case in reaching a verdict, you must bring to the consideration of the evidence your everyday common sense and judgment as reasonable men and women. Thus, you are not limited solely to what you see and hear as the witnesses testify. You may draw reasonable inferences which you feel are justified by the evidence, keeping in mind that such inferences should not be based on speculation or guess.

A penalty verdict may never be influenced by [sympathy, passion,] prejudice or public opinion. Your decision should be the product of sincere judgment and sound discretion in accordance with these rules of law.

The use of the bracketed language during a capital penalty hearing is discretionary "…as long as the court also instructs the jury to consider mitigating factors." *Wesley v. State*, 112 Nev. 503, 519, 916 P.2d 793, 804 (1996); accord *Thomas v. State*, 120 Nev. 37, 46, 83 P.3d 818, 825 (2004); *Leonard v. State*, 117 Nev. 53, 79, 17 P.3d 397, 413 (2001); *Byford v. State*, 116 Nev. 215, 233, 994 P.2d 700, 712 (2000); *Riley v. State*, 107 Nev. 205, 215–16, 808 P.2d 551, 557 (1991); *Hogan v. State*, 103 Nev. 21, 25, 732 P.2d 422, 424–25 (1987); *Biondi v. State*, 101 Nev. 252, 257–58, 699 P.2d 1062, 1066 (1985); *Howard v. State*, 102 Nev. 572, 577–78, 729 P.2d 1341, 1344–45 (1986); *Nevius v. State*, 101 Nev. 238, 250–51, 699 P.2d 1053, 1060–61 (1985).

7.02: CONSIDER INSTRUCTIONS AS A WHOLE

If in these instructions, any rule, direction or idea is repeated or stated in different ways, no emphasis thereon is intended by me and none may be inferred by you. For that reason, you are not to single out any certain sentence or any individual point or instruction and ignore the others, but you are to consider all the instructions as a whole and regard each in light of all the others.

The order in which the instructions are given has no significance as to their relative importance.

South Pacific Co. v. Watkins, 83 Nev. 471, 492-93, 435 P.2d 498, 512 (1967); *State v. Lewis*, 59 Nev. 262, 91 P.2d 820, 823 (1939).

7.03: JURY DETERMINES SENTENCE IN DEATH PENALTY CASES

You have found the Defendant guilty of Murder of the First Degree. Therefore, under the law of this state, you must determine the sentence to be imposed upon the Defendant.

First Degree Murder is punishable:

(1) By death, only if one or more aggravating circumstances are found, and any mitigating circumstance or circumstances which are found do not outweigh the aggravating circumstances; or

(2) By imprisonment in Nevada State Prison for life without the possibility of parole; or

(3) By imprisonment in the Nevada State Prison for life with the possibility of parole, with eligibility for parole beginning when a minimum of 20 years has been served.

(4) By imprisonment in the Nevada State Prison for a definite term of 50 years, with eligibility for parole beginning when a minimum of 20 years has been served.

A determination of whether one or more aggravating circumstances exists is not necessary in the event you determine to impose a sentence less than death.

NRS 200.030.

7.04: PUNISHMENT EXPLAINED

A prison term of 50 years with eligibility for parole beginning when a minimum of 20 years has been served does not mean that the Defendant would be paroled after 20 years, but only that the Defendant would be eligible for parole after that period of time.

Life imprisonment with the possibility of parole is a sentence to life imprisonment which provides that the Defendant would be eligible for parole after a period of 20 years. This does not mean that the Defendant would be paroled after 20 years but only that the Defendant would be eligible for parole after that period of time.

Life imprisonment without the possibility of parole means exactly what it says, that the Defendant shall not be eligible for parole.

If you sentence the Defendant to death, you must assume that the sentence will be carried out.

NRS 213.085; *Sonner v. State*, 114 Nev. 321, 326-27, 955 P.2d 673, 677 (1998); *Leonard v. State*, 117 Nev. 53, 80, 17 P.3d 397, 414 (2001).

7.05: WEIGHING CIRCUMSTANCES IN DETERMINING SENTENCE

The State has alleged that certain aggravating circumstances are present in this case.

The Defendant has alleged certain mitigating circumstances are present in this case.

It shall be your duty to determine:

(1) Whether one or more aggravating circumstances have been proved;

(2) Whether a mitigating circumstance or circumstances are found to exist; and,

(3) Based upon these findings, whether the Defendant should be sentenced to imprisonment for a definite term of 50 years, life imprisonment with the possibility of parole, life imprisonment without the possibility of parole or death.

The Defendant is eligible to receive a sentence of death only if one or more aggravating circumstances are found, and any mitigating circumstance or circumstances which are found do not outweigh the aggravating circumstances or circumstances.

The jury must find the existence of each aggravating circumstance, if any, unanimously and beyond a reasonable doubt.

The jurors need not find any mitigating circumstance unanimously nor beyond a reasonable doubt. In determining the appropriate sentence, each juror must consider and weigh any mitigating circumstance or circumstances which that juror finds.

The jury may impose a sentence of death only if:

(1) The jurors find unanimously and beyond a reasonable doubt that at least one aggravating circumstance exists;

(2) Each and every juror determines that the mitigating circumstance or circumstances, if any which he or she has found do not outweigh the aggravating circumstance or circumstances; and

(3) The jurors unanimously determine that in their discretion a sentence of death is appropriate.

NRS 175.554. *Byford v. State*, 116 Nev. 215, 994 P.2d 700 (2000); *Geary v. State*, 114 Nev. 100, 952 P.2d 431 (1998); *see Barlow v. State*, 138 Nev. Adv. Op. 25, 507 P.3d 1185, 1196 (2022) (appendix).

7.06: CONSIDERING EVIDENCE

In deciding on an appropriate sentence for the Defendant, you will consider three types of evidence: evidence relevant to the existence of aggravating circumstances, evidence relevant to the existence of mitigating circumstances, and other evidence presented against the Defendant. You must consider each type of evidence for its appropriate purposes.

In determining unanimously whether any aggravating circumstance has been proven beyond a reasonable doubt, you are to consider only evidence relevant to that aggravating circumstance. You are not to consider other evidence against the Defendant.

In determining individually whether any mitigating circumstance exists, you are to consider only evidence relevant to that mitigating circumstance. You are not to consider other evidence presented against the Defendant.

In determining individually whether any mitigating circumstances outweigh any aggravating circumstances, you are to consider only evidence relevant to any mitigating and aggravating circumstances. You are not to consider other evidence presented against the Defendant.

If you find unanimously and beyond a reasonable doubt that at least one aggravating circumstance exists and each of you determines that any mitigating circumstances do not outweigh the aggravating, the Defendant is eligible for a death sentence. At this point, you are to consider all three types of evidence, and you still have the discretion to impose a sentence less than death. You must decide on a sentence unanimously.

If you do not decide unanimously that at least one aggravating circumstance has been proven beyond a reasonable doubt, or if at least one of you determines that the mitigating circumstances outweigh the aggravating, the Defendant is not eligible for a death sentence. Upon determining that the Defendant is not eligible for death, you are to consider all three types of evidence in determining a sentence other than death, and you must decide on such a sentence unanimously.

NRS 175.552; NRS 175.554; *Evans v. State*, 117 Nev. 609, 634-636, 28 P.3d 498, 515-517 (2001).

7.07: AGGRAVATING CIRCUMSTANCES

The following are the only circumstances alleged in this case by which murder of the first degree may be aggravated:

[1. Aggravating circumstance . . .]

[2. Aggravating circumstance . . .]

NRS 175.554; NRS 200.033.

7.08: TORTURE AGGRAVATING CIRCUMSTANCE

As to aggravating circumstance number […]: Torture requires that the murderer must have intended to inflict pain beyond the killing itself. Torture involves a calculated intent to inflict pain for revenge, extortion, persuasion or for any sadistic purpose.

NRS 175.554; NRS 200.033; *Weber v. State*, 121 Nev. 554, 587, 119 P.3d 107, 129 (2005); *Hernandez v. State*, 124 Nev. 978, 984, 194 P.3d 1235, 1239 (2008); *Rodriguez v. State*, 117 Nev. 800, 814, 32 P.3d 773, 782 (2001); *Servin v. State*, 117 Nev. 775, 790, 32 P.3d 1277, 1288 (2001).

7.09: MUTILATION OF VICTIM

As to aggravating circumstance number […]: "Mutilate" means to cut off or permanently destroy a limb or essential part of the body or to cut off or alter radically so as to make imperfect. In order for mutilation to be found as an aggravating circumstance, there must be mutilation of the victim beyond the act of killing.

NRS 175.554; NRS 200.033; *McConnell v. State*, 120 Nev. 1043, 1070, 102 P.3d 606, 625 (2004); *Vanisi v. State*, 117 Nev. 330, 342, 22 P.3d 1164, 1172 (2001).

7.10: MITIGATING CIRCUMSTANCES DEFINED

A mitigating circumstance is any factor which you believe is a basis for imposing a sentence less than death. Such circumstances may include, but are not limited to: any aspect of the Defendant's character, background, or record; any factor that extenuates or reduces the degree of the Defendant's moral culpability, regardless of whether it constitutes a legal justification or excuse for the offense; any circumstances of the offense, or any desire you may have to extend mercy to the Defendant. Any mitigating circumstance may be sufficient, standing alone, to support a decision that death is not the appropriate punishment in this case.

In balancing aggravating and mitigating circumstances, it is not the mere number of aggravating circumstances or mitigating circumstances that controls. You must consider each aggravating circumstance separately and each mitigating circumstance separately to determine what weight should be given.

NRS 200.035; NRS 175.554; *Watson v. State*, 130 Nev. 764, 335 P.3d 157 (2014); *Holloway v. State*, 116 Nev. 732, 6 P.3d 987, (2000); *Middleton v. State*, 116 Nev. 732, 6 P.3d 987 (2000); *Leonard v. State*, 114 Nev. 1196, 969 P.2d 288 (1998); *State v. Haberstroh*, 119 Nev. 173, 69 P.3d 676 (2003).

7.11: INDEPENDENT EVALUATION

In determining whether mitigating circumstances exist, jurors have an obligation to make an independent and objective analysis of all the relevant evidence. Arguments of counsel or a party do not relieve jurors of this responsibility. Jurors must individually consider the totality of the circumstances of the crime and the Defendant, as established by the evidence presented in the guilt and penalty phases of the trial. Neither the Prosecution's nor the Defendant's insistence on the existence or nonexistence of mitigating circumstances is binding upon the jurors.

Holloway v. State, 116 Nev. 732, 743-744, 6 P.3d 987, 995-996 (2000).

7.12: THE LAW DOES NOT COMPEL A DEATH SENTENCE

The law never compels the imposition of the death penalty. Even if you find that the aggravating circumstances have been proven beyond a reasonable doubt, and even if you also do not find that any mitigating circumstances exist, you are not required to return a verdict of the sentence of death as punishment but may instead sentence the Defendant to one of the alternatives less than death.

Geary v. State, 114 Nev. 100, 103-04, 952 P.2d 431, 432-33 (1998).

7.13: REASONABLE DOUBT

The State has the burden of proving beyond a reasonable doubt any of the aggravating circumstance[s] alleged in the case.

A reasonable doubt is one based on reason. It is not mere possible doubt, but is such doubt as would govern or control a person in the more weighty affairs of life. If the minds of the jurors after the entire comparison and consideration of all the evidence are in such a condition that they can say they feel an abiding conviction of the truth of the charge, there is not a reasonable doubt. Doubt, to be reasonable, must be actual, not mere possibility or speculation.

The weighing of any mitigating circumstances and any aggravating circumstances, however, is a matter of an individual moral determination, and the law does not impose a burden of proof on the determination of whether there are mitigating circumstances sufficient to outweigh the aggravating circumstance[s] found. In other words, the State does not have the burden of proving beyond a reasonable doubt that any mitigating circumstances do not outweigh the aggravating circumstance[s].

If the jury does not find at least one aggravating circumstance beyond a reasonable doubt, or if any juror finds the mitigating circumstance[s] are sufficient to outweigh the aggravating circumstance[s] found, or for any other reason any juror declines to impose the death penalty, the Defendant is entitled to a verdict of one of the alternatives less than death.

NRS 175.211; *Bulter v. State*, 120 Nev. 879, 892 n.17, 102 P.3d 71, 80 n.17 (2004); *Hollaway v. State*, 116 Nev. 732, 745, 6 P.3d 987, 996 (2000); *Nunnery v. State*, 127 Nev. 749, 772, 263 P.3d 235, 250-251 (2011); *Hover v. State*, No. 63888, 2016 WL 699871, at *9 (Nev. Feb. 19, 2016)(Unpublished Disposition), cert. denied, 137 S. Ct. 72 (2016); *Middleton v. McDaniel*, No. 62869, 2016 WL 7407431,(Nev. Dec. 21, 2016) (Unpublished Disposition); *see Barlow v. State*, 138 Nev. Adv. Op. 25, 507 P.3d 1185, 1196 (2022) (appendix).

7.14: EVIDENCE

The evidence presented both during the trial and during this hearing may be considered by the jury in deciding the proper and appropriate sentence in this case.

This evidence consists of the sworn testimony of the witnesses, both on direct and cross-examination, regardless of who called the witness; the exhibits which have been introduced into evidence and any facts to which the attorneys have agreed or stipulated.

NRS 175.554.

7.15: DIRECT AND CIRCUMSTANTIAL EVIDENCE

There are two kinds of evidence: direct and circumstantial.

Direct evidence is direct proof of a fact, such as testimony of an eyewitness. Circumstantial evidence is indirect evidence, proof of a chain of facts from which you could find that another fact exists, even though it has not been proved directly. Such evidence may consist of any acts, declarations, or circumstances admitted in evidence tending to prove the commission of a crime. You are entitled to consider both kinds of evidence. The law permits you to give equal weight to both, but it is for you to decide how much weight to give to any evidence.

[By way of example, if you wake up in the morning and see the ground, the sidewalks, and the streets are all wet and water is running down the gutters, you may decide from those facts that it rained during the night. This would be an example of circumstantial evidence. It is proof of one or more facts from which you can find another fact. However, if you are awake during the night and saw the rain fall, that would be direct evidence, something you personally saw.]

7.16: CREDIBILITY OF WITNESSES

In deciding the facts of this case you may have to decide which witnesses to believe and which witnesses not to believe. You may believe everything a witness says, only part of it, or none of it.

In considering the weight or value of the testimony of any witness, you may consider the appearance, attitude, and behavior of the witness when testifying, and a number of other things, including: the witness's ability to see, hear, or know of the things the witness testifies to; the quality of the witness's memory; the inclination of a witness to speak truthfully; whether or not the witness has any interest in the outcome of the case or any motive, bias, or prejudice; whether the witness is contradicted by anything the witness said or wrote before the trial; and, how reasonable the witness's testimony is when considered with other evidence which you believe.

In deciding whether or not to believe a witness, keep in mind that people sometimes forget things. You need to consider whether a contradiction is an innocent lapse of memory or an intentional falsehood, and that may depend on whether it has to do with an important fact or only a small detail.

The weight or value of evidence does not necessarily depend on the number of witnesses testifying for one side. You must consider all the evidence and you may decide the testimony of a smaller number of witnesses on one side has more weight or value than that presented by the larger number of witnesses on the other side.

If you believe that any witness willfully testified falsely about a material fact in the case, you may disregard the whole of the evidence of any such witness or any portion that is not proved by other evidence.

However, you should bear in mind that discrepancies in a witness's testimony or between his or her testimony and that of others, if there were any, do not necessarily mean that you should disbelieve the witness, as failure of recollection is a common experience and innocent misrecollection is not uncommon. You are all certainly aware of the fact that two persons witnessing the same incident often will see or hear it differently.

Also, in considering a discrepancy in a witness's testimony, you should consider whether such discrepancy concerns an important fact or only a trivial detail.

7.17: WHAT IS NOT EVIDENCE

In reaching your verdict you may consider only the testimony of the witnesses, the exhibits admitted in evidence [and stipulations].

Certain things are not evidence and you may not consider them in deciding what the proper and appropriate sentence should be in this case. Arguments and statements by attorneys are not evidence. The attorneys are not witnesses. What they have said in their opening statements, closing arguments, and at other times is intended to help you interpret the evidence, but it is not evidence. If the facts as you remember them differ from what the attorneys have stated them, then your memory controls.

Questions and objections by attorneys are not evidence. Attorneys have a duty to object when they believe a question is improper under the rules of evidence. You should not be influenced by the objection or the Court's ruling on it.

Testimony excluded or stricken by the Court or testimony which I have instructed you to disregard is not evidence and must not be considered.

Anything you may have seen or heard when the Court was not in session is not evidence. You are to decide the proper punishment solely on the evidence received at the trial and at this hearing.

7.18: ARGUMENT OF COUNSEL

Now you will listen to the arguments of counsel who will endeavor to aid you in reaching a proper verdict by refreshing in your minds the evidence and by showing the application thereof to the law. Whatever counsel may say, you will bear in mind that it is your duty to be governed in your deliberations by the evidence as you understand it, and remember it to be, and the law as given to you in these instructions, with the sole, fixed, and steadfast purpose of doing equal and exact justice between the Defendant and the State of Nevada.

NRS 175.161.

7.19: SAMPLE VERDICT FORMS

See Barlow v. State, 138 Nev. Adv. Op. 25, 507 P.3d 1185, 1196 (2022) (appendix).

7.20: MITIGATION FINDINGS NEED NOT BE UNANIMOUS

You have been given a mitigation interrogatory. Responses to this mitigation interrogatory need not be unanimous. An interrogatory is a written question you are asked to answer on the form provided.

8.00: MAYHEM

The elements of the crime of MAYHEM are:

(1) The Defendant unlawfully and maliciously;

(2) Deprives a human being of a member of his or her body, or disfigures or renders it useless.

[It is not a defense that the disfigurement has been or may be medically alleviated. Whether the injury constitutes permanent disfiguration of appearance, diminution of vigor, or other permanent injury, is to be determined without considering the effects of subsequent successful medical intervention.]

See NRS 200.280 for statutory examples of the second element of Mayhem.

8.01: MAYHEM - MALICE DEFINED

"Maliciously" means having an evil intent, wish or design to vex, annoy or injure another person. "Malice," as applied to the crime of Mayhem, does not require the specific intent to disfigure or maim. Malice may be inferred from an act done in willful disregard of the rights of another, or an act wrongfully done without just cause or excuse, or an act betraying a reckless disregard of consequence and social duty, where disfigurement was reasonably to be apprehended as a natural and probable consequence of the act.

NRS 193.0175; *Crawford v. State*, 100 Nev. 617, 618, 691 P.2d 433, 434 (1984); *Ex parte Ralls*, 71 Nev. 276, 278-79, 288 P.2d 450, 451 (1955); *Ewish v. State*, 110 Nev. 221, 228 n.4, 871 P.2d 306, 311 n.4 (1994); *Lamb v. Cree*, 86 Nev. 179, 180-183, 466 P.2d 660, 661-663 (1970); *State v. Enkhouse*, 40 Nev. 1, 160 P. 23, 25 (1916); *Lomas v. State*, 98 Nev. 27, 29, 639 P.2d 551, 551-52 (1982); *Levi v. State*, 95 Nev. 746, 748, 602 P.2d 189, 190 (1979); *Guy v. State*, 108 Nev. 770, 776-77, 839 P.2d 578, 582-83 (1992).

8.02: MAYHEM - PERMANENT INJURY NECESSARY

It is immaterial by what means or instrument or in what manner the injury was inflicted. However, if the injury inflicted will not result in any permanent disfiguration of appearance, diminution of vigor, or other permanent injury, no conviction for MAYHEM shall be had, but the Defendant may be convicted of [assault, battery, or any other offense that has been proven beyond a reasonable doubt].

NRS 200.290; NRS 200.300.

8.03: MAYHEM - PERMANENT DISFIGUREMENT REQUIRED

The permanent disfigurement necessary to convict for MAYHEM is such which may be seen by the casual observation of the person injured, and doesn't require a close or unusual inspection to detect. In other words, the injury must seem disfiguring to ordinary observation.

State v. Elkhouse, 40 Nev. 1, 6, 160 P. 23 (1916).

8.04: ASSAULT

The crime of ASSAULT consists of the following elements:

(1) Unlawfully attempting to use physical force against another person; or

(2) Intentionally placing another person in reasonable apprehension of immediate bodily harm.

NRS 200.471; *Newell v. State*, 131 Nev. 974, 977, 364 P.3d 602, 604 (2015).

8.05: BATTERY

The crime of BATTERY consists of the following elements:

(1) The Defendant willfully and unlawfully;
(2) Used force or violence;
(3) Upon the person of another.

The words "force or violence" include any intentional, unlawful, and unwanted application of physical force against the person of another, however slight, even though it causes no pain or bodily harm or leaves no mark.

NRS 200.481; *Hobbs v. State*, 127 Nev. 234, 237-242, 251 P.3d 177, 179-182 (2011); *Byars v. State*, 130 Nev. 848, 862, 336 P.3d 939, 949 (2014).

8.06: BATTERY BY A PRISONER

The crime of BATTERY BY A [PRISONER; PROBATIONER; PAROLEE] consists of the following elements:

(1) The Defendant willfully and unlawfully;
(2) Used force or violence upon the person of another;
(3) While a [prisoner in lawful custody or confinement; probationer; parolee].

The words "force or violence" include any intentional, unlawful, and unwanted application of physical force against the person of another, however slight, even though it causes no pain or bodily harm or leaves no mark.

NRS 200.481; *Dumaine v. State*, 103 Nev. 121, 124-125; 734 P.2d 1230, 1232-1233 (1987); *Robinson v. State*, 117 Nev. 97, 99-100, 17 P.3d 420, 422 (2001); *Hobbs v. State*, 127 Nev. 234, 237-242, 251 P.3d 177, 179-182 (2011); *Byars v. State*, 130 Nev. 848, 862, 336 P.3d 939, 949 (2014).

8.07: PRISONER DEFINED

A prisoner is a person deprived of his or her liberty for criminal conduct and kept under involuntary restraint, confinement, or custody.

[A person does not become a prisoner until actual physical control of the person has been established, either because he or she submitted to arrest or because he or she was physically confined or controlled. Once a person becomes a prisoner, he or she remains a prisoner even though the actual physical control is lessened.]

NRS 200.481; *Dumaine v. State*, 103 Nev. 121, 124-125; 734 P.2d 1230, 1232-1233 (1987); *Robinson v. State*, 117 Nev. 97, 99-100, 17 P.3d 420, 422 (2001); *Byars v. State*, 130 Nev. 848, 862, 336 P.3d 939, 949 (2014); *Hobbs v. State*, 127 Nev. 234, 237-242, 251 P.3d 177, 179-182 (2011).

8.08: BATTERY UPON AN OFFICER

The crime of BATTERY UPON AN OFFICER consists of the following elements:

(1) The Defendant willfully and unlawfully;
(2) Used force or violence;
(3) Upon an officer;
(4) Who was performing his or her duty; and
(5) The Defendant knew or should have known that the victim was an officer.

The words "force or violence" include any intentional, unlawful, and unwanted application of physical force against the person of another, however slight, even though it causes no pain or bodily harm or leaves no mark.

"Officer" means [include as appropriate]:
(1) A person who possesses some or all of the powers of a peace officer;
(2) A person employed in a full-time salaried occupation of fire fighting for the benefit or safety of the public;
(3) A member of a volunteer fire department;
(4) A jailer, guard, matron or other correctional officer of a city or county jail or detention facility;
(5) A justice of the Supreme Court, judge of the Court of Appeals, district judge, justice of the peace, municipal judge, magistrate, court commissioner, master or referee, including, without limitation, a person acting pro tempore in a capacity of [a justice of the Supreme Court, judge of the Court of Appeals, district judge, justice of the peace, municipal judge, magistrate, court commissioner, master or referee]; or

(6) An employee of the State of Nevada or a political subdivision of the State whose official duties require the employee to make home visits;

(7) A civilian employee or a volunteer of a law enforcement agency whose official duties require the employee or volunteer to:

(a) Interact with the public;

(b) Perform tasks related to law enforcement; and

(c) Wear identification, clothing or a uniform that identifies the employee or volunteer as working or volunteering for the law enforcement agency;

(8) A civilian employee or a volunteer of a fire-fighting agency whose official duties require the employee or volunteer to:

(a) Interact with the public;

(b) Perform tasks related to fire-fighting or fire prevention; and

(c) Wear identification, clothing, or a uniform that identifies the employee or volunteer as working or volunteering for the fire-fighting agency; or

(9) A civilian employee or volunteer of the State of Nevada or a political subdivision of this State whose official duties require the employee or volunteer to:

(a) Interact with the public;

(b) Perform tasks related to code enforcement; and

(c) Wear identification, clothing, or a uniform that identifies the employee or volunteer as working or volunteering for this State or a political subdivision of this State.

[The following persons have the powers of a peace officer: {include as appropriate, e.g., "sheriffs of counties and of metropolitan police departments, their deputies and correctional officers"; "marshals, police officers and correctional officers of cities and towns"; "the bailiff of the Supreme Court"}]

["Performing his or her duty" includes actions undertaken by an officer while off-duty or outside the geographical area of his or her jurisdiction if such action is in its nature within the scope of his or her responsibility as an officer, and so long as such action would be within the scope of the officer's official responsibilities if he or she was on-duty or within his or her geographical jurisdiction. An officer is not "performing his or her duty" when acting purely as a private citizen.]

["Fire-fighting agency" means a public fire department, fire protection district or other agency of this State or a political subdivision of this State, the primary functions of which are to control, extinguish, prevent, and suppress fires.]

NRS 239B.020; NRS 169.125; NRS 289.010; NRS 289.150; NRS 289.155; NRS 289.160; NRS 289.170; NRS 289.175; NRS 289.180; NRS 289.190; NRS 289.200; NRS 289.210; NRS 289.220; NRS 289.230; NRS 289.240; NRS 289.250; NRS 289.260; NRS 289.270; NRS 289.280; NRS 289.290; NRS 289.300; NRS 289.310; NRS 289.320; NRS 289.330; NRS 289.340; NRS 289.350; NRS 289.360; *Rosas v. State*, 122 Nev. 1258, 147 P.3d 1101 (2006); *Sheriff v. Zimmerman*, 99 Nev. 480, 663 P.2d 1194 (1983); *Dumaine v. State*, 103 Nev. 121, 734 P.2d 1230 (1987); *Robinson v. State,* 117 Nev. 97, 99–100, 17 P.3d 420, 422 (2001); *Byars v. State,* 130 Nev. 848, 862, 336 P.3d 939, 949 (2014); *Hobbs v. State,* 127 Nev. 234, 237-242, 251 P.3d 177, 179-182 (2011).

8.09: ASSAULT UPON AN OFFICER

The crime of ASSAULT UPON AN OFFICER consists of the following elements:

(1) The Defendant willfully and unlawfully;
(2) Either:
    (a) Attempted to use physical force against an officer; or
    (b) Intentionally placed an officer in reasonable apprehension of immediate bodily harm;
(3) The officer was performing his or her duty; and
(4) The Defendant knew or should have known that the victim was an officer.

"Officer" means [include as appropriate]:

(1) A person who possesses some or all of the powers of a peace officer;
(2) A person employed in a full-time salaried occupation of fire fighting for the benefit or safety of the public;
(3) A member of a volunteer fire department;
(4) A jailer, guard, matron or other correctional officer of a city or county jail or detention facility;
(5) A justice of the Supreme Court, judge of the Court of Appeals, district judge, justice of the peace, municipal judge, magistrate, court commissioner, master or referee, including, without limitation, a person acting pro tempore in a capacity of [a justice of the Supreme Court, judge of the Court of Appeals, district judge, justice of the peace, municipal judge, magistrate, court commissioner, master or referee]; or

(6) An employee of the State of Nevada or a political subdivision of this State whose official duties require the employee to make home visits;

(7) A civilian employee or a volunteer of a law enforcement agency whose official duties require the employee or volunteer to:

(a) Interact with the public;

(b) Perform tasks related to law enforcement; and

(c) Wear identification, clothing or a uniform that identifies the employee or volunteer as working or volunteering for the law enforcement agency

(8) A civilian employee or a volunteer of a fire-fighting agency whose official duties require the employee or volunteer to:

(a) Interact with the public;

(b) Perform tasks related to fire-fighting or fire prevention; and

(c) Wear identification, clothing or a uniform that identifies the employee or volunteer as working or volunteering for the fire-fighting agency; or

(9) A civilian employee or volunteer of the State of Nevada or a political subdivision of this State whose official duties require the employee or volunteer to:

(a) Interact with the public;

(b) Perform tasks related to code enforcement; and

(c) Wear identification, clothing or a uniform that identifies the employee or volunteer as working or volunteering for this State or a political subdivision of this State.

[The following persons have the powers of a peace officer: {include as appropriate, e.g., "sheriffs of counties and of metropolitan police departments, their deputies and correctional officers"; "marshals, police officers and correctional officers of cities and towns"; "the bailiff of the Supreme Court"}]

["Performing his or her duty" includes actions undertaken by an officer while off-duty or outside the geographical area of his or her jurisdiction if such action is in its nature within the scope of his or her responsibility as an officer, and so long as such action would be within the scope of the officer's official responsibilities if he or she was on-duty or within his or her geographical jurisdiction. An officer is not "performing his or her duty" when acting purely as a private citizen.]

["Fire-fighting agency" means a public fire department, fire protection district or other agency of this State or a political subdivision of this State, the primary functions of which are to control, extinguish, prevent, and suppress fires.]

NRS 239B.020; NRS 169.125; NRS 289.010; NRS 289.150; NRS 289.155; NRS 289.160; NRS 289.170; NRS 289.175; NRS 289.180; NRS 289.190; NRS 289.200; NRS 289.210; NRS 289.220; NRS 289.230; NRS 289.240; NRS 289.250; NRS 289.260; NRS 289.270; NRS 289.280; NRS 289.290; NRS 289.300; NRS 289.310; NRS 289.320; NRS 289.330; NRS 289.340; NRS 289.350; NRS 289.360; *Rosas v. State*, 122 Nev. 1258, 147 P.3d 1101 (2006); *Sheriff v. Zimmerman*, 99 Nev. 480, 663 P.2d 1194 (1983); *Dumaine v. State*, 103 Nev. 121, 734 P.2d 1230 (1987); *Robinson v. State*, 117 Nev. 97, 99-100, 17 P.3d 420, 422 (2001); *Byars v. State*, 130 Nev. 848, 862, 336 P.3d 939, 949 (2014); *Hobbs v. State*, 127 Nev. 234, 237-242, 251 P.3d 177, 179-182 (2011).

8.10: RESISTING A PUBLIC OFFICER

The crime of RESISTING A PUBLIC OFFICER consists of the following elements:

(1) The Defendant willfully and unlawfully;
(2) Resisted, delayed, or obstructed;
(3) A public officer;
(4) In discharging or attempting to discharge any legal duty of his or her office.

NRS 199.280(3); *Rosas v. State*, 122 Nev. 1258, 1263, 147 P.3d 1101, 1105 (2006).

8.11: BATTERY WHICH CONSTITUTES DOMESTIC VIOLENCE

The crime of BATTERY WHICH CONSTITUTES DOMESTIC VIOLENCE consists of the following elements:

(1) The Defendant willfully and unlawfully;
(2) Used force or violence;
(3) Upon [include as appropriate: the Defendant's spouse or former spouse; any other person to whom the Defendant is related by blood or marriage (except siblings or cousins who are not in a custodial or guardianship relationship with each other); any other person with whom the Defendant is or was actually residing (except siblings or cousins who are not in a custodial or guardianship relationship with each other); any other person with whom the Defendant has had or is having a dating relationship; any other person with whom the Defendant has a child in common; the minor child of any of those persons; the Defendant's minor child or any other person who has been appointed the custodian or legal guardian for the Defendant's minor child].

The words "force or violence" include any intentional, unlawful, and unwanted application of physical force against the person of another, however slight, even though it causes no pain or bodily harm or leaves no mark.

"Dating relationship" means frequent, intimate associations primarily characterized by the expectation of affectional or sexual involvement. The term does not include a causal relationship or an ordinary association between persons in a business or social context.

NRS 200.481; NRS 200.485; NRS 33.018; *Hobbs v. State*, 127 Nev. 234, 237-242, 251 P.3d 177, 179-182 (2011); *Byars v. State*, 130 Nev. 848, 862, 336 P.3d 939, 949 (2014).

But see Newman v. State, 129 Nev. 222, 233, 298 P.3d 1171, 1179 (2013) (In cases alleging battery upon a minor child, the "parental privilege defense" may justify some forms of parental discipline.)

8.12: BATTERY WHICH CONSTITUTES DOMESTIC VIOLENCE BY STRANGULATION

The crime of BATTERY WHICH CONSTITUTES DOMESTIC VIOLENCE BY STRANGULATION consists of the following elements:

(1) The Defendant willfully and unlawfully;
(2) Used force or violence by way of strangulation;
(3) Upon [include as appropriate: the Defendant's spouse or former spouse; any other person to whom the Defendant is related by blood or marriage (except siblings or cousins who are not in a custodial or guardianship relationship with each other); any other person with whom the Defendant is or was actually residing (except siblings or cousins who are not in a custodial or guardianship relationship with each other); any other person with whom the Defendant has had or is having a dating relationship; any other person with whom the Defendant has a child in common; the minor child of any of those persons; the Defendant's minor child or any other person who has been appointed the custodian or legal guardian for the Defendant's minor child].

The words "force or violence" include any intentional, unlawful, and unwanted application of physical force against the person of another, however slight, even though it causes no pain or bodily harm or leaves no mark.

"Strangulation" means intentionally impeding the normal breathing or circulation of the blood by applying pressure on the throat or neck or by blocking the nose or mouth of another person in a manner that creates a risk of death or substantial bodily harm.

"Substantial bodily harm" means:

(1) Bodily injury which creates a substantial risk of death, or which causes serious, permanent disfigurement or protracted loss or impairment of the function of any bodily member or organ; or

(2) Prolonged physical pain.

"Prolonged physical pain" means some physical suffering or injury that lasts longer than the pain immediately resulting from the wrongful act. In a battery, for example, the wrongdoer would not be liable for "prolonged physical pain" for the touching itself. However, the wrongdoer would be liable for any lasting physical pain resulting from the touching.

"Dating relationship" means frequent, intimate associations primarily characterized by the expectation of affectional or sexual involvement. The term does not include a causal relationship or an ordinary association between persons in a business or social context.

NRS 200.481; NRS 200.485; NRS 33.018; NRS 0.060; *Hobbs v. State*, 127 Nev. 234, 237-242, 251 P.3d 177, 179-182 (2011); *Byars v. State*, 130 Nev. 848, 862, 336 P.3d 939, 949 (2014); *LaChance v. State*, 130 Nev. 263, 269, 321 P.3d 919, 924-26 (2014); *Collins v. State*, 125 Nev. 60, 64-65, 203 P.3d 90, 92-93 (2009); *McNamara v. State*, 132 Nev. 606, 613, 377 P.3d 106, 111 (2016).

8.13: BATTERY BY STRANGULATION

The crime of BATTERY BY STRANGULATION consists of the following elements:

(1) The Defendant willfully and unlawfully;
(2) Used force or violence upon the person of another;
(3) By way of strangulation.

The words "force or violence" include any intentional, unlawful, and unwanted application of physical force against the person of another, however slight, even though it causes no pain or bodily harm or leaves no mark.

"Strangulation" means intentionally impeding the normal breathing or circulation of the blood by applying pressure on the throat or neck or by blocking the nose or mouth of another person in a manner that creates a risk of death or substantial bodily harm.

"Substantial bodily harm" means:

(1) Bodily injury which creates a substantial risk of death or which causes serious, permanent disfigurement or protracted loss or impairment of the function of any bodily member or organ; or
(2) Prolonged physical pain.

"Prolonged physical pain" means some physical suffering or injury that lasts longer that the pain immediately resulting from the wrongful act. In a battery, for example, the wrongdoer would not be liable for "prolonged physical pain" for the touching itself. However, the wrongdoer would be liable for any lasting physical pain resulting from the touching.

NRS 200.481; NRS 0.060; *Hobbs v. State*, 127 Nev. 234, 237-242, 251 P.3d 177, 179-182 (2011); *Byars v. State,* 130 Nev. 848, 862, 336 P.3d 939, 949 (2014); *LaChance v. State,* 130 Nev. 263, 269, 321 P.3d 919, 924-26 (2014); *Collins v. State*, 125 Nev. 60, 64-65, 203 P.3d 90, 92-93 (2009); *McNamara v. State,* 132 Nev. 606, 613, 377 P.3d 106, 111 (2016).

9.00: FIRST DEGREE KIDNAPPING

The crime of KIDNAPPING IN THE FIRST DEGREE consists of the following elements:

(1) The Defendant willfully;

(2) Either:

(a) Seizes, confines, inveigles, entices, decoys, abducts, conceals, kidnaps, or carries away a person by any means whatsoever with the intent to hold or detain the person; or

(b) Holds or detains the person;

(3) For the specific purpose of committing [sexual assault, extortion, or robbery upon or from the person, or for the purpose of killing the person or inflicting substantial bodily harm upon the person, or to exact from relatives, friends, or any other person any money or valuable thing for the return or disposition of the kidnapped person].

"Kidnap" means to take and carry away any person by unlawful force or fraud and against his or her will.

The term "inveigle" means to lead astray by trickery or deceitful persuasion.

The term "entice" means to lure or induce, or to wrongfully solicit a person to do something.

The law does not require the person being kidnapped to be carried away for any minimum distance. It is the fact of movement of a victim, not the distance, that constitutes the offense. The crime of kidnapping does not require force or restraint.

Consent of the person kidnapped or confined to the kidnapping or confinement is not a defense unless the person was above the age of 18 years and the person's consent was not extorted by threats, duress, or fraud.

If evidence of consent is present, the State must prove beyond a reasonable doubt that the victim did not consent, that the victim was under the age of 18 years at the time the consent was given, or that the victim's consent was extorted by threats, duress, or fraud. If you find that the State has failed to prove the absence of legal consent beyond a reasonable doubt, you must find the Defendant not guilty.

[Use the following if charges include an associated offense where restraint or movement is inherent, such as Robbery.]

In order for you to find the Defendant guilty of both [associated offense where restraint or movement is inherent, e.g. robbery] and kidnapping arising from the same course of conduct, you must also find beyond a reasonable doubt either:

(1) That any movement of the victim was not incidental to the [robbery or other associated offense]; or

(2) That any incidental movement of the victim substantially increased the risk of harm to the victim over and above that necessarily present in the[robbery or other associated offense]; [Note: murder not applicable]

(3) That any incidental movement of the victim substantially exceeded that required to complete the [robbery or other associated offense]; or

(4) That the victim was physically restrained, and such restraint substantially increased the risk of harm to the victim; or

(5) The movement or restraint had an independent purpose or significance.

"Physically restrained" includes but is not limited to, tying, binding, or taping.

NRS 200.310; NRS 200.350; *McDonald v. Sheriff*, 89 Nev. 326, 327 n.2, 512 P.2d 774, 775 n.2 (1973); *Bridges v. State*, 116 Nev. 752, 765, 6 P.3d 1000, 1009 (2000); *Lovell v. State*, 92 Nev. 128, 131-32, 546 P.2d 1301, 1303 (1976); *Jensen v. Sheriff*, 89 Nev. 123, 125026, 508 P.2d 4, 5-6 (1973); *Eckert v. Sheriff*, 92 Nev. 719, 721, 557 P.2d 1150, 1151 (1976); *Jacobson v. State*, 89 Nev. 197, 203, 510 P.2d 856, 860 (1973); *Stewart v. State,* 133 Nev. 142, 143, 393 P.3d 685, 687-88 (2017); *Mendoza v. State*, 122 Nev. 267, 271-76, 275 n.19, 130 P.3d 176, 178-81, 180 n.19 (2006); *Jefferson v. State*, 95 Nev. 577, 578-580, 599 P.2d 1043, 1043-44 (1979); *Ford v. State*, 127 Nev. 608, 617, 262 P.3d 1123, 1129 (2011); *Middleton v. State*, 114 Nev. 1089, 1104, 968 P.2d 296, 307 (1998).

9.01: FIRST DEGREE KIDNAPPING OF A MINOR

The crime of KIDNAPPING IN THE FIRST DEGREE OF A MINOR consists of the following elements:

(1) The Defendant willfully;

(2) Leads, takes, entices, or carries away or detains any minor;

(3) With the specific intent:

(a) To keep the minor permanently or for a protracted period of time from his or her parents, guardians, or any other person having lawful custody of the minor; or

(b) To imprison or confine the minor from his or her parents, guardians, or any other person having lawful custody of the minor; or

(c) To hold the minor to unlawful service; or

(d) To perpetrate upon the person of the minor any unlawful act.

The term "entice" means to lure or induce, or to wrongfully solicit a person to do something.

The law does not require the person being kidnapped to be carried away for any minimum distance. It is the fact of movement of a victim, not the distance, that constitutes the offense. The crime of kidnapping does not require force or restraint.

Consent of the person kidnapped or confined to the kidnapping or confinement is not a defense unless the person was above the age of 18 years and the person's consent was not extorted by threats, duress, or fraud.

If evidence of consent is present, the State must prove beyond a reasonable doubt that the victim did not consent, that the victim was under the age of 18 years at the time the consent was given, or that the victim's consent was extorted by threats, duress, or fraud. If you find that the State has failed to prove the absence of legal consent beyond a reasonable doubt, you must find the Defendant not guilty.

[Use if charges include an associated offense where restraint or movement is inherent.]

In order for you to find the Defendant guilty of both [associated offense where restraint or movement is inherent] and kidnapping arising from the same course of conduct, you must also find beyond a reasonable doubt either:

(1) That any movement of the victim was not incidental to the [associated offense]; or

(2) That any incidental movement of the victim substantially increased the risk of harm to the victim over and above that necessarily present in the [offense]; [Note: murder not applicable]

(3) That any incidental movement of the victim substantially exceeded that required to complete the [associated offense]; or

(4) That the victim was physically restrained, and such restraint substantially increased the risk of harm to the victim; or

(5) The movement or restraint had an independent purpose or significance.

"Physically restrained" includes but is not limited to, tying, binding, or taping.

NRS 200.310; NRS 200.350; *Schofield v. State*, 132 Nev. 303, 308, 372 P.3d 488, 491 (2016); *McDonald v. Sheriff*, 89 Nev. 326, 327 n.2, 512 P.2d 774, 775 n.2 (1973); *Bridges v. State*, 116 Nev. 752, 765, 6 P.3d 1000, 1009 (2000); *Lovell v. State*, 92 Nev. 128, 131-32, 546 P.2d 1301, 1303 (1976); *Jensen v. Sheriff*, 89 Nev. 123, 125-26, 508 P.2d 4, 5-6 (1973); *Eckert v. Sheriff*, 92 Nev. 719, 721, 557 P.2d 1150, 1151 (1976); *Jacobson v. State*, 89 Nev. 197, 203, 510 P.2d 856, 860 (1973); *Stewart v. State*, 133 Nev. 142, 143, 393 P.3d 685, 687-88 (2017); *Mendoza v. State*, 122 Nev. 276, 271-76, 275 n.19, 130 P.3d 176, 178-81, 180 n.19 (2006); *Jefferson v. State*, 95 Nev. 577, 578-580, 599 P.2d 1043, 1043-1044 (1979); *Ford v. State*, 127 Nev. 608, 617, 262 P.3d 1123, 1129 (2011); *Middleton v. State*, 114 Nev. 1089, 1104, 968 P.2d 296, 307 (1998).

9.02: FIRST DEGREE KIDNAPPING WITH SUBSTANTIAL BODILY HARM

If you find the Defendant committed the offense of FIRST DEGREE KIDNAPPING, then you must further determine whether the victim suffered substantial bodily harm during the act of kidnapping or the subsequent detention and confinement or in attempted escape or escape therefrom.

The burden is on the State to prove beyond a reasonable doubt that the victim suffered substantial bodily harm during the kidnapping, subsequent detention and confinement, or escape or attempted escape.

"Substantial bodily harm" means:

(1) Bodily injury which creates a substantial risk of death, or which causes serious, permanent disfigurement; or
(2) Bodily injury which creates protracted loss or impairment of the function of any bodily member or organ; or
(3) Prolonged physical pain.

"Prolonged physical pain" means physical suffering or injury that lasts longer than the pain immediately resulting from the wrongful act. In a battery, for example, the wrongdoer would not be liable for "prolonged physical pain" for the touching itself. However, the wrongdoer would be liable for any lasting physical pain resulting from the touching.

NRS 200.320; NRS 0.060; *Collins v. State*, 125 Nev. 60, 64-65, 203 P.3d 90, 92-93 (2009); *Hardaway v. State*, 112 Nev. 1208, 1211-1213, 926 P.2d 288, 290-291 (1996).

9.03: SECOND DEGREE KIDNAPPING

The crime of SECOND DEGREE KIDNAPPING consists of the following elements:

(1) The Defendant willfully and without authority of law;
(2) Seizes, inveigles, takes, carries away or kidnaps another person;
(3) Specifically,
    (a) With the intent to keep the person secretly imprisoned within the State; or
    (b) For the purpose of conveying the person out of the State without authority of law; or
    (c) For the purpose of holding the person to service; or
    (d) With the intent to detain the person against his or her will.

"Kidnap" means to take and carry away any person by unlawful force or fraud and against his or her will. The crime of kidnapping does not require force or restraint.

The term "inveigle" means to lead astray by trickery or deceitful persuasion.

The law does not require the person being kidnapped to be carried away for any minimum distance. It is the fact of movement of a victim, not the distance, that constitutes the offense.

Consent of the person kidnapped or confined to the kidnapping or confinement is not a defense unless the person was above the age of 18 years and the person's consent was not extorted by threats, duress, or fraud.

If evidence of consent is present, the State must prove beyond a reasonable doubt that the victim did not consent, that the victim was under the age of 18 years at the time the consent was given, or that the victim's consent was extorted by threats, duress, or fraud.

If you find that the State has failed to prove the absence of legal consent beyond a reasonable doubt, you must find the Defendant not guilty.

[Use if charges include an associated offense where restraint or movement is inherent.]

In order for you to find the Defendant guilty of both [associated offense where restraint or movement is inherent] and kidnapping arising from the same course of conduct, you must also find beyond a reasonable doubt either:

(1) That any movement of the victim was not incidental to the [associated offense]; or

(2) That any incidental movement of the victim substantially increased the risk of harm to the victim over and above that necessarily present in the [associated offense];

(3) That any incidental movement of the victim substantially exceeded that required to complete the [associated offense]; or

(4) That the victim was physically restrained, and such restraint substantially increased the risk of harm to the victim; or

(5) The movement or restraint had an independent purpose or significance.

"Physically restrained" includes but is not limited to, tying, binding, or taping.

NRS 200.310; NRS 200.350; *McDonald v. Sheriff*, 89 Nev. 326, 327 n.2, 512 P.2d 774, 775 n.2 (1973); *Bridges v. State*, 116 Nev. 752, 765, 6 P.3d 1000, 1009 (2000); *Lovell v. State*, 92 Nev. 128, 131-32, 546 P.2d 1301, 1303 (1976); *Jensen v. Sheriff*, 89 Nev. 123, 125-26, 508 P.2d 4, 5-6 (1973); *Eckert v. Sheriff*, 92 Nev. 719, 721, 557 P.2d 1150, 1151 (1976); *Jacobson v. State*, 89 Nev. 197, 203, 510 P.2d 856, 860 (1973); *Stewart v. State,* 133 Nev. 142, 143, 393 P.3d 685, 687-88 (2017); *Mendoza v. State*, 122 Nev. 267, 271-76, 275 n.19, 130 P.3d 176, 178-81, 180 n. 19 (2006); *Pascua v. State*, 122 Nev. 1001, 1004-06, 145 P.3d 1031, 1033-34 (2006); *Jefferson v. State*, 95 Nev. 577, 578-80, 599 P.2d 1043, 1043-1044 (1979); *Middleton v. State*, 114 Nev. 1089, 1104, 968 P.2d 296, 307 (1998).

9.04: FALSE IMPRISONMENT

FALSE IMPRISONMENT is an unlawful violation of the personal liberty of another. Therefore, the crime of FALSE IMPRISONMENT consists of the following elements:

(1) The Defendant willfully;
(2) Confines or detains another person;
(3) Without sufficient legal authority.

The crime of FALSE IMPRISONMENT does not require the use of force.

[Use if charges include an associated offense where confinement or detention is inherent.]

In order for you to find Defendant guilty of both [associated offense] and FALSE IMPRISONMENT arising from the same course of conduct, you must also find beyond a reasonable doubt either:

(1) That any confinement or detention of the victim was not incidental to the [associated offense]; or
(2) That any incidental confinement or detention of the victim substantially increased the risk of harm to the victim over and above that necessarily present in the [associated offense]; or
(3) That any incidental confinement or detention of the victim substantially exceeded that required to complete the [associated offense]; or

(4) The confinement or detention had an independent purpose or significance.

NRS 200.460; *Garcia v. State*, 121 Nev. 327, 333-335, 113 P.3d 836, 840-841 (2005); *Mendoza v. State*, 112 Nev. 267, 271-76, 275 n.19, 130 P.3d 176, 178-81, 180 n.19 (2006); *Bridges v. State*, 116 Nev. 752, 765, 6 P.3d 1000, 1009 (2000).

10.00: SEXUAL ASSAULT

The crime of SEXUAL ASSAULT consists of the following elements:

(1) The Defendant willfully and unlawfully;

(2) Subjects another person to sexual penetration [or forces another person to make a sexual penetration on himself or herself or another, or on a beast];

(3) (a) Against the will of the victim, or

(b) Under conditions in which the perpetrator knows or should know that the victim is mentally or physically incapable of resisting or understanding the nature of his or her conduct.

"Sexual penetration" means cunnilingus, fellatio, or any intrusion, however slight, of any part of a person's body or any object manipulated or inserted by a person into the genital or anal openings of the body of another, including sexual intercourse in its ordinary meaning. The term does not include any such conduct for medical purposes.

["Fellatio" means oral stimulation of the penis by the mouth or tongue. Fellatio does not require penetration of the victim's mouth.]

["Cunnilingus" means oral stimulation of the vagina by the mouth or tongue. Cunnilingus does not require penetration of the victim's vagina.]

NRS 200.366; NRS 200.364; *Maes v. Sheriff*, 94 Nev. 715, 716, 582 P.2d 793, 794 (1978); *Lipsitz v. State*, 135 Nev. 131, 139, 442 P.3d 138, 145 (2019).

10.01: PHYSICAL FORCE IS NOT NECESSARY

The use of physical force is not a necessary element of the crime of SEXUAL ASSAULT. The question is not whether the sexual penetration was physically forced, but whether the act was committed without the victim's consent [or under conditions in which the perpetrator knows or should know that the victim is mentally or physically incapable of resisting or understanding the nature of his or her conduct]. There is no consent where a person is induced to submit to sexual penetration by threats, force, duress, intimidation, or fear of immediate and unlawful bodily injury to himself or herself or another [or through fraud and deceit].

McNair v. State, 108 Nev. 53, 57-61, 825 P.2d 571, 574-77 (1992); *Dickens v. State*, 92 Nev. 74, 77-79, 546 P.2d 228, 230 (1976); *Hardaway v. State; Carter v. State*, 121 Nev. 759, 763,767, 121 P.3d 592, 595-597 (2005); *Honeycutt v. State*, 118 Nev. 660, 669-671, 56 P.3d 362, 368-370 (2002).

10.02: AGAINST THE WILL DEFINED

Penetration occurs against the victim's will or without his or her consent when, for any reason, the victim is not in a position to exercise an independent judgment concerning the act of sexual penetration.

McNair v. State, 108 Nev. 53, 57-61, 825 P.2d 571, 574-77 (1992); *Dinkens v. State*, 92 Nev. 74, 77-79, 546 P.2d 228, 230 (1976).

10.03: SEXUAL ASSAULT BY SPOUSE

It is not a defense to a charge of SEXUAL ASSAULT that the perpetrator was, at the time of the assault, married to the victim, if the assault was committed by force or by the threat of force.

NRS 200.373.

10.04: REASONABLE BUT MISTAKEN BELIEF OF CONSENT

It is a defense to the crime of SEXUAL ASSAULT that the Defendant, at the time of the penetration, has a reasonable and good faith belief that the alleged victim voluntarily consented to the sexual penetration.

However, a belief that is based upon ambiguous conduct by an alleged victim that is the product of force, violence, duress, menace or fear of immediate and unlawful bodily injury on another is not a reasonable good faith belief.

If after a consideration of all of the evidence you have a reasonable doubt that the Defendant had criminal intent at the time of the act constituting sexual assault, you must find the Defendant not guilty of such crime.

Honeycutt v. State, 118 Nev. 660, 669-671, 56 P.3d 362, 368-370 (2002).

10.05: CONSENT DEFINED REGARDING SEXUAL ASSAULT

In determining the existence of consent, the question is not whether an alleged victim acted as an objectively reasonable person would have under the circumstances,but whether the person was induced to submit to the sexual acts by actual fear. Accordingly, it is irrelevant whether an objectively 'reasonable' person would have experienced the same fear under such circumstances.

[Submission is not the equivalent of consent. While consent inevitably involves submission, submission does not inevitably involve consent. A person is not required to do more than the person's age, strength, and the surrounding facts and attending circumstance would reasonably dictate as a manifestation of their opposition to a sexual assault. Whether the alleged victim manifested opposition or did in fact consent, depends on the facts of the particular case. Lack of protest by an alleged victim is simply one factor of the totality of circumstances to be considered by the jury.]

McNair v. State, 108 Nev. 53, 57-61, 825 P.2d 571, 574-77 (1992); *Hardaway v. State*, 112 Nev. 108, 926 P.2d 288, 289-90 (1996); *Dinkins v. State*, 92 Nev. 74, 77-79, 546 P.2d 228, 230 (1976).

10.06: LIVE VICTIM REQUIRED

The offense of SEXUAL ASSAULT requires a live victim.

Atkins v. State, 112 Nev. 1122, 1127, 923 P.2d 1119, 1122 (1996).

10.07: TESTIMONY OF VICTIM NEED NOT BE CORROBORATED

See Instruction 3.17.

10.08: SEXUAL ASSAULT – SUBSTANTIAL BODILY HARM

If you find the Defendant committed the offense of SEXUAL ASSAULT, then you must further determine whether substantial bodily harm to the victim resulted from the actions of the Defendant committed in connection with or as a part of the sexual assault. The burden is on the State to prove beyond a reasonable doubt that the victim suffered such substantial bodily harm.

"Substantial bodily harm" means:

(1) Bodily injury which creates a substantial risk of death or which causes serious, permanent disfigurement; or

(2) Bodily injury which creates protracted loss or impairment of the function of any bodily member or organ; or

(3) Prolonged physical pain.

"Prolonged physical pain" means physical suffering or injury that lasts longer than the pain immediately resulting from the wrongful act. In a battery, for example, the wrongdoer would not be liable for "prolonged physical pain" for the touching itself. However, the wrongdoer would be liable for any lasting physical pain resulting from the touching.

NRS 200.366; NRS 0.060; *Collins v. State*, 125 Nev. 60, 203 P.3d 90 (2009); *Hardaway v. State*, 112 Nev. 1208, 926 P.2d 288 (1996).

10.09: BATTERY WITH INTENT TO COMMIT SEXUAL ASSAULT

The crime of BATTERY WITH INTENT TO COMMIT SEXUAL ASSAULT consists of the following elements:

(1) The Defendant willfully and unlawfully;
(2) Uses force or violence upon the person of another;
(3) With the intent to commit sexual assault upon the person.

The words "force or violence" include any intentional, unlawful, and unwanted application of physical force against the person of another, however slight, even though it causes no pain or bodily harm or leaves no mark.

The offense of BATTERY WITH THE INTENT TO COMMIT SEXUAL ASSAULT is complete when force or violence is used upon the person of another with the intention of committing sexual assault, even if the sexual assault is not committed thereafter.

"Intent to commit sexual assault" means the intent to subject another person to sexual penetration, or force another person to make a sexual penetration on himself or herself or another, or on a beast against the will of the victim or under conditions in which the perpetrator knows or should know that the victim is mentally or physically incapable of resisting or understanding the nature of his or her conduct.

NRS 200.400; NRS 200.366; *Hobbs v. State*, 127 Nev. 234, 251 P.3d 177 (2011); *Byars v. State*, 130 Nev. 848, 862, 336 P.3d 939, 949 (2014); *Wilkerson v. State*, 87 Nev. 123, 482 P.2d 314 (1971); *Estes v. State*, 122 Nev. 1123, 1127-28 (2006); *Cf. Sheriff v. Stevens*, 97 Nev. 316, 630 P.2d 256 (1981).

10.10: BATTERY WITH INTENT TO COMMIT SEXUAL ASSAULT BY STRANGULATION

If you find the Defendant committed the offense of BATTERY WITH THE INTENT TO COMMIT SEXUAL ASSAULT, then you must further determine whether the battery was committed by strangulation. The burden is on the State to prove beyond a reasonable doubt that the battery was committed by way of strangulation.

"Strangulation" means intentionally impeding the normal breathing or circulation of the blood by applying pressure on the throat or neck or by blocking the nose or mouth of another person in a manner that creates a risk of death or substantial bodily harm.

"Substantial bodily harm" means:

(1) Bodily injury which creates a substantial risk of death or which causes serious, permanent disfigurement or protracted loss or impairment of the function of any bodily member or organ; or

(2) Prolonged physical pain.

"Prolonged physical pain" means some physical suffering or injury that lasts longer than the pain immediately resulting from the wrongful act. In a battery, for example, the wrongdoer would not be liable for "prolonged physical pain" for the touching itself. However, the wrongdoer would be liable for any lasting physical pain resulting from the touching.

NRS 200.400; NRS 200.481; NRS 0.060; *Hobbs v. State*, 127 Nev. 234, 251 P.3d 177 (2011); *Byars v. State*, 130 Nev. 848, 862, 336 P.3d 939, 949 (2014); *LaChance v. State*, 130 Nev. 263, 269, 321 P.3d 919, 924-26 (2014); *Collins v. State*, 125 Nev. 60, 64-65, 203 P.3d 90, 92-93 (2009); *McNamara v. State*, 132 Nev. 606, 613, 377 P.3d 106, 111 (2016).

10.11: BATTERY WITH INTENT TO COMMIT SEXUAL ASSAULT RESULTING IN SUBSTANTIAL BODILY HARM

If you find the Defendant committed the offense of BATTERY WITH THE INTENT TO COMMIT SEXUAL ASSAULT, then you must further determine whether the crime resulted in substantial bodily harm to the victim. The burden is on the State to prove beyond a reasonable doubt that the victim suffered substantial bodily harm as a result of the crime.

"Substantial bodily harm" means:

(1) Bodily injury which creates a substantial risk of death or which causes serious, permanent disfigurement; or

(2) Bodily injury which creates protracted loss or impairment of the function of any bodily member or organ; or

(3) Prolonged physical pain.

"Prolonged physical pain" means physical suffering or injury that lasts longer than the pain immediately resulting from the wrongful act. In a battery, for example, the wrongdoer would not be liable for "prolonged physical pain" for the touching itself. However, the wrongdoer would be liable for any lasting physical pain resulting from the touching.

NRS 200.400; NRS 200.481; NRS 0.060; *Collins v. State*, 125 Nev. 60, 203 P.3d 90 (2009); *Hardaway v. State*, 112 Nev. 1208, 926 P.2d 288 (1996).

10.12: LEWDNESS WITH A CHILD

The crime of LEWDNESS WITH A CHILD UNDER [14 or 16] YEARS consists of the following elements:

(1) The Defendant willfully and lewdly;
(2) Commits any lewd or lascivious act [other than acts constituting the crime of sexual assault] upon or with the body, or any part or member thereof;
(3) Of a child under the age of [14 or 16] years;
(4) With the specific intent of arousing, appealing to, or gratifying the lust or passions or sexual desires of that person or of that child.

The words "lewdly," "lewd," and "lascivious" refer to sexual conduct that is obscene or indecent, tending to moral impurity or wantonness, sexually unchaste or licentious, lustful, or preoccupied with sex and sexual desire.

A lewd act committed "upon" the body or any part of the body of a minor under [14 or 16] years requires some kind of touching or physical contact. Skin contact is not required; the touching may be through the child's clothing.

A lewd act committed "with" the body of a child under [14 or 16] means that the child's body is the object of attention, but does not require a touching or physical contact by the perpetrator. A lewd act is committed "with" the child's body if the perpetrator instigates, causes, or coerces the child to perform a lewd act upon himself or herself.

It is not a defense to the charge of Lewdness With a Child Under [14 or 16] Years that the child consented to the alleged lewd or lascivious act.

[The offense of Lewdness With a Child Under [14 or 16] Years is complete when the lewd or lascivious act occurs upon or with the child's body with the perpetrator's intention of arousing or gratifying [his or her, or the child's] sexual desires, even if those desires are not thereafter actually aroused or gratified by the conduct.]

NRS 201.230; *State v. Catanio*, 120 Nev. 1030, 1033–1036, 102 P.3d 588, 591–593 (2004); *Crowley v. State*, 120 Nev. 30, 31, 83 P.3d 282, 284 (2004); *Berry v. State*, 125 Nev. 265, 274–84, 212 P.3d 1085, 1092–98 (2009); *Summers v. Sheriff*, 90 Nev. 180, 181–83, 521 P.2d 1228, 1228–29 (1974); *State v. Koseck*, 113 Nev. 477, 479, 936 P.2d 836, 838 (1997); *State v. District Court*, 120 Nev. 254, 259 n.8, 89 P.3d 663, 666 n.8 (2004).

10.13: INDECENT EXPOSURE

The crime of INDECENT EXPOSURE consists of the following elements:

(1) The Defendant intentionally;
(2) Makes an open and indecent or obscene exposure;
(3) Of his or her genitals or anus.

The crime of INDECENT OR OBSCENE EXPOSURE does not require proof of intent to offend an observer or even that the exposure was observed.

"Open" exposure refers to an exposure committed in public or committed openly in a place where there is a likelihood that the act would be observed, even if the Defendant did not intend to offend an observer and even if the exposure was not observed.

"Open" exposure also includes an exposure committed in a private place in a non-secretive manner where the evidence shows that the Defendant clearly intended his or her acts to be offensive to his or her victims.

"Indecent" means nonconformance with accepted standards of morality.

"Obscene" means any exposure which:

(a) An average person applying contemporary community standards would find, taken as a whole, appeals to prurient interest;
(b) Taken as a whole lacks serious literary, artistic, political or scientific value; and
(c) Does one of the following:
    (1) Depicts or describes in a patently offensive way ultimate sexual acts, normal or perverted, actual or simulated;
    (2) Depicts or describes in a patently offensive way masturbation, excretory functions, sadism or masochism;
    (3) Lewdly exhibits the genitals.

"Prurient interest" refers to a shameful or morbid interest in nudity, sex, or excretion, or involving sexual responses over and beyond those that would be characterized as normal.

[The breast feeding of a child by the mother of the child does not constitute an act of open and indecent or obscene exposure of her body.]

[The mere exposure of one's buttocks, as occurs with a thong or g-string, does not establish the crime of indecent exposure.]

NRS 201.220; *Ebeling v. State,* 120 Nev. 401, 405, 91 P.3d 599, 601 (2004); *Young v. State,* 109 Nev. 205, 215, 849 P.2d 336, 343 (1993); *State v. Castaneda,* 126 Nev. 478, 483-91, 245 P.3d 550, 554-59 (2010); *Berry v. State,* 125 Nev. 265, 280-83, 212 P.3d 1085, 1095-98 (2009); *Shue v. State*, 133 Nev. 798, 805, 407 P.3d 332, 338 (2017).

10.14: SEXUAL ASSAULT UPON A CHILD UNDER THE AGE OF 14

The crime of SEXUAL ASSAULT UPON A CHILD UNDER THE AGE OF 14 YEARS consists of the following elements:

(1) The Defendant willfully and unlawfully;

(2) (a) Commits a sexual penetration upon a child under the age of 14 years; or

(b) Causes a child under the age of 14 years to make a sexual penetration on himself or herself [or another, or on a beast].

"Sexual penetration" means cunnilingus, fellatio, or any intrusion, however slight, of any part of a person's body or any object manipulated or inserted by a person into the genital or anal openings of the body of another, including sexual intercourse in its ordinary meaning. The term does not include any such conduct for medical purposes.

["Fellatio" means oral stimulation of the penis by the mouth or tongue. Fellatio does not require penetration of the victim's mouth.]

["Cunnilingus" means oral stimulation of the vagina by the mouth or tongue. Cunnilingus does not require penetration of the victim's vagina.]

NRS 200.366; NRS 200.364; *Maes v. Sheriff*, 94 Nev. 715, 716, 582 P.2d 793, 794 (1978); *Lipsitz v. State*, 135 Nev. 131, 139, 442 P.3d 138, 145 (2019).

10.15: PHYSICAL FORCE IS NOT NECESSARY

The use of physical force is not a necessary element of the crime of SEXUAL ASSAULT UPON A CHILD UNDER THE AGE OF 14 YEARS. Therefore, the crucial question is not whether the sexual penetration was physically forced, but whether the Defendant sexually penetrated the child [or in any way caused the child to sexually penetrate himself or herself, or another, or a beast].

NRS 200.366; *McNair v. State*, 108 Nev. 53, 57-61, 825 P.2d 571, 574-77 (1992); *Hardaway v. State*, 112 Nev. 108, 926 P.2d 288, 289-90 (1996); *Dinkins v. State*, 92 Nev. 74, 77-79, 546 P.2d 228, 230 (1976).

10.16: CONSENT IS NOT A DEFENSE

It is not a defense to the charge of SEXUAL ASSAULT UPON A CHILD UNDER THE AGE OF 14 YEARS that the child submitted or consented to the sexual penetration.

NRS 200.366.

10.17: STATUTORY SEXUAL SEDUCTION

The crime of STATUTORY SEXUAL SEDUCTION consists of the following elements:

(1) The Defendant, while 18 years of age or older;
(2) Unlawfully engaged in any of the following acts:
    (a) Ordinary sexual intercourse; or
    (b) Anal intercourse; or
    (c) Sexual penetration;
(3) With a person who:
    (a) was 14 or 15 years of age; and
    (b) who was at least 4 years younger than the Defendant.

"Sexual penetration" means cunnilingus, fellatio, or any intrusion, however slight, of any part of a person's body or any object manipulated or inserted by a person into the genital or anal openings of the body of another, including sexual intercourse in its ordinary meaning. The term does not include any such conduct for medical purposes.

["Fellatio" means oral stimulation of the penis by the mouth or tongue. Fellatio does not require penetration of the victim's mouth.]

["Cunnilingus" means oral stimulation of the vagina by the mouth or tongue. Cunnilingus does not require penetration of the victim's vagina.]

NRS 200.364(10); *Maes v. Sheriff*, 94 Nev. 715, 582 P.2d 793 (1978); *Mejia v. State*, 122 Nev. 487, 134 P.3d 722 (2006); *Lipsitz v. State*, 135 Nev. 131, 139, 442 P.3d 138, 145 (2019).

10.18: MISTAKE AS TO AGE NOT A DEFENSE

Lack of knowledge of the age, or a reasonable but mistaken belief as to the age of a child is not a defense to the crime of STATUTORY SEXUAL SEDUCTION.

Honeycutt v. State, 118 Nev. 660, 56 P.3d 362 (2002); *Jenkins v. State*, 110 Nev. 865, 877 P.2d 1063 (1994).

10.19: MULTIPLE SEXUAL ASSAULTS WITHIN A SINGLE ENCOUNTER

Each different type of sexual penetration that occurs during a single criminal encounter is a separate offense.

Additionally, where multiple acts of the same type of sexual penetration occur as part of a single criminal encounter, each separate and distinct act is a separate offense, even when they all occur within a relatively short time.

However, when multiple acts of the same type of sexual penetration are either not interrupted or are only briefly interrupted, such that the interruption amounts to merely a hypertechnical division of a single continuous instance of conduct, the Defendant may be found guilty of only one count of sexual assault.

Townsend v. State, 103 Nev. 113, 734 P.2d 705(1987); *Braunstein v. State*, 118 Nev. 68, 40 P.3d 413 (2002); *Peck v. State*, 116 Nev. 840, 7 P.3d 470 (2000); *Dreyfuss v. State*, 126 Nev. 707, 367 P.3d 764 (2010); *Crowley v. State*, 120 Nev. 30, 83 P.3d 282 (2004); *Gaxiola v. State*, 121 Nev. 638, 119 P.3d 1225 (2005).

10.20: SINGLE ACT – LEWDNESS AND SEXUAL ASSAULT

Where multiple acts of lewdness and sexual penetration occur as part of a single criminal encounter, each separate and distinct act is a separate offense, even when they all occur within a relatively short time.

However, when a single uninterrupted act constitutes *both* a sexual assault *and* a lewdness, the Defendant may not be convicted of both crimes.

When an indecent contact is incidental to an act of sexual assault or simply preparatory to an act of sexual penetration, such that:

(1) the acts form part of a single uninterrupted instance of sexual conduct; or

(2) any interruption between the indecent contact and the sexual penetration is brief and amounts to merely a hypertechnical division of a single continuous instance of sexual conduct,

the Defendant may be found guilty of only one count of sexual assault or lewdness.

Crowley v. State, 120 Nev. 30, 33-34, 83 P.3d 282, 285 (2004); *Gaxiola v. State*, 121 Nev. 638, 653, 119 P.3d 1225, 1235 (2005); *Townsend v. State*, 103 Nev. 113, 120-21, 734 P.2d 705, 709-10 (1987); *Braunstein v. State*, 118 Nev. 68, 78, 40 P.3d 413, 420 (2002); *Peck v. State*, 116 Nev. 840, 848-89, 7 P.3d 470, 475 (2000); *Dreyfuss v. State*, 126 Nev. 707, 367 P.3d 764 (2010).

10.21: SEX TRAFFICKING OF A CHILD

The crime of SEX TRAFFICKING OF A CHILD consists of the following elements:

(1) The Defendant willfully and unlawfully;

(2) [Include as appropriate: induces, causes, recruits, harbors, transports, provides, obtains or maintains] a child;

(a) to engage in prostitution; or

(b) to enter any place within this State in which prostitution is practiced, encouraged, or allowed for the purpose of sexual conduct or prostitution;

(3) With the specific intent that the child become or remain a prostitute.

"Child" means a person less than 18 years of age.

"Induce" means to persuade, encourage, inveigle or entice.

"Prostitute" means a male or female person who for a fee, monetary consideration or other thing of value engages in sexual intercourse, oral-genital contact or any touching of the sexual organs or other intimate parts of a person for the purpose of arousing or gratifying the sexual desire of either person.

"Prostitution" means engaging in sexual conduct with another person in return for a fee, monetary consideration or other thing of value.

"Sexual conduct" means sexual intercourse, oral-genital contact or any touching of the sexual organs or other intimate parts of a person for the purpose of arousing or gratifying the sexual desire of either person.

"Transports" means to transport or cause to be transported, by any means of conveyance, into, through, or across this State, or to aid or assist in obtaining such transportation.

NRS 201.300(2)(a)(1); NRS 201.295; *Ford v. State*, 127 Nev. 608, 262 P.3d 1123 (2011).

10.22: SEX TRAFFICKING WITH KNOWLEDGE/RECKLESS DISREGARD FOR VIOLENCE

The crime of SEX TRAFFICKING consists of the following elements:

(1) The Defendant willfully and unlawfully;
(2) [Include as appropriate: induces, recruits, harbors, transports, provides, obtains or maintains] a person by any means;
(3) with knowledge or in reckless disregard of the fact that;
(4) threats, violence, force, intimidation, fraud, duress or coercion will be used to cause the person:
    (a) to engage in prostitution; or
    (b) to enter any place within this State in which prostitution is practiced, encouraged, or allowed for the purpose of sexual conduct or prostitution.

"Induce" means to persuade, encourage, inveigle or entice.

"Prostitute" means a male or female person who for a fee, monetary consideration or other thing of value engages in sexual intercourse, oral-genital contact or any touching of the sexual organs or other intimate parts of a person for the purpose of arousing or gratifying the sexual desire of either person.

"Prostitution" means engaging in sexual conduct with another person in return for a fee, monetary consideration or other thing of value.

"Sexual conduct" means sexual intercourse, oral-genital contact or any touching of the sexual organs or other intimate parts of a person for the purpose of arousing or gratifying the sexual desire of either person.

"Transports" means to transport or cause to be transported, by any means of conveyance, into, through or across this State, or to aid or assist in obtaining such transportation.

NRS 201.300(2)(a)(2); NRS 201.295.

10.23: SEX TRAFFICKING BY DIRECTLY USING THREATS OR VIOLENCE

The crime of SEX TRAFFICKING consists of the following elements:

(1) The Defendant willfully and unlawfully;

(2) [Include as appropriate: takes, places, harbors, induces, causes, compels or procures] a person

(a) to engage in prostitution; or

(b) to enter any place within this State in which prostitution is practiced, encouraged or allowed for the purpose of sexual conduct or prostitution;

(3) By threats, violence, force, intimidation, fraud, duress, coercion, by any device or scheme, or by abuse of any position of confidence or authority, or having legal charge.

"Induce" means to persuade, encourage, inveigle or entice.

"Prostitute" means a male or female person who for a fee, monetary consideration or other thing of value engages in sexual intercourse, oral-genital contact or any touching of the sexual organs or other intimate parts of a person for the purpose of arousing or gratifying the sexual desire of either person.

"Prostitution" means engaging in sexual conduct with another person in return for a fee, monetary consideration or other thing of value.

"Sexual conduct" means sexual intercourse, oral-genital contact or any touching of the sexual organs or other intimate parts of a person for the purpose of arousing or gratifying the sexual desire of either person.

"Transports" means to transport or cause to be transported, by any means of conveyance, into, through or across this State, or to aid or assist in obtaining such transportation.

NRS 201.300(2)(a)(3); NRS 201.295.

10.24: SEX TRAFFICKING TO COMPEL MARRIAGE

The crime of SEX TRAFFICKING TO COMPEL MARRIAGE consists of the following elements:

(1) The Defendant willfully and unlawfully;
(2) Takes or detains a person;
(3) With the specific intent to compel the person by force, violence, threats or duress to marry him or her or any other person.

NRS 201.300(2)(a)(4); NRS 201.295.

10.25: PANDERING

The crime of PANDERING consists of the following elements:

(1) The Defendant is not a customer of a prostitute; and
(2) The Defendant willfully and unlawfully;
(3) Without physical force or the immediate threat of force;
(4) Induces an adult:
    (a) to unlawfully become a prostitute;
    (b) to continue to engage in prostitution; or
    (c) to enter any place within this State in which prostitution is practiced, encouraged, or allowed for the purpose of sexual conduct or prostitution;
(5) With the specific intent to induce prostitution.

"Induce" means to persuade, encourage, inveigle, or entice.

"Prostitute" means a male or female person who for a fee, monetary consideration or other thing of value engages in sexual intercourse, oral-genital contact or any touching of the sexual organs or other intimate parts of a person for the purpose of arousing or gratifying the sexual desire of either person.

"Prostitution" means engaging in sexual conduct with another person in return for a fee, monetary consideration, or other thing of value.

NRS 201.300(1); NRS 201.295; *Ford v. State*, 127 Nev. 608, 262 P.3d 1123 (2011).

10.26: POSSESSION OF A VISUAL PRESENTATION OF SEXUAL CONDUCT

The crime of POSSESSION OF A VISUAL PRESENTATION DEPICTING SEXUAL CONDUCT OF A PERSON UNDER 16 YEARS OF AGE consists of the following elements:

(1) The Defendant knowingly and willfully;
(2) Has in his or her possession;
(3) For any purpose;
(4) Any film, photograph or other visual presentation depicting a person under the age of 16 years:
    (a) As the subject of a sexual portrayal, or
    (b) Engaging in or simulating sexual conduct, or
    (c) Assisting others to engage in or simulate sexual conduct.

"Performance" means any play, film, photograph, computer-generated image, electronic representation, dance, or other visual presentation.

"Promote" means to produce, direct, procure, manufacture, sell, give, lend, publish, distribute, exhibit, advertise or possess for the purpose of distribution.

"Sexual conduct" means sexual intercourse, lewd exhibition of the genitals, fellatio, cunnilingus, bestiality, anal intercourse, excretion, sado-masochistic abuse, masturbation, or the penetration of any part of a person's body or of any object manipulated or inserted by a person into the genital or anal opening of the body of another.

"Sexual portrayal" means the depiction of a person in a manner which appeals to the prurient interest in sex and which does not have serious literary, artistic, political, or scientific value.

"Prurient" means a shameful or morbid interest in nudity, sex, or excretion, or involving sexual responses over and beyond those that would be characterized as normal.

NRS 200.730; NRS 200.700; *Wilson v. State*, 121 Nev. 345, 359, 114 P.3d 285, 295 (2005); *Shue v. State*, 133 Nev. 798, 407 P.3d 332 (2017).

10.27: USE OF A MINOR IN THE PRODUCTION OF PORNOGRAPHY

The crime of USING A MINOR IN PRODUCING PORNOGRAPHY consists of the following elements:

(1) The Defendant knowingly;
(2) Uses, encourages, entices or permits a minor;
(3) (a) To simulate or engage in sexual conduct to produce a performance, or
(b) To assist others to simulate or engage in sexual conduct to produce a performance.

"Performance" means any play, film, photograph, computer-generated image, electronic representation, dance, or other visual presentation.

"Sexual conduct" means sexual intercourse, lewd exhibition of the genitals, fellatio, cunnilingus, bestiality, anal intercourse, excretion, sado-masochistic abuse, masturbation, or the penetration of any part of a person's body or of any object manipulated or inserted by a person into the genital or anal opening of the body of another.

NRS 200.710; NRS 200.700; *Wilson v. State*, 121 Nev. 345, 356-359, 114 P.3d 285, 293-295 (2005); *Casteel v. State*, 122 Nev. 356, 131 P.3d 1, 5 (2006).

10.28: USE OF A MINOR AS THE SUBJECT OF SEXUAL PORTRAYAL

The crime of USING A MINOR AS THE SUBJECT OF A SEXUAL PORTRAYAL IN A PERFORMANCE consists of the following elements:

(1) The Defendant knowingly;
(2) Uses, encourages, entices, coerces, or permits a minor;
(3) To be the subject of a sexual portrayal in a performance.

"Performance" means any play, film, photograph, computer-generated image, electronic representation, dance, or other visual presentation.

"Sexual portrayal" means the depiction of a person in a manner which appeals to the prurient interest in sex and which does not have serious literary, artistic, political or scientific value.

"Prurient" means a shameful or morbid interest in nudity, sex, or excretion, or involving sexual responses over and beyond those that would be characterized as normal.

NRS 200.710; NRS 200.700; *Wilson v. State*, 121 Nev. 345, 356-359, 114 P.3d 285, 293-295 (2005); *Casteel v. State*, 122 Nev. 356, 131 P.3d 1, 5 (2006); *Shue v. State*, 133 Nev. 798, 407 P.3d 332, 338-39 (2017).

10.29: UNLAWFUL DISSEMINATION OF INTIMATE IMAGE

The crime of UNLAWFUL DISSEMINATION OF INTIMATE IMAGE consists of the following elements:

(1) The Defendant willfully and unlawfully;
(2) electronically disseminates or sells;
(3) an intimate image depicting another person;
(4) with the intent to harass, harm or terrorize the other person; and
(5) the other person:
    (a) did not give prior consent to the electronic dissemination or sale of the intimate image;
    (b) had a reasonable expectation that the intimate image would be kept private and would not be made visible to the public; and
    (c) was at least 18 years of age when the intimate image was created.

NRS 200.780.

10.30: LIVING FROM THE EARNINGS OF A PROSTITUTE

The crime of LIVING FROM THE EARNINGS OF A PROSTITUTE consists of the following elements:

(1) The Defendant knowingly;
(2) accepts, receives, levies, or appropriates any money or other valuable thing;
(3) without consideration;
(4) from the proceeds of a prostitute.

NRS 200.320(1); NRS 193.017.

10.31: INFERENCE REGARDING LIVING FROM THE EARNINGS OF A PROSTITUTE – LACK OF CONSIDERATION

Nevada law provides that you may, but are not required to, regard evidence of the Defendant's acceptance, receipt, levy or appropriation of money or any valuable thing from the prostitute, by itself, as sufficient evidence of lack of consideration given in exchange for the money or valuable thing.

However, the Defendant can only be found guilty of Living from Earnings of a Prostitute if, in light of all the evidence in the case, it has been proven beyond a reasonable doubt that the Defendant gave no consideration in exchange for the money or valuable thing accepted from the prostitute.

NRS 200.320; NRS 47.230; *Hollis v. State*, 96 Nev. 207, 208-09, 606 P.2d 534, 535-36 (1980); *Redeford v. State*, 93 Nev. 649, 653-53, 573 P.2d 219, 221-22 (1977); *Marshall v. State*, 95 Nev. 802, 803-04- 603 P.2d 283, 284 (1979); *Brackeen v. State*, 104 Nev. 547, 551-52, 763 P.2d 59, 62 (1988); *Ricci v. State*, 91 Nev. 373, 381, 536 P.2d 79, 83-84 (1975).

11.00: ROBBERY

The crime of ROBBERY consists of the following elements:

(1) The Defendant willfully and unlawfully;
(2) Takes personal property;
(3) From the person of another, or in his or her presence;
(4) Against his or her will; and
(5) [Select all that apply]
    (a) By means of force, or
    (b) By means of violence, or
    (c) By means of fear of injury, immediate or future, to:
        (i) His or her person; or
        (ii) The person of a member of his or her family; or
        (iii) The person of anyone in his or her company at the time of the robbery.

Property is in a person's presence when it is so within his or her reach, inspection, observation, or control that he or she could, if not overcome by violence or prevented by fear, retain possession of the property.

A "taking" is by means of force or fear if force or fear is used to:
(1) Obtain or retain possession of the property;
(2) Prevent or overcome resistance to the taking; or
(3) Facilitate escape.

The degree of force used is immaterial if it is used to compel acquiescence to the taking of or escaping with the property.

A taking constitutes robbery whenever it appears that, although the taking was fully completed without the knowledge of the person from whom property was taken, such knowledge was prevented by the use of force or fear.

The State is not required to prove the value of property taken in a robbery; however, the State must prove that some property was indeed taken.

It is not necessary that the force or violence involved in a robbery be committed with the specific intent to steal property. Therefore, although acts of violence and intimidation [use of force] may precede the actual taking of property and may be intended for another purpose, it is enough to support the charge of robbery when a person thereafter takes property by taking advantage of the terrifying situation he or she created.

Regarding fear of immediate or future injury, the subjective courageousness or timidity of the particular victim is irrelevant. The standard is objective, and therefore fear of immediate or future injury is sufficient to support a conviction of Robbery if the Defendant's words, actions, or words and actions under the circumstances would create an apprehension of danger and induce a reasonable person placed in a similar situation to part with his or her property for the safety of his or her person [or of the person or of a member of his or her family; or of the person of anyone in his or her company at the time].

NRS 200.380; *Chappell v. State,* 114 Nev. 1403, 1408, 972 P.2d 838, 841 (1998); *Leonard v. State,* 117 Nev. 53, 76–77, 17 P.3d 397, 412 (2001); *Nay v. State,* 123 Nev. 326, 331 n.8, 167 P.3d 430, 433 n.8 (2007); *Cortinas v. State,* 124 Nev. 1013, 1031, 195 P.3d 315, 327 (2008); *Litteral v. State,* 97 Nev. 503, 506–08, 634 P.2d 1226, 1228–29 (1981); *Hickson v. State*, 98 Nev. 78, 79, 640 P.2d 921, 921 (1982); *Abeyta v. State,* 113 Nev. 1070, 1077–78, 944 P.2d 849, 854 (1997); *Barkley v. State,* 114 Nev. 635, 637, 958 P.2d 1218, 1219 (1998); *Martinez v. State,* 114 Nev. 746, 748, 961 P.2d 752, 754 (1998); *Williams v. State,* 93 Nev. 405, 407–408, 566 P.2d 417, 419 (1977); *State v. Brown,* 75 Wash. 2d 611, 611–12, 452 P.2d 958, 959 (1969); *Guy v. State,* 108 Nev. 770, 775–76, 839 P.2d 578, 581–82 (1992); *Barkley v. State,* 114 Nev. 635, 637 n.1, 958 P.2d 1218, 1219 n.1 (1998); *Mangerich v. State*, 93 Nev. 683, 685, 572 P.2d 542, 543 (1977); *Hayden v. State*, 91 Nev. 474, 475–76, 538 P.2d 583, 584 (1975); *Phillips v. State,* 99 Nev. 693, 695–696, 669 P.2d 706, 707 (1983); *Robertson v. Sheriff,* 93 Nev. 300, 302, 565 P.2d 647, 647–48 (1977); *Klein v. State,* 105 Nev. 880, 884–885, 784 P.2d 970, 973–974 (1989); *Flynn v. State,* 93 Nev. 247, 249, 562 P.2d 1135, 1136 (1977); *Dalie v. State,* 94 Nev. 10, 11, 574 P.2d 271, 272 (1978); *Williams v. State*, 93 Nev. 405, 407, 566 P.2d 417, 419 (1977).

12.00: FIRST DEGREE ARSON

The crime of FIRST DEGREE ARSON consists of the following elements:

(1) The Defendant willfully and maliciously;

(2) Either:

(a) Sets fire to, or burns, or causes to be burned; or

(b) Aids, counsels, or procures the burning of;

(3) Any:

(a) Dwelling house or other structure or mobile home, whether occupied or vacant regardless of whether the property belongs to the Defendant or another person; or

(b) Personal property which is occupied by one or more persons regardless of whether the property belongs to the Defendant or another person; and

(4) With the specific intent to injure the property burned. For the purposes of arson, "maliciously" imports an evil intent,wish, or design to vex, annoy, or injure property by fire.

Any person shall be deemed to have "set fire to" a building, structure, or any property whenever any part thereof or anything therein shall be scorched, charred, or burned.

Whenever any building or structure shall be so situated as to be manifestly endangered by a fire and shall subsequently be set on fire thereby, any person participating in setting such fire shall be deemed to have participated in setting such building or structure on fire.

To constitute arson it shall not be necessary that another person than the Defendant should have had ownership in the building or structure set on fire.

NRS 205.010; NRS 205.005; *Ewish v. State*, 110 Nev. 221, 229 n.4, 871 P.2d 306, 312 n.4 (1994); *State v. Second Jud. Dist. Ct. in & for Cnty. of Washoe*, 136 Nev. 191, 196, 462 P.3d 671, 675 (2020).

12.01: SECOND DEGREE ARSON

The crime of SECOND DEGREE ARSON consists of the following elements:

(1) The Defendant willfully and maliciously;

(2) Either:

(a) Sets fire to, or burns, or causes to be burned; or

(b) Aids, counsels, or procures the burning of any;

(3) Abandoned building or structure whether the property of the Defendant or of another; and

(4) With the specific intent to injure the property burned.

For the purposes of arson, "maliciously" imports an evil intent, wish, or design to vex, annoy, or injure property by fire.

Any person shall be deemed to have "set fire to" a building, structure, or any property whenever any part thereof or anything therein shall be scorched, charred, or burned.

Whenever any building or structure shall be so situated as to be manifestly endangered by a fire and shall subsequently be set on fire thereby, any person participating in setting such fire shall be deemed to have participated in setting such building or structure on fire.

To constitute arson it shall not be necessary that another person than the Defendant should have had ownership in the building or structure set on fire.

NRS 205.015; NRS 205.045; NRS 205.050; NRS 193.0175; *Ewish v. State*, 110 Nev. 221, 229 n.4, 871 P.2d 306, 312 n.4 (1994); *State v. Second Jud. Dist. Ct. in & for Cnty. of Washoe*, 136 Nev. 191, 196, 462 P.3d 671, 675 (2020).

12.02: THIRD DEGREE ARSON

The crime of THIRD DEGREE ARSON consists of the following elements:

(1) The Defendant willfully and maliciously;

(2) Either:

(a) Sets fire to, or burns, or causes to be burned; or

(b) Aids, counsels or procures the burning of;

(3) Any:

(a) Unoccupied personal property of another which has the value of $25 or more; or

(b) Unoccupied personal property owned by the Defendant in which another person has a legal interest; or

(c) Timber, forest, shrubbery, crops, grass, vegetation, or other flammable material not his or her own;

(4) With the specific intent to injure the property burned.

For the purposes of arson, "maliciously" imports an evil intent, wish, or design to vex, annoy, or injure property by fire.

Any person shall be deemed to have "set fire to" any property whenever any part thereof or anything therein shall be scorched, charred, or burned.

NRS 205.020; NRS 205.005; *Ewish v. State*, 110 Nev. 221, 871 P.2d 306 (1994); *State v. Second Jud. Dist. Ct. in & for Cnty. of Washoe*, 136 Nev. 191, 196, 462 P.3d 671, 675 (2020).

12.03: FOURTH DEGREE ARSON

The crime of FOURTH DEGREE ARSON consists of the following elements:

(1) The Defendant willfully and maliciously;

(2) (a) Attempts to set fire to, or attempts to burn; or

(b) Attempts to aid, counsel or procure the setting fire to or the burning of; or

(c) Commits any act preliminary to or in furtherance of the setting fire to or burning of;

(3) [As applicable]:

(a) Any dwelling house or other structure or mobile home, whether occupied or vacant, and whether it is the property of the Defendant or of another; or

(b) Any personal property which is occupied by one or more persons, whether the property of the Defendant or of another; or

(c) Any abandoned building or structure, whether the property of the Defendant or of another; or

(d) Any unoccupied personal property of another which has the value of $25 or more; or

(e) Any unoccupied personal property owned by the Defendant in which another person has a legal interest; or

(f) Any timber, forest, shrubbery, crops, grass, vegetation, or other flammable material not his or her own;

(4) With the specific intent to injure the property burned.

For the purposes of arson, "maliciously" imports an evil intent, wish, or design to vex, annoy, or injure property by fire.

Any person shall be deemed to have "set fire to" a building, structure, or any property whenever any part thereof or anything therein shall be scorched, charred, or burned.

To constitute arson it shall not be necessary that another person than the Defendant should have had ownership in the building or structure it set on fire or that is the subject of any attempt to set fire to or to burn.

NRS 205.025; NRS 205.055; NRS 205.005; NRS 205.050; *Ewish v. State*, 110 Nev. 221, 871 P.2d 306 (1994); *State v. Second Jud. Dist. Ct. in & for Cnty. of Washoe*, 136 Nev. 191, 196, 462 P.3d 671, 675 (2020).

12.04: ATTEMPT OF ARSON

An "attempt" to commit ARSON is an act done with the intent to commit the crime, and tending, but failing to accomplish it. The act done must be a direct step or movement toward the present commission of the ARSON, although it need not amount to the commission of an actual element of the crime. When the intent to commit ARSON is clearly shown, there need only be slight acts in furtherance of the crime to constitute an attempt.

Additionally, any willful preparation made by any person with a view to setting fire to any building or structure, such as by devising or arranging the means necessary for the commission of the offense, shall be deemed to be an attempt to commit the crime of ARSON.

NRS 205.055; NRS 193.330; *Sharma v. State*, 118 Nev. 648, 56 P.3d 868 (2002); *Curry v. State*, 106 Nev. 317, 792 P.2d 396 (1990); *Moffett v. State*, 96 Nev. 822, 618 P.2d 1223 (1980); *Stephens v. Sheriff, Clark Cty.*, 93 Nev. 338, 565 P.2d 1007 (1977); *Beddow v. State*, 93 Nev. 619, 572 P.2d 526 (1977); *Van Bell v. State*, 105 Nev. 352, 775 P.2d 1273 (1989); *Darnell v. State*, 92 Nev. 680, 558 P.2d 624 (1976); *Larsen v. State*, 86 Nev. 451, 470 P.2d 417 (1970).

12.05: BURNING PROPERTY WITH INTENT TO DEFRAUD INSURER

The crime of BURNING PROPERTY WITH INTENT TO DEFRAUD INSURER consists of the following elements:

(1) The Defendant willfully and with intent to injure or defraud the insurer;
    (a) Sets fire to, or burns; or
    (b) Attempts to set fire to or burn; or
    (c) Aids, counsels or procures the burning of;
(2) Any building, structure or personal property of whatsoever class or character;
(3) Which is at the time insured by any person, company or corporation against loss or damage by fire;
(4) Whether the property belongs to the Defendant or another person.

Any person shall be deemed to have "set fire to" a building, structure, or any property whenever any part thereof or anything therein shall be scorched, charred or burned.

NRS 205.030, NRS 205.005; For definition of "attempt," generally see instruction 12.04 (citing NRS 193.330, NRS 205.055, *Sharma v. State*, 118 Nev. 648, 652, 56 P.3d 868, 870 (2002), and *Moffett v. State*, 96 Nev. 822, 824-25, 618 P.2d 1223, 1224-25 (1980)).

13.00: BURGLARY – FOR OFFENSES THAT ARE ALLEGED TO HAVE OCCURRED PRIOR TO JULY 1, 2020

The crime of BURGLARY consists of the following elements:

(1) The Defendant enters any [house, room, apartment, tenement, shop, warehouse, store, mill, barn, stable, outhouse or other building, tent, vessel, vehicle, vehicle trailer, semitrailer or house trailer, airplane, glider, boat or railroad car];

(2) With the specific intent to commit [grand or petit larceny, assault or battery on any person or any felony, or to obtain money or property by false pretenses].

Entry by breaking or other force is not an element of the offense of burglary. Burglary occurs and is complete when any [house, room, apartment, building, vehicle] is entered with the intent to commit[assault, battery, larceny or any felony therein], even if entry is made with the consent of the owner, and even if the [assault, battery, larceny or felony] is not committed thereafter. However, if the intent to commit [grand or petit larceny, assault or battery on any person or any felony, or to obtain money or property by false pretenses] is formed after entry, it is not a burglary.

"Entry" of a building [house, room, apartment, vehicle] includes the entrance of the intruder, or the insertion of any part of his or her body or of any instrument or weapon held in his or her hand and used or intended to be used to threaten or intimidate a person, or to detach or remove property. An entry is complete when any portion of the intruder's body, or any instrument or weapon held by the intruder and used or intended to intimidate a person or remove property, penetrates the space within the building's [house's, room's, apartment's, vehicle's] outer boundary.

Even the slightest penetration into a building [house, room, apartment, vehicle] will suffice to support a burglary conviction.

[Whenever the outer boundary of a building is not self-evident from the shape and contours of the structure itself, the outer boundary legally includes any element that encloses an area of the building into which a reasonable person would believe that a member of the general public could not pass without authorization.]

"Building" includes every house, shed, boat, watercraft, railway car, tent or booth, whether completed or not, suitable for affording shelter for any human being, or as a place where any property is or will be kept for use, sale or deposit.

A person cannot burglarize his or her own [house, room, apartment, vehicle, etc.] so long as he or she has an absolute, unconditional right to enter the [house, room, apartment, vehicle, etc.] that cannot be conditioned on the consent of roommates or other occupants, such that he or she could not be refused admission to the [house, room, apartment, vehicle, etc.] or ejected from the [house, room, apartment, vehicle, etc.] after entry.

NRS 205.060; NRS 193.0145; NRS 193.0125; *Carr v. Sheriff,* 95 Nev. 688, 689–90, 601 P.2d 422, 423 (1979); *Sheriff v. Stevens,* 97 Nev. 316, 317–18, 630 P.2d 256, 257 (1981); *State v. Adams,* 94 Nev. 503, 505, 581 P.2d 868, 869 (1978); *Hernandez v. State,* 118 Nev. 513, 531, 50 P.3d 1100, 1113 (2002); *Sheriff v. Stevens,* 97 Nev. 316, 317–318, 630 P.2d 256, 257 (1981); *State v. White,* 130 Nev. 533, 538, 330 P.3d 482, 485-86 (2014); *Merlino v. State,* 131 Nev. 652, 357 P.3d 379, 381-87 (Ct. App. 2015).

The jury must also be instructed regarding the elements of the underlying offense(s). Please refer to the appropriate section in this manual.

13.01: RESIDENTIAL BURGLARY

The crime of RESIDENTIAL BURGLARY consists of the following elements:

(1) The Defendant unlawfully enters, or unlawfully remains in;

(2) Any dwelling;

(3) With the specific intent to commit [grand or petit larceny, assault or battery on any person or any felony, or to obtain money or property by false pretenses].

"Dwelling" means any structure, building, house, room, apartment, tenement, tent, conveyance, vessel, boat, vehicle, house trailer, travel trailer, motor home or railroad car, including, without limitation, any part thereof that is divided into a separately occupied unit:

(1) In which any person lives; or

(2) Which is customarily used by a person for overnight accommodations, regardless of whether the person is inside at the time of the offense.

"Entry" of a dwelling includes the entrance of the intruder, or the insertion of any part of his or her body or of any instrument or weapon held in his or her hand and used or intended to be used to threaten or intimidate a person, or to detach or remove property. An entry is complete when any portion of the intruder's body, or any instrument or weapon held by the intruder and used or intended to intimidate a person or remove property, penetrates the space within the dwelling's outer boundary. Even the slightest penetration into a dwelling will suffice to support a Residential Burglary conviction.

A person "unlawfully enters or unlawfully remains" in a dwelling when the person enters or remains in any part of the dwelling when the person is not licensed or privileged to do so, including, without limitation, under false pretenses. [A license or privilege to enter or remain in a part of a dwelling that is open to the public is not a license or privilege to enter or remain in a part of the dwelling that is not open to the public.]

Entry by breaking or other force is not an element of the offense of Residential Burglary. Residential Burglary occurs and is complete when any part of a dwelling is unlawfully entered with the intent to commit [grand or petit larceny, assault or battery on any person or any felony, or to obtain money or property by false pretenses], even if the [grand or petit larceny, assault or battery on any person or any felony, or to obtain money or property by false pretenses] is not committed thereafter. However, if the intent to commit [grand or petit larceny, assault or battery on any person or any felony, or to obtain money or property by false pretenses] is formed after entry, it is not a Residential Burglary.

[Whenever the outer boundary of a building is not self-evident from the shape and contours of the structure itself, the outer boundary legally includes any element that encloses an area of the building into which a reasonable person would believe that a member of the general public could not pass without authorization.]

NRS 193.0145; NRS 193.0125; NRS 200.481; NRS 202.060; NRS 200.471; NRS 205.220; NRS 205.240; NRS 205.070; *Carr v. Sheriff,* 95 Nev. 688, 689–90, 601 P.2d 422, 423 (1979); *Sheriff v. Stevens,* 97 Nev. 316, 317–18, 630 P.2d 256, 257 (1981); *State v. Adams,* 94 Nev. 503, 505, 581 P.2d 868, 869 (1978); *Hernandez v. State,* 118 Nev. 513, 531, 50 P.3d 1100, 1113 (2002); *State v. White,* 130 Nev. 533, 537, 330 P.3d 482, 485–86 (2014).

The jury must also be instructed regarding the elements of the underlying offense(s). Please refer to the appropriate section in this manual.

13.02: BURGLARY OF A BUSINESS

The crime of BURGLARY OF A BUSINESS consists of the following elements:

(1) The Defendant unlawfully enters, or unlawfully remains in;

(2) Any business structure;

(3) With the specific intent to commit [grand or petit larceny, assault or battery on any person or any felony].

"Entry" of a business structure includes the entrance of the intruder, or the insertion of any part of his or her body or of any instrument or weapon held in his or her hand and used or intended to be used to threaten or intimidate a person, or to detach or remove property. An entry is complete when any portion of the intruder's body, or any instrument or weapon held by the intruder and used or intended to intimidate a person or remove property, penetrates the space within the structure's outer boundary. Even the slightest penetration into a business structure will suffice to support a Burglary of a Business conviction.

"Business structure" means any structure or building, the primary purpose of which is to carry on any lawful effort for a business, including, without limitation, any business with an educational, industrial, benevolent, social, or political purpose, regardless of whether the business is operated for profit.

A person "unlawfully enters or unlawfully remains" in a business structure when the person enters or remains in any part of the structure when the person is not licensed or privileged to do so, including, without limitation, under false pretenses. A license or privilege to enter or remain in a part of a business structure that

is open to the public is not a license or privilege to enter or remain in a part of the structure that is not open to the public.

Entry by breaking or other force is not an element of the offense of Burglary. Burglary of a Business occurs and is complete when any part of a business structure is unlawfully entered with the intent to commit [grand or petit larceny, assault or battery on any person or any felony], even if the [grand or petit larceny, assault or battery on any person or any felony] is not committed thereafter. However, if the intent to commit [grand or petit larceny, assault or battery on any person or any felony] is formed after entry, it is not a Burglary of a Business.

[Whenever the outer boundary of a business structure is not self-evident from the shape and contours of the structure itself, the outer boundary legally includes any element that encloses an area of the structure into which a reasonable person would believe that a member of the general public could not pass without authorization.]

NRS 193.0145; NRS 193.0125; NRS 200.481; NRS 202.060; NRS 200.471; NRS 205.220; NRS 205.240; NRS 205.070; *Carr v. Sheriff,* 95 Nev. 688, 689–90, 601 P.2d 422, 423 (1979); *Sheriff v. Stevens,* 97 Nev. 316, 317–18, 630 P.2d 256, 257 (1981); *State v. Adams,* 94 Nev. 503, 505, 581 P.2d 868, 869 (1978); *Hernandez v. State,* 118 Nev. 513, 531, 50 P.3d 1100, 1113 (2002); *State v. White,* 130 Nev. 533, 537, 330 P.3d 482, 485–86 (2014).

The jury must also be instructed regarding the elements of the underlying offense(s). Please refer to the appropriate section in this manual.

13.03: BURGLARY OF A STRUCTURE

The crime of BURGLARY OF A STRUCTURE consists of the following elements:

(1) The Defendant unlawfully enters, or unlawfully remains in;

(2) Any structure, or any part of a structure [that is not a dwelling, business structure, or motor vehicle];

(3) With the specific intent to commit [grand or petit larceny, assault or battery on any person or any felony].

"Entry" of a structure includes the entrance of the intruder, or the insertion of any part of his or her body or of any instrument or weapon held in his or her hand and used or intended to be used to threaten or intimidate a person, or to detach or remove property. An entry is complete when any portion of the intruder's body, or any instrument or weapon held by the intruder and used or intended to intimidate a person or remove property, penetrates the space within the structure's outer boundary. Even the slightest penetration into a structure will suffice to support a Burglary of a Structure conviction.

["Dwelling" means any structure, building, house, room, apartment, tenement, tent, conveyance, vessel, boat, vehicle, house trailer, travel trailer, motor home or railroad car, including, without limitation, any part thereof that is divided into a separately occupied unit:

(1) In which any person lives; or

(2) Which is customarily used by a person for overnight accommodations, regardless of whether the person is inside at the time of the offense.]

["Business structure" means any structure or building, the primary purpose of which is to carry on any lawful effort for a business, including, without limitation, any business with an educational, industrial, benevolent, social, or political purpose, regardless of whether the business is operated for profit.]

["Motor vehicle" means any motorized craft or device designed for the transportation of a person or property across land or water or through the air which does not qualify as a dwelling or business structure.]

A person "unlawfully enters or unlawfully remains" in a structure when the person enters or remains in any part of the structure when the person is not licensed or privileged to do so, including, without limitation, under false pretenses. [A license or privilege to enter or remain in a part of a structure that is open to the public is not a license or privilege to enter or remain in a part of the structure that is not open to the public.]

Entry by breaking or other force is not an element of the offense of Burglary. Burglary of a Structure occurs and is complete when any part of a structure is unlawfully entered with the intent to commit [grand or petit larceny, assault or battery on any person or any felony], even if the [grand or petit larceny, assault or battery on any person or any felony] is not committed thereafter. However, if the intent to commit [grand or petit larceny, assault or battery on any person or any felony] is formed after entry, it is not a Burglary of a Structure.

[Whenever the outer boundary of a structure is not self-evident from the shape and contours of the structure itself, the outer boundary legally includes any element that encloses an area of the structure into which a reasonable person would believe that a member of the general public could not pass without authorization.]

NRS 193.0145; NRS 193.0125; NRS 200.481; NRS 202.060; NRS 200.471; NRS 205.220; NRS 205.240; NRS 205.070; *Carr v. Sheriff,* 95 Nev. 688, 689–90, 601 P.2d 422, 423 (1979); *Sheriff v. Stevens,* 97 Nev. 316, 317–18, 630 P.2d 256, 257 (1981); *State v. Adams,* 94 Nev. 503, 505, 581 P.2d 868, 869 (1978); *Hernandez v. State,* 118 Nev. 513, 531, 50 P.3d 1100, 1113 (2002); *State v. White,* 130 Nev. 533, 537, 330 P.3d 482, 485-86 (2014).

The jury must also be instructed regarding the elements of the underlying offense(s). Please refer to the appropriate section in this manual.

13.04: BURGLARY OF A MOTOR VEHICLE

The crime of BURGLARY OF A MOTOR VEHICLE consists of the following elements:

(1) The Defendant unlawfully enters, or unlawfully remains in;

(2) Any motor vehicle, or any part thereof;

(3) With the specific intent to commit [grand or petit larceny, assault or battery on any person or any felony].

"Entry" of a motor vehicle includes the entrance of the intruder, or the insertion of any part of his or her body or of any instrument or weapon held in his or her hand and used or intended to be used to threaten or intimidate a person, or to detach or remove property. An entry is complete when any portion of the intruder's body, or any instrument or weapon held by the intruder and used or intended to intimidate a person or remove property, penetrates the space within the motor vehicle's outer boundary. Even the slightest penetration into a motor vehicle will suffice to support a Burglary of a Motor Vehicle conviction.

"Motor vehicle" means any motorized craft or device designed for the transportation of a person or property across land or water or through the air [which does not qualify as a dwelling or business structure].

["Dwelling" means any structure, building, house, room, apartment, tenement, tent, conveyance, vessel, boat, vehicle, house trailer, travel trailer, motor home or railroad car, including, without limitation, any part thereof that is divided into a separately occupied unit:

(1) In which any person lives; or

(2) Which is customarily used by a person for overnight accommodations, regardless of whether the person is inside at the time of the offense.]

["Business structure" means any structure or building, the primary purpose of which is to carry on any lawful effort for a business, including, without limitation, any business with an educational, industrial, benevolent, social, or political purpose, regardless of whether the business is operated for profit.]

A person "unlawfully" enters or "unlawfully" remains in a motor vehicle when the person enters or remains in any part of the vehicle when the person is not licensed or privileged to do so, including, without limitation, under false pretenses. [A license or privilege to enter or remain in a part of a motor vehicle that is open to the public is not a license or privilege to enter or remain in a part of the vehicle that is not open to the public.]

Entry by breaking or other force is not an element of the offense of Burglary. Burglary of a Motor Vehicle occurs and is complete when any part of a motor vehicle is unlawfully entered with the intent to commit [grand or petit larceny, assault or battery on any person or any felony], even if the [grand or petit larceny, assault or battery on any person or any felony] is not committed thereafter. However, if the intent to commit [grand or petit larceny, assault or battery on any person or any felony] is formed after entry, it is not a Burglary of a Motor Vehicle.

[Whenever the outer boundary of a motor vehicle is not self-evident from the shape and contours of the vehicle itself, the outer boundary legally includes any element that encloses an area of the vehicle into which a reasonable person would believe that a member of the general public could not pass without authorization.]

NRS 193.0145; NRS 193.0125; NRS 200.481; NRS 202.060; NRS 200.471; NRS 205.220; NRS 205.240; NRS 205.070; *Carr v. Sheriff,* 95 Nev. 688, 689–90, 601 P.2d 422, 423 (1979); *Sheriff v. Stevens,* 97 Nev. 316, 317–18, 630 P.2d 256, 257 (1981); *State v. Adams,* 94 Nev. 503, 505, 581 P.2d 868, 869 (1978); *Hernandez v. State,* 118 Nev. 513, 531, 50 P.3d 1100, 1113 (2002); *State v. White,* 130 Nev. 533, 537, 330 P.3d 482, 485–86 (2014).

The jury must also be instructed regarding the elements of the underlying offense(s). Please refer to the appropriate section in this manual.

13.05: CONSENT TO ENTER NOT A DEFENSE

Consent to enter a [house, room, apartment, vehicle, etc.] is not a defense to the crime of burglary if the entry was made with the specific intent to commit larceny or another felony.

Thomas v. State, 94 Nev. 605, 610, 584, P.2d 674, 677 (1978); *State v. Adams*, 94 Nev. 503, 581 P.2d 868 (1978); *Barrett v. State*, 105 Nev. 361, 364, 775 P.2d 1276, 1277 (1989).

13.06: COMMERCIAL ESTABLISHMENT EXCEPTION

The crime of burglary does not include the act of entering a commercial establishment during business hours with the intent to commit petit larceny.

NRS 205.060(5).
Do not use this instruction where Defendant has been convicted: (a) two or more times for committing petit larceny within the immediately preceding 7 years; or (b) of a felony.

13.07: BURGLARY WITH EXPLOSIVES

The crime of BURGLARY WITH EXPLOSIVES consists of the following elements:

(1) The Defendant breaks and enters, either by day or by night;

(2) Any building, whether inhabited or not;

(3) With the intent to commit a crime; and

(4) Opens, or attempts to open, any vault, safe, or other secure place;

(5) By use of nitroglycerine, dynamite, gunpowder or any other explosive.

"Building" includes every house, shed, boat, watercraft, railway car, tent or booth, whether completed or not, suitable for affording shelter for any human being, or as a place where any property is or will be kept for use, sale, or deposit.

NRS 205.075; NRS 193.0125.

13.08: POSSESSION OF BURGLARY TOOLS

The crime of POSSESSION OF BURGLARY TOOLS [POSSESSION OF AN INSTRUMENT WITH BURGLARIOUS INTENT] consists of the following elements:

(1) The Defendant:

(a) Makes or mends, or

(b) Causes to be made or mended, or

(c) Possesses, whether in the day or nighttime;

(2) Any engine, machine, tool, false key, picklock, bit, nippers, or implement adapted, designed, or commonly used for the commission of burglary, invasion of the home, larceny or other crime;

(3) Under circumstances evincing, beyond a reasonable doubt:

(a) An intent to use or employ, or allow the same to be used or employed in the commission of a crime, or

(b) Knowledge that the same is intended to be used or employed in the commission of a crime.

NRS 205.080.

13.09: INVASION OF THE HOME

The crime of INVASION OF THE HOME consists of the following elements:

(1) The Defendant willfully, by day or night;

(2) Forcibly enters;

(3) An inhabited dwelling, whether or not a person is present at the time of the entry;

(4) Without permission of the owner, resident, or lawful occupant.

"Forcibly enters" means the entry of an inhabited dwelling involving any act of physical force resulting in damage to the structure.

"Inhabited dwelling" means any structure, building, house, room, apartment, tenement, tent, conveyance, vessel, boat, vehicle, house trailer, travel trailer, motor home or railroad car in which the owner or other lawful occupant resides. To reside in a dwelling does not require a permanent or continuous use, and an individual is not limited to inhabiting one dwelling at a time. For example, a vacation condominium would constitute an inhabited dwelling, even when not presently occupied, so long as the owner or lawful occupant intends to return and continue to use it as a residence or a sleeping place in the future.

"Entry" of an occupied dwelling includes the entrance of the intruder, or the insertion of any part of his or her body or of any instrument or weapon held in his or her hand and used or intended to be used to threaten or intimidate a person, or to detach or remove property. An entry is complete when, however slight, any portion of

the intruder's body, or any instrument or weapon held by the intruder and used or intended to intimidate a person or remove property, penetrates the space within the outer boundary of the occupied dwelling.

[Whenever the outer boundary of a building is not self-evident from the shape and contours of the structure itself, the outer boundary legally includes any element that encloses an area of the building into which a reasonable person would believe that a member of the general public could not pass without authorization.]

[The Defendant may be separately convicted of any other crime committed at the time of entry or after entering the inhabited dwelling.]

[A person cannot commit the crime of home invasion by forcibly entering his or her own home if that person is a lawful occupant or resident of the home.]

[The offense of home invasion does not require proof of entry with a specific intent to commit a crime. A Defendant is guilty of home invasion if he or she commits a forcible entry of an inhabited dwelling without permission of the owner, resident, or lawful occupant.]

NRS 205.067; NRS 193.0145; NRS 193.0125; NRS 205.070; ***Servin v. State***, 117 Nev. 775, 789, 32 P.3d 1277, 1287 (2001); ***Truesdell v. State***, 129 Nev. 194, 202, 304 P.3d 396, 401-02 (2013); ***Merlino v. State***, 131 Nev. 652, 655, 357 P.3d 379, 381-87 (Ct. App. 2015); ***Dunham v. State***, 134 Nev. 563, 564, 426 P.3d 11, 12-15 (2018).

13.10: INVASION OF HOME WITH POSSESSION OF DEADLY WEAPON

If you find the Defendant committed the offense of INVASION OF THE HOME, then you must further determine whether the Defendant had in his or her possession or gained possession of any firearm or deadly weapon at any time during the commission of the crime, at any time before leaving the structure, or upon leaving the structure. You should indicate your finding on the verdict form.

The burden is on the State to prove beyond a reasonable doubt that the Defendant possessed or gained possession of a firearm or deadly weapon at any time during the crime, or before or upon leaving the structure. [However, the State is not required to prove that the specific firearm or deadly weapon at issue was recovered, nor is the State required to produce the subject weapon at trial.]

NRS 205.067; NRS 193.165; ***Harrison v. State***, 96 Nev. 347, 350-51, 608 P.2d 1107, 1109 (1980).

The Jury must also be instructed regarding the definition of Deadly Weapon. Please refer to the appropriate section of this manual.

13.11: BURGLARY WITH A DEADLY WEAPON

If you find the Defendant committed the offense of BURGLARY, then you must further determine whether the Defendant had in his or her possession or gained possession of any firearm or deadly weapon at any time during the commission of the crime, at any time before leaving the structure, or upon leaving the structure. You should indicate your finding on the verdict form.

The burden is on the State to prove beyond a reasonable doubt that the Defendant possessed or gained possession of a firearm or deadly weapon at any time during the crime, or before or upon leaving the structure. [However, the State is not required to prove that the specific firearm or deadly weapon at issue was recovered, nor is the State required to produce the subject weapon at trial.]

NRS 205.067; NRS 193.165; ***Harrison v. State***, 96 Nev. 347, 350-51, 608 P.2d 1107, 1109 (1980).

The Jury must also be instructed regarding the definition of Deadly Weapon. Please refer to the appropriate section of this manual.

14.00: FORGERY (ALLEGED PURSUANT TO NRS 205.090)

The crime of FORGERY [OF A CONVEYANCE, NEGOTIABLE INSTRUMENT, ETC.] consists of the following elements:

(1) The Defendant falsely makes, alters, forges or counterfeits;

(2) Any [include as appropriate: record, or other authentic matter of a public nature; or any charter, letters patent, deed, lease, indenture, writing obligatory, will, testament, codicil, annuity, bond, covenant, bank bill or note, post note, check, draft, bill of exchange, contract, promissory note, traveler's check, money order, due bill for the payment of money or property or for the payment of any labor claim, receipt for money or property, power of attorney, any auditor's warrant for the payment of the money at the treasury, county order or warrant, or request for the payment of money, or the delivery of goods or chattels of any kind, or for the delivery of any instrument of writing, or acquittance, release, or receipt for money, goods, or labor claim, or any acquittance, release, or discharge for any debt, account, suit, action, demand, or other thing, real or personal, or any transfer or assurance of money, stock, goods, chattels, or other property whatsoever, or any letter of attorney, or other power to receive money, or to receive or transfer stock or annuities, or to let, lease, dispose of, alien or convey any goods or chattels, lands or tenements, or other estate, real or personal, or any acceptance or endorsement of any bill of exchange, promissory note, draft, order or assignment of any bond, writing obligatory, or promissory note, for money or other

property, or any order, writ or process lawfully issued by any court or public officer, or any document or paper recorded or filed in any court or with any public officer, or in the Senate or Assembly, or counterfeits or forges the seal or handwriting of another];

(3) With the intent to damage or defraud [any person, body politic or corporate] whether the [person, body politic or corporate, resides in or belongs to this State or not.]

To defraud means to deprive a person of property or interest, estate or right by fraud, deceit or artifice. An intent to defraud is thus an intent to deceive another person for the purpose of inducing him or her to part with property or to alter his or her position to his or her injury or risk, and to accomplish that purpose by some false statement, false representation of fact, wrongful concealment or suppression of truth, or by any other artifice or act calculated to deceive.

As to any charge of forgery, the State is not required to prove an intent to defraud any particular person. The element of intent to defraud is satisfied if the State proves that the Defendant intended to defraud any person, association or body politic or corporation, whatsoever.

[A "written instrument," a "writing," or a "paper" includes an instrument partly written and partly printed or wholly printed with a written signature thereto, or any signature or writing purporting to be a signature of or intended to bind an individual, partnership, corporation or association or an officer thereof.]

[“Signature” includes any memorandum, mark or sign made with intent to authenticate any instrument or writing, or the subscription of any person thereto.]

[The words “forge,” “forgery,” “forged,” and “forging,” include the false making, “counterfeiting,” and the alteration, erasure or obliteration of a genuine instrument in whole or in part, the false making or counterfeiting of the signature of a party or witness, real or fictitious, and the placing or connecting together with intent to defraud, of different parts or the whole of several genuine instruments.]

[A plate is in the 'form and similitude,' of the genuine instrument forged, if the finished parts of the engraving thereupon shall resemble or conform to the similar parts of the genuine instrument.]

[A plate, label, trademark, term, design, device or form of advertisement is in the form and similitude of the genuine instrument imitated if the finished parts of the engraving thereupon shall resemble or conform to the similar parts of the genuine instrument.]

[The false making or forging of an instrument or writing purporting to have been issued by or in behalf of a corporation or association, state or government and bearing the pretended signature of any person therein falsely indicated as an agent or officer of such corporation, association, state or government, is forgery the same as if that person were in truth such officer or agent of such corporation, association, state or government.]

[Every person who, knowing the same to be forged or altered, and with intent to defraud, shall utter, offer, dispose of or put off as true, or have in his or her possession with intent so to utter, offer, dispose of or put off any forged writing, instrument or other thing, the false making, forging or altering of which is punishable as forgery, is guilty of forgery the same as if the person had forged the same.]

[Whenever the false making or uttering of any instrument or writing is forgery, every person who, with intent to defraud, shall offer, dispose of or put off such an instrument or writing subscribed or endorsed in his or her own name or that of any other person, whether such signature be genuine or fictitious, under the pretense that such subscription or endorsement is the act of another person of the same name, or that of a person not in existence, is guilty of forgery.]

NRS 205.085; NRS 205.090; NRS 205.105; NRS 205.110; NRS 205.115; NRS 193.040; NRS 193.0245; NRS 193.024; ***State v. Jarman***, 84 Nev. 187, 190, 438 P.2d 250, 252-253 (1968); ***Bratcher v. City of Las Vegas***, 113 Nev. 502, 510-511, 937 P.2d 485, 491 (1997); ***Winston v. Warden***, 86 Nev. 33, 34-35, 464 P.2d 30, 31 (1970); ***State v. Williams***, 46 Nev. 263, 210 P. 995, 996-997 (1922); ***Barron v. State***, 105 Nev. 767, 774-775, 783 P.2d 444, 448-449 (1989).

14.01: UTTERING A FORGED INSTRUMENT (ALLEGED PURSUANT TO NRS 205.090)

The crime of FORGERY BY UTTERING A [CONVEYANCE, NEGOTIABLE INSTRUMENT, ETC.] consists of the following elements:

(1) The Defendant utters, publishes, passes or attempts to pass, as true and genuine;

(2) Any false, altered, forged or counterfeited [include as appropriate: record, or other authentic matter of a public nature; or any charter, letters patent, deed, lease, indenture, writing obligatory, will, testament, codicil, annuity, bond, covenant, bank bill or note, post note, check, draft, bill of exchange, contract, promissory note, traveler's check, money order, due bill for the payment of money or property or for the payment of any labor claim, receipt for money or property, power of attorney, any auditor's warrant for the payment of the money at the treasury, county order or warrant, or request for the payment of money, or the delivery of goods or chattels of any kind, or for the delivery of any instrument of writing, or acquittance, release, or receipt for money, goods, or labor claim, or any acquittance, release, or discharge for any debt, account, suit, action, demand, or other thing, real or personal, or any transfer or assurance of money, stock, goods, chattels, or other property whatever, or any letter of attorney, or other power to receive money, or to receive or transfer stock or annuities, or to let, lease, dispose of, alien or convey any goods or chattels, lands or tenements, or other estate, real or personal, or any acceptance or endorsement of any bill of exchange, promissory note, draft, order or assignment of any bond, writing obligatory, or promissory note, for money or other property, or any order writ or process lawfully issued by any court or public officer, or in the Senate or

Assembly, or counterfeits or forges the seal or handwriting of another];

(3) Knowing it to be false, altered, forged or counterfeited;

(4) With the intent to prejudice, damage or defraud any person, [body politic or corporate,] whether the person, [body politic or corporate,] resides in this State or not.

To "utter" a thing is to publish or circulate it as if it were genuine.

To defraud means to deprive a person of property or interest, estate or right by fraud, deceit or artifice. An intent to defraud is thus an intent to deceive another person for the purpose of inducing him or her to part with property or to alter his or her position to his or her injury or risk, and to accomplish that purpose by some false statement, false representation of fact, wrongful concealment or suppression of truth, or by any other artifice or act calculated to deceive.

As to any charge of forgery, the State is not required to prove an intent to defraud any particular person. The element of intent to defraud is satisfied if the State proves that the Defendant intended to defraud any person, association or body politic or corporation, whatsoever.

[A "written instrument," a "writing," or a "paper" includes an instrument partly written and partly printed or wholly printed with a written signature thereto, or any signature or writing purporting to be a signature of or intended to bind an individual, partnership, corporation or association or an officer thereof.]

["Signature" includes any memorandum, mark or sign made with intent to authenticate any instrument or writing, or the subscription of any person thereto.]

[The words "forge," "forgery," "forged," and "forging," include the false making, "counterfeiting," and the alteration, erasure or obliteration of a genuine instrument in whole or in part, the false making or counterfeiting of the signature of a party or witness, real or fictitious, and the placing or connecting together with intent to defraud, of different parts or the whole of several genuine instruments.]

[A plate is in the "form and similitude," of the genuine instrument forged, if the finished parts of the engraving thereupon shall resemble or conform to the similar parts of the genuine instrument.]

[A plate, label, trademark, term, design, device or form of advertisement is in the form and similitude of the genuine instrument imitated if the finished parts of the engraving thereupon shall resemble or conform to the similar parts of the genuine instrument.]

[The false making or forging of an instrument or writing purporting to have been issued by or in behalf of a corporation or association, state or government and bearing the pretended signature of any person therein falsely indicated as an agent or officer of such corporation, association, state or government, is forgery the same as if that person were in truth such officer or agent of such corporation, association, state or government.]

[Every person who, knowing the same to be forged or altered, and with intent to defraud, shall utter, offer, dispose of or put off as true, or have in his or her possession with intent so to utter, offer, dispose of or put off any forged writing, instrument or other thing, the false making, forging or altering of which is punishable as forgery, is guilty of forgery the same as if the person had forged the same.]

[Whenever the false making or uttering of any instrument or writing is forgery, every person who, with intent to defraud, shall offer, dispose of or put off such an instrument or writing subscribed or endorsed in his or her own name or that of any other person, whether such signature be genuine or fictitious, under the pretense that such subscription or endorsement is the act of another person of the same name, or that of a person not in existence, is guilty of forgery.]

NRS 205.085; NRS 205.090; NRS 205.115; NRS 193.040; NRS 193.0245; NRS 193.024; *State v. Jarman*, 84 Nev. 187, 190, 438 P.2d 250, 252-253 (1968); *Bratcher v. City of Las Vegas*, 113 Nev. 502, 510-511, 937 P.2d 485, 491 (1997); *Winston v. Warden*, 86 Nev. 33, 34-35, 464 P.2d 30, 31 (1970); *State v. Williams*, 46 Nev. 263, 210 P. 995, 996-997 (1922); *Barron v. State*, 105 Nev. 767, 774-775, 783 P.2d 444, 448-449 (1989); Black's Law Dictionary (7th ed. 1999) at 1545.

14.02: FORGERY REGARDING A PUBLIC RECORD OR ACCOUNT (ALLEGED PURSUANT TO NRS 205.095(1)(2))

The crime of FORGERY [REGARDING A PUBLIC RECORD OR ACCOUNT] consists of the following elements:

(1) The Defendant:

(a) Makes any false entry, or

(b) Fails to make a true entry of any material matter;

(2) In any public record or account;

(3) With the intent to damage or defraud any person [body politic or corporate] whether the person, [body politic or corporate], resides in or belongs to this State or not.

To "defraud" means to deprive a person of property or interest, estate or right by fraud, deceit or artifice. An intent to defraud is thus an intent to deceive another person for the purpose of inducing him or her to part with property or to alter his or her position to his or her injury or risk, and to accomplish that purpose by some false statement, false representation of fact, wrongful concealment or suppression of truth, or by any other artifice or act calculated to deceive.

As to any charge of forgery, the State is not required to prove an intent to defraud any particular person. The element of intent to defraud is satisfied if the State proves that the Defendant intended to defraud any person, association or body politic or corporation, whatsoever.

[A "written instrument," a "writing," or a "paper" includes an instrument partly written and partly printed or wholly printed with a written signature thereto, or any signature or writing purporting to be a signature of or intended to bind an individual, partnership, corporation or association or an officer thereof.]

["Signature" includes any memorandum, mark or sign made with intent to authenticate any instrument or writing, or the subscription of any person thereto.]

[The words "forge," "forgery," "forged," and "forging," include the false making, "counterfeiting," and the alteration, erasure or obliteration of a genuine instrument in whole or in part, the false making or counterfeiting of the signature of a party or witness, real or fictitious, and the placing or connecting together with intent to defraud, of different parts or the whole of several genuine instruments.]

[A plate is in the "form and similitude," of the genuine instrument forged, if the finished parts of the engraving thereupon shall resemble or conform to the similar parts of the genuine instrument.]

[A plate, label, trademark, term, design, device or form of advertisement is in the form and similitude of the genuine instrument imitated if the finished parts of the engraving thereupon shall resemble or conform to the similar parts of the genuine instrument.]

[The false making or forging of an instrument or writing purporting to have been issued by or in behalf of a corporation or association, state or government and bearing the pretended signature of any person therein falsely indicated as an agent or officer of such corporation, association, state or government, is forgery the same as if that person were in truth such officer or agent of such corporation, association, state or government.]

[Every person who, knowing the same to be forged or altered, and with intent to defraud, shall utter, offer, dispose of or put off as true or have in his or her possession with intent so to utter, offer, dispose of or put off any forged writing, instrument or other thing, the false making, forging or altering of which is punishable as forgery, is guilty of forgery the same as if the person had forged the same.]

[Whenever the false making or uttering of any instrument or writing is forgery, every person who, with intent to defraud, shall offer, dispose of or put off such an instrument or writing subscribed or endorsed in his or her own name or that of any other person, whether such signature be genuine or fictitious, under the pretense that such subscription or endorsement is the act of another person of the same name, or that of a person not in existence, is guilty of forgery.]

NRS 205.085; NRS 205.095; NRS 205.105; NRS 205.110; NRS 205.115; NRS 193.040; NRS 193.0245; NRS 193.024; *State v. Jarman*, 84 Nev. 187, 190, 438 P.2d 250, 252-253 (1968); *Bratcher v. City of Las Vegas*, 113 Nev. 502, 510-511, 937 P.2d 485, 491 (1997); *Winston v. Warden*, 86 Nev. 33, 34-35, 464 P.2d 30, 31 (1970); *State v. Williams*, 46 Nev. 263, 210 P. 995, 996-997 (1922); *Barron v. State*, 105 Nev. 767, 774-775, 783 P.2d 444, 448-449 (1989); Black's Law Dictionary (7th ed. 1999) at 1545.

14.03: FORGERY OF A WRITTEN COMMUNICATION (ALLEGED UNDER NRS 205.095(3))

The crime of FORGERY [OF A WRITTEN COMMUNICATION] consists of the following elements:

(1) The Defendant, with the intent to damage or defraud any person [body politic or corporate], whether the person, [body politic or corporate], resides in or belongs to this State or not;

(2) (a) Forges any letter or written communication or copy or purported copy thereof; [or]

(b) Sends or delivers any false or fictitious telegraph message or copy or purported copy thereof;] [or]

(c) Connives at the sending or delivering any false or fictitious telegraph message or copy or purported copy thereof;]

(3) Whereby or wherein the sentiments, opinions, conduct, character, purpose, property, interests or rights of any person shall be misrepresented or may be injuriously affected.

To "defraud" means to deprive a person of property or interest, estate or right by fraud, deceit or artifice. An intent to defraud is thus an intent to deceive another person for the purpose of inducing him or her to part with property or to alter his or her position to his or her injury or risk, and to accomplish that purpose by some false statement, false representation of fact, wrongful concealment or suppression of truth, or by any other artifice or act calculated to deceive.

As to any charge of forgery, the State is not required to prove an intent to defraud any particular person. The element of intent to defraud is satisfied if the State proves that the Defendant intended to defraud any person, association or body politic or corporation, whatsoever.

[A "written instrument," a "writing," or a "paper" includes an instrument partly written and partly printed or wholly printed with a written signature thereto, or any signature or writing purporting to be a signature of or intended to bind an individual, partnership, corporation or association or an officer thereof.]

["Signature" includes any memorandum, mark or sign made with intent to authenticate any instrument or writing, or the subscription of any person thereto.]

[The words "forge," "forgery," "forged," and "forging," include the false making, "counterfeiting," and the alteration, erasure or obliteration of a genuine instrument in whole or in part, the false making or counterfeiting of the signature of a party or witness, real or fictitious, and the placing or connecting together with intent to defraud, of different parts or the whole of several genuine instruments.]

[A plate is in the "form and similitude," of the genuine instrument forged, if the finished parts of the engraving thereupon shall resemble or conform to the similar parts of the genuine instrument.]

[A plate, label, trademark, term, design, device or form of advertisement is in the form and similitude of the genuine instrument imitated if the finished parts of the engraving thereupon shall resemble or conform to the similar parts of the genuine instrument.]

[The false making or forging of an instrument or writing purporting to have been issued by or in behalf of a corporation or association, state or government and bearing the pretended signature of any person therein falsely indicated as an agent or officer of such corporation, association, state or government, is forgery the same as if that person were in truth such officer or agent of such corporation, association, state or government.]

[Every person who, knowing the same to be forged or altered, and with intent to defraud, shall utter, offer, dispose of or put off as true, or have in his or her possession with intent so to utter, offer, dispose of or put off any forged writing, instrument or other thing, the false making, forging or altering of which is punishable as forgery, is guilty of forgery the same as if the person had forged the same.]

[Whenever the false making or uttering of any instrument or writing is forgery, every person who, with intent to defraud, shall offer, dispose of or put off such an instrument or writing subscribed or endorsed in his or her own name or that of any other person, whether such signature be genuine or fictitious, under the pretense that such subscription or endorsement is the act of another person of the same name, or that of a person not in existence, is guilty of forgery.]

NRS 205.085; NRS 205.095; NRS 205.105; NRS 205.110; NRS 205.115; NRS 193.040; NRS 193.0245; NRS 193.024; *State v. Jarman*, 84 Nev. 187, 190, 438 P.2d 250, 252-253 (1968); *Bratcher v. City of Las Vegas*, 113 Nev. 502, 510-511, 937 P.2d 485, 491 (1997); *Winston v. Warden*, 86 Nev. 33, 34-35, 464 P.2d 30, 31 (1970); *State v. Williams*, 46 Nev. 263, 210 P. 995, 996-997 (1922); *Barron v. State*, 105 Nev. 767, 774-775, 783 P.2d 444, 448-449 (1989); Black's Law Dictionary (7th ed. 1999) at 1545.

14.04: FORGERY BY UTTERING A WRITTEN COMMUNICATION (ALLEGED PURSUANT TO NRS 205.095(3))

The crime of FORGERY [BY UTTERING A WRITTEN COMMUNICATION] consists of the following elements:

(1) The Defendant, with the intent to damage or defraud any person, [body politic or corporate,] whether the person, [body politic or corporate,] resides in or belongs to this State or not;

(2) Utters or publishes as true;

(3) (a) Any forged letter or written communication or copy or purported copy thereof; [or]

[(b) Any false or fictitious telegraph message or copy or purported copy thereof;]

(4) Whereby or wherein the sentiments, opinions, conduct, character, purpose, property, interests, or rights of any person shall be misrepresented or may be injuriously affected;

(5) Knowing any such letter, communication or message or any copy or purported copy thereof to be false.

To "utter" a thing is to publish or circulate it as if it were genuine.

To "defraud" means to deprive a person of property or interest, estate or right by fraud, deceit or artifice. An intent to defraud is thus an intent to deceive another person for the purpose of inducing him or her to part with property or to alter his or her position to his or her injury or risk, and to accomplish that purpose by some false statement, false representation of fact, wrongful concealment or suppression of truth, or by any other artifice or act calculated to deceive.

As to any charge of forgery, the State is not required to prove an intent to defraud any particular person. The element of intent to defraud is satisfied if the State proves that the Defendant intended to defraud any person, association or body politic or corporation, whatsoever.

[A "written instrument," a "writing," or a "paper" includes an instrument partly written and partly printed or wholly printed with a written signature thereto, or any signature or writing purporting to be a signature of or intended to bind an individual, partnership, corporation or association or an officer thereof.]

["Signature" includes any memorandum, mark or sign made with intent to authenticate any instrument or writing, or the subscription of any person thereto.]

[The words "forge," "forgery," "forged," and "forging," include the false making, "counterfeiting," and the alteration, erasure or obliteration of a genuine instrument in whole or in part, the false making or counterfeiting of the signature of a party or witness, real or fictitious, and the placing or connecting together with intent to defraud, of different parts or the whole of several genuine instruments.]

[A plate is in the "form and similitude," of the genuine instrument forged, if the finished parts of the engraving thereupon shall resemble or conform to the similar parts of the genuine instrument.]

[A plate, label, trademark, term, design, device or form of advertisement is in the form and similitude of the genuine instrument imitated if the finished parts of the engraving thereupon shall resemble or conform to the similar parts of the genuine instrument.]

[The false making or forging of an instrument or writing purporting to have been issued by or in behalf of a corporation or association, state or government and bearing the pretended signature of any person therein falsely indicated as an agent or officer of such corporation, association, state or government, is forgery the same as if that person were in truth such officer or agent of such corporation, association, state or government.]

[Every person who, knowing the same to be forged or altered, and with intent to defraud, shall utter, offer, dispose of or put off as true, or have in his or her possession with intent so to utter, offer, dispose of or put off any forged writing, instrument or other thing, the false making, forging or altering of which is punishable as forgery, is guilty of forgery the same as if the person had forged the same.]

[Whenever the false making or uttering of any instrument or writing is forgery, every person who, with intent to defraud, shall offer, dispose of or put off such an instrument or writing subscribed or endorsed in his or her own name or that of any other person, whether such signature be genuine or fictitious, under the pretense that such subscription or endorsement is the act of another person of the same name, or that of a person not in existence, is guilty of forgery.]

NRS 205.085; NRS 205.095; NRS 205.105; NRS 205.110; NRS 205.115; NRS 193.040; NRS 193.0245; NRS 193.024; *State v. Jarman*, 84 Nev. 187, 190, 438 P.2d 250, 252-253 (1968); *Bratcher v. City of Las Vegas*, 113 Nev. 502, 510-511, 937 P.2d 485, 491 (1997); *Winston v. Warden*, 86 Nev. 33, 34-35, 464 P.2d 30, 31 (1970); *State v. Williams*, 46 Nev. 263, 210 P. 995, 996-997 (1922); *Barron v. State*, 105 Nev. 767, 774-775, 783 P.2d 444, 448-449 (1989); Black's Law Dictionary (7th ed. 1999) at 1545.

14.05: FORGERY BY MAKING, UTTERING, OR POSSESSING WITH INTENT TO UTTER ANY FICTITIOUS BILL, NOTE OR CHECK (ALLEGED PURSUANT TO NRS 205.100)

The crime of FORGERY BY MAKING, UTTERING OR POSSESSING WITH INTENT TO UTTER ANY FICTITIOUS BILL, NOTE OR CHECK consists of the following elements:

(1) The Defendant:

(a) Makes; or

(b) Passes, utters or publishes; or

(c) Attempts to pass, utter or publish;

(2) Any fictitious [bill, note or check purporting to be the bill, note or check, or other instrument in writing,] for the payment of [money, or property, or any labor claim or claims] of [some bank, corporation, copartnership or individual,] when in fact there is no such [bank, corporation, copartnership or individual] in existence;

(3) Knowing the [bill, note, check or instrument] to be fictitious;

(4) With an intention to defraud any person or persons [body politic or corporate,] either in this State or elsewhere.

To "defraud" means to deprive a person of property or interest, estate or right by fraud, deceit or artifice. An intent to defraud is thus an intent to deceive another person for the purpose of inducing him or her to part with property or to alter his or her position to his or her injury or risk, and to accomplish that purpose by some false statement, false representation of fact, wrongful concealment or suppression of truth, or by any other artifice or act calculated to deceive.

As to any charge of forgery, the State is not required to prove an intent to defraud any particular person. The element of intent to defraud is satisfied if the State proves that the Defendant intended to defraud any person, association or body politic or corporation, whatsoever.

[To "utter" a thing is to publish or circulate it as if it were genuine.]

[A "written instrument," a "writing," or a "paper" includes an instrument partly written and partly printed or wholly printed with a written signature thereto, or any signature or writing purporting to be a signature of or intended to bind an individual, partnership, corporation or association or an officer thereof.]

["Signature" includes any memorandum, mark or sign made with intent to authenticate any instrument or writing, or the subscription of any person thereto.]

[The words "forge," "forgery," "forged," and "forging," include the false making, "counterfeiting," and the alteration, erasure or obliteration of a genuine instrument in whole or in part, the false making or counterfeiting of the signature of a party or witness, real or fictitious, and the placing or connecting together with intent to defraud, of different parts or the whole of several genuine instruments.]

[A plate is in the "form and similitude," of the genuine instrument forged, if the finished parts of the engraving thereupon shall resemble or conform to the similar parts of the genuine instrument.]

[A plate, label, trademark, term, design, device or form of advertisement is in the form and similitude of the genuine instrument imitated if the finished parts of the engraving thereupon shall resemble or conform to the similar parts of the genuine instrument.]

[You may, but are not required to, regard evidence that the purported drawer had no account at the bank as sufficient evidence of the nonexistence of the drawer of such instrument. However, the Defendant can only be found guilty of Forgery By Making, Uttering Or Possessing With Intent To Utter Any Fictitious Bill, Note Or Check if, in light of all the evidence in the case, the nonexistence of the drawer of such instrument has been proved beyond a reasonable doubt.]

[The false making or forging of an instrument or writing purporting to have been issued by or in behalf of a corporation or association, state or government and bearing the pretended signature of any person therein falsely indicated as an agent or officer of such corporation, association, state or government, is forgery the same as if that person were in truth such officer or agent of such corporation, association, state or government.]

[Whenever the false making or uttering of any instrument or writing is forgery, every person who, with intent to defraud, shall offer, dispose of or put off such an instrument or writing subscribed or endorsed in his or her own name or that of any other person, whether such signature be genuine or fictitious, under the pretense that such subscription or endorsement is the act of another person of the same name, or that of a person not in existence, is guilty of forgery.]

NRS 205.085; NRS 205.100; NRS 205.105; NRS 205.110; NRS 205.115; NRS 193.040; NRS 193.0245; NRS 193.024; NRS 47.230; *State v. Jarman*, 84 Nev. 187, 190, 438 P.2d 250, 252-253 (1968); *Bratcher v. City of Las Vegas*, 113 Nev. 502, 510-511, 937 P.2d 485, 491 (1997); *Winston v. Warden*, 86 Nev. 33, 34-35, 464 P.2d 30, 31 (1970); *State v. Williams*, 46 Nev. 263, 210 P. 995, 996-997 (1922); *Barron v. State*, 105 Nev. 767, 774-775, 783 P.2d 444, 448-449 (1989); Black's Law Dictionary (7th ed. 1999) at 1545.

14.06: POSSESSING OR RECEIVING A FORGED PROMISSORY NOTE, TRAVELER'S CHECK, MONEY ORDER, BANK BILL, OR BILL FOR THE PAYMENT OF MONEY (ALLEGED PURSUANT TO NRS 205.160)

The crime of [POSSESSING OR RECEIVING] A FORGED [PROMISSORY NOTE, TRAVELER'S CHECK, MONEY ORDER, BANK BILL, OR BILL FOR THE PAYMENT OF MONEY] consists of the following elements:

(1) The Defendant has in his or her possession, or receives from any other person;

(2) Any forged [promissory note, traveler's check or money order, or bank bill, or bill for the payment of money or property];

(3) Knowing it to be forged or counterfeited;

(4) With the intention to pass it, or to permit, cause, or procure it to be uttered or passed; and

(5) With the intention to defraud any person, [body politic or corporate,] whether the person, [body politic or corporate,] resides in or belongs to this State or not.

To "defraud" means to deprive a person of property or interest, estate or right by fraud, deceit or artifice. An intent to defraud is thus an intent to deceive another person for the purpose of inducing him or her to part with property or to alter his or her position to his or her injury or risk, and to accomplish that purpose by some false statement, false representation of fact, wrongful concealment or suppression of truth, or by any other artifice or act calculated to deceive.

As to any charge of forgery, the State is not required to prove an intent to defraud any particular person. The element of intent to defraud is satisfied if the State proves that the Defendant intended to defraud any person, association or body politic or corporation, whatsoever.

[To "utter" a thing is to publish or circulate it as if it were genuine.]

[The words "forge," "forgery," "forged," and "forging," include the false making, "counterfeiting," and the alteration, erasure or obliteration of a genuine instrument in whole or in part, the false making or counterfeiting of the signature of a party or witness, real or fictitious, and the placing or connecting together with intent to defraud, of different parts or the whole of several genuine instruments.]

NRS 205.085; NRS 205.100; NRS 205.105; NRS 205.110; NRS 205.115; NRS 193.040; NRS 193.0245; NRS 193.024; NRS 47.230; *State v. Jarman*, 84 Nev. 187, 190, 438 P.2d 250, 252-253 (1968); *Bratcher v. City of Las Vegas*, 113 Nev. 502, 510-511, 937 P.2d 485, 491 (1997); *Winston v. Warden*, 86 Nev. 33, 34-35, 464 P.2d 30, 31 (1970); *State v. Williams*, 46 Nev. 263, 210 P. 995, 996-997 (1922); *Barron v. State*, 105 Nev. 767, 774-775, 783 P.2d 444, 448-449 (1989); Black's Law Dictionary (7th ed. 1999) at 1545.

14.07: POSSESSING A BLANK OR UNFINISHED FORGED [NOTE, TRAVELER'S CHECK, MONEY ORDER OR BANK BILL] (ALLEGED PURSUANT TO NRS 205.160)

The crime of KEEPING OR POSSESSING A BLANK OR UNFINISHED FORGED [NOTE, TRAVELER'S CHECK, MONEY ORDER OR BANK BILL] consists of the following elements:

(1) The Defendant has or keeps in his or her possession;

(2) Any blank or unfinished [note, traveler's check, money order or bank bill] made in the form or similitude of any promissory note or bill for payment of money or property, made to be issued by any person, company, partnership or corporation;

(3) With the intention:

(a) To fill up and complete the blank and unfinished note or bill in order to utter or pass it, or to permit, or cause, or procure it to be uttered and passed; or

(b) To permit, or cause, or procure it to be filled up and completed in order to utter or pass it, or to permit, or cause, or procure it to be uttered and passed;

(4) And with the intention to defraud any person, [body politic or corporate,] whether in this State or elsewhere.

To "defraud" means to deprive a person of property or interest, estate or right by fraud, deceit or artifice. An intent to defraud is thus an intent to deceive another person for the purpose of inducing him or her to part with property or to alter his or her position to his or her injury or risk, and to accomplish that purpose by some false statement, false representation of fact, wrongful concealment or suppression of truth, or by any other artifice or act calculated to deceive.

As to any charge of forgery, the State is not required to prove an intent to defraud any particular person. The element of intent to defraud is satisfied if the State proves that the Defendant intended to defraud any person, association or body politic or corporation, whatever.

[To "utter" a thing is to publish or circulate it as if it were genuine.]

[The words "forge," "forgery," "forged," and "forging," include the false making, "counterfeiting," and the alteration, erasure or obliteration of a genuine instrument in whole or in part, the false making or counterfeiting of the signature of a party or witness, real or fictitious, and the placing or connecting together with intent to defraud, of different parts or the whole of several genuine instruments.]

NRS 205.085; NRS 205.160; NRS 193.040; NRS 193.0245; NRS 193.024; *State v. Jarman*, 84 Nev. 187, 190, 438 P.2d 250, 252-253 (1968); *Bratcher v. City of Las Vegas*, 113 Nev. 502, 510-511, 937 P.2d 485, 491 (1997); *Winston v. Warden*, 86 Nev. 33, 34-35, 464 P.2d 30, 31 (1970); *State v. Williams*, 46 Nev. 263, 210 P. 995, 996-997 (1922); *Barron v. State*, 105 Nev. 767, 774-775, 783 P.2d 444, 448-449 (1989); Black's Law Dictionary (7th ed. 1999) at 1545.

14.08: FORGERY BY UTTERING A FORGED OR ALTERED INSTRUMENT (ALLEGED PURSUANT TO NRS 205.110)

The crime of FORGERY BY UTTERING A FORGED OR ALTERED INSTRUMENT consists of the following elements:

(1) The Defendant:
  (a) Utters; or
  (b) Offers; or
  (c) Disposes of; or
  (d) Puts off as true;

(2) Any [forged writing, instrument or other thing, the false making, forging or altering of which is punishable as forgery];

(3) Knowing the [forged writing, instrument or other thing, the false making, forging or altering of which is punishable as forgery] to be forged or altered;

(4) With the intent to damage or defraud any person, [body politic or corporate,] whether the person, [body politic or corporate,] resides in or belongs to this State or not.

[To "utter" a thing is to publish or circulate it as if it were genuine.]

To "defraud" means to deprive a person of property or interest, estate or right by fraud, deceit or artifice. An intent to defraud is thus an intent to deceive another person for the purpose of inducing him or her to part with property or to alter his or her position to his or her injury or risk, and to accomplish that purpose by some false statement, false representation of fact, wrongful concealment or suppression of truth, or by any other artifice or act calculated to deceive.

As to any charge of forgery, the State is not required to prove an intent to defraud any particular person. The element of intent to defraud is satisfied if the State proves that the Defendant intended to defraud any person, association or body politic or corporation, whatever.

[The words "forge," "forgery," "forged," and "forging," include the false making, "counterfeiting," and the alteration, erasure or obliteration of a genuine instrument in whole or in part, the false making or counterfeiting of the signature of a party or witness, real or fictitious, and the placing or connecting together with intent to defraud, of different parts or the whole of several genuine instruments.]

NRS 205.085; NRS 205.160; NRS 193.040; NRS 193.0245; NRS 193.024; *State v. Jarman*, 84 Nev. 187, 190, 438 P.2d 250, 252-253 (1968); *Bratcher v. City of Las Vegas*, 113 Nev. 502, 510-511, 937 P.2d 485, 491 (1997); *Winston v. Warden*, 86 Nev. 33, 34-35, 464 P.2d 30, 31 (1970); *State v. Williams*, 46 Nev. 263, 210 P. 995, 996-997 (1922); *Barron v. State*, 105 Nev. 767, 774-775, 783 P.2d 444, 448-449 (1989); Black's Law Dictionary (7th ed. 1999) at 1545.

14.09: FORGERY BY POSSESSION OF A FORGED INSTRUMENT (ALLEGED PURSUANT TO NRS 205.110)

The crime of FORGERY BY POSSESSION OF A FORGED OR ALTERED INSTRUMENT consists of the following elements:

(1) The Defendant possessed any [forged writing, instrument or other thing, the false making, forging or altering of which is punishable as forgery];

(2) Knowing the [forged writing, instrument or other thing, the false making, forging or altering of which is punishable as forgery] to be forged or altered;

(3) With intent to utter, offer, dispose of or put off as true the [forged writing, instrument or other thing, the false making, forging or altering of which is punishable as forgery]; and

(4) With the intent to damage or defraud any person, [body politic or corporate,] whether the person, [body politic or corporate,] resides in or belongs to this State or not.

[To "utter" a thing is to publish or circulate it as if it were genuine.]

To "defraud" means to deprive a person of property or interest, estate or right by fraud, deceit or artifice. An intent to defraud is thus an intent to deceive another person for the purpose of inducing him or her to part with property or to alter his or her position to his or her injury or risk, and to accomplish that purpose by some false statement, false representation of fact, wrongful concealment or suppression of truth, or by any other artifice or act calculated to deceive.

As to any charge of forgery, the State is not required to prove an intent to defraud any particular person. The element of intent to defraud is satisfied if the State proves that the Defendant intended to defraud any person, association or body politic or corporation, whatsoever.

[The words "forge," "forgery," "forged," and "forging," include the false making, "counterfeiting," and the alteration, erasure or obliteration of a genuine instrument in whole or in part, the false making or counterfeiting of the signature of a party or witness, real or fictitious, and the placing or connecting together with intent to defraud, of different parts or the whole of several genuine instruments.]

NRS 205.085; NRS 205.160; NRS 193.040; NRS 193.0245; NRS 193.024; *State v. Jarman*, 84 Nev. 187, 190, 438 P.2d 250, 252-253 (1968); *Bratcher v. City of Las Vegas*, 113 Nev. 502, 510-511, 937 P.2d 485, 491 (1997); *Winston v. Warden*, 86 Nev. 33, 34-35, 464 P.2d 30, 31 (1970); *State v. Williams*, 46 Nev. 263, 210 P. 995, 996-997 (1922); *Barron v. State*, 105 Nev. 767, 774-775, 783 P.2d 444, 448-449 (1989); Black's Law Dictionary (7th ed. 1999) at 1545.

14.10: ISSUANCE OF A CHECK OR DRAFT WITHOUT SUFFICIENT MONEY OR CREDIT WHEN THE AMOUNT ALLEGED EXCEEDS $1,200 (ALLEGED PURSUANT TO NRS 205.130)

The crime of ISSUANCE OF A CHECK OR DRAFT WITHOUT SUFFICIENT MONEY OR CREDIT consists of the following elements:

(1) The Defendant willfully and with intent to defraud;

(2) Draws or passes a [check or draft in the amount of $1,200.00 or more] [series of checks or drafts passed in the State during a period of 90 days totaling $1,200.00 or more];

(3) Drawn upon any real or fictitious [person, bank firm, partnership, corporation, or depository];

(4) To obtain [money, delivery of other valuable property, services, the use of property, credit extended by any licensed gaming establishment];

(5) When the Defendant had insufficient money, property or credit with the drawee of the instrument to pay it in full upon its presentation.

A "draft" is a written order by the first party, called the drawer, instructing a second party, called the drawee (such as a bank), to pay money to a third party, called the payee. [A "draft" is a written instruction to pay money signed by the person giving the instruction.]

A "check" is an instrument drawn upon a bank and payable on demand, signed by the drawer, containing an instruction to pay a certain amount to another party. [An instrument may be a check even though it is described on its face by another term, such as "money order" or "marker."]

"Credit" means an arrangement or understanding with a person, firm, corporation, bank or depositary for the payment of a check or other instrument.

[Whether a payee chooses to cash a check or draft immediately or at a later date does not alter the character of the instrument. The mere fact that a check or draft is held for a period of time prior to deposit does not convert the instrument into a post-dated contract.]

NRS 205.130; NRS 205.132; *Nguyen v. State*, 116 Nev. 1174, 14 P.3d 515 (2000); *Zahavi v. State,* 131 Nev. 51, 52, 343 P.3d 595 (2015).

14.11: ISSUANCE OF A CHECK OR DRAFT WITHOUT SUFFICIENT MONEY OR CREDIT (BASED UPON THREE OR MORE PRIOR MISDEMEANOR CONVICTIONS ALLEGED PURSUANT TO NRS 205.130(2), A FELONY)

The crime of ISSUANCE OF A CHECK OR DRAFT WITHOUT SUFFICIENT MONEY OR CREDIT consists of the following elements:

(1) The Defendant willfully and with intent to defraud;

(2) Draws or passes a check or draft;

(3) Drawn upon any real or fictitious [person, bank, firm, partnership, corporation, or depository];

(4) To obtain [money, delivery of other valuable property, services, the use of property, credit extended by any licensed gaming establishment];

(5) When the Defendant had insufficient money, property or credit with the drawee of the instrument to pay it in full upon its presentation.

A "draft" is a written order by the first party, called the drawer, instructing a second party, called the drawee (such as a bank), to pay money to a third party, called the payee. [A "draft" is a written instruction to pay money signed by the person giving the instruction.]

A "check" is an instrument drawn upon a bank and payable on demand, signed by the drawer, containing an instruction to pay a certain amount to another party. [An instrument may be a check even though it is described on its face by another term, such as "money order" or "marker."]

"Credit" means an arrangement or understanding with a person, firm, corporation, bank or depositary for the payment of a check or other instrument.

[Whether a payee chooses to cash a check or draft immediately or at a later date does not alter the character of the instrument. The mere fact that a check or draft is held for a period of time prior to deposit does not convert the instrument into a post-dated contract.]

NRS 205.130; NRS 205.132; *Nguyen v. State*, 116 Nev. 1174, 14 P.3d 515 (2000); *Zahavi v. State,* 131 Nev. 51, 52, 343 P.3d 595 (2015).

14.12: ISSUANCE OF A CHECK OR DRAFT FOR PAYMENT OF WAGES WITHOUT SUFFICIENT MONEY OR CREDIT (AS ALLEGED PURSUANT TO NRS 205.130(3), A GROSS MISDEMEANOR)

The crime of ISSUANCE OF A CHECK OR DRAFT FOR PAYMENT OF WAGES WITHOUT SUFFICIENT MONEY OR CREDIT consists of the following elements:

(1) The Defendant willfully issues any check or draft for the payment of wages;

(2) In an amount in excess of $1,200.00;

(3) Drawn upon any real or fictitious [person, bank, firm, partnership, corporation, or depository];

(4) When the Defendant knows he or she has insufficient money, property or credit with the drawee of the instrument to pay it in full upon its presentation

A "draft" is a written order by the first party, called the drawer, instructing a second party, called the drawee (such as a bank), to pay money to a third party, called the payee. [A "draft" is a written instruction to pay money signed by the person giving the instruction.]

A "check" is an instrument drawn upon a bank and payable on demand, signed by the drawer, containing an instruction to pay a certain amount to another party. [An instrument may be a check even though it is described on its face by another term, such as "money order" or "marker."]

"Credit" means an arrangement or understanding with a person, firm, corporation, bank or depositary for the payment of a check or other instrument.

[Whether a payee chooses to cash a check or draft immediately or at a later date does not alter the character of the instrument. The mere fact that a check or draft is held for a period of time prior to deposit does not convert the instrument into a post-dated contract.]

NRS 205.130; NRS 205.132; *Nguyen v. State*, 116 Nev. 1174, 14 P.3d 515 (2000); *Zahavi v. State*, 131 Nev. 51, 52, 343 P.3d 595 (2015).

14.13: INFERENCE OF KNOWLEDGE OF INSUFFICIENT FUNDS

You may, but are not required to, regard the following as sufficient evidence of both:

(1) the Defendant's intent to defraud, and

(2) the Defendant's knowledge that he or she did not have sufficient money, property or credit with the [insert name of drawee] to pay it in full upon its presentation:

(a) The check or draft is drawn on a purported account which does not exist; or

(b) Payment of the check or draft was refused by the [insert name of drawee] when it was presented in the usual course of business, unless within 5 days after receiving notice of this fact from the [insert name of drawee or holder of the instrument,] the Defendant paid the holder of the instrument the full amount due plus any handling charges; or

(c) Notice of refusal of payment, sent to the Defendant by registered or certified mail at an address printed or written on the check or draft, was returned because of nondelivery.

However, the Defendant can only be found guilty of Issuance Of A Check Or Draft Without Sufficient Money Or Credit if, in light of all the evidence in the case, it has been proved beyond a reasonable doubt that the Defendant, at the time he or she drew or passed the check or draft, intended to defraud and knew he or she did not have sufficient money, property or credit with the [insert name of drawee of the instrument] to pay it in full upon its presentation.

NRS 205.130; NRS 205.132; NRS 47.230; *Hollis v. State*, 96 Nev. 207, 606 P.2d 534 (1980); *Redeford v. State*, 93 Nev. 649, 572 P.2d 219 (1977); *Marshall v. State*, 95 Nev. 802, 603 P.2d 293 (1979); *Brackeen v. State*, 104 Nev. 547, 763 P.2d 59 (1988); *Ricci v. State*, 91 Nev. 373, 536 P.2d 79 (1975).

This instruction will need to be modified if the charge is NRS 205.130(3), which does not require the intent to defraud.

14.14: DEFENSE TO INTENT TO DEFRAUD

When the offense of Issuance of a Check or Draft Without Sufficient Money or Credit is alleged to involve a marker issued to a Defendant by a casino/gaming establishment based upon a line of credit, the "intent to defraud" element of the crime may be negated by a casino/gaming establishment's actual knowledge that the Defendant did not have sufficient funds to cover the marker at the time it was issued.

Factors to be considered in determining whether the "intent to defraud" element may be negated include (1) what the Defendant disclosed or represented to the casino/gaming establishment, and (2) knowledge about the sufficiency of the Defendant's funds gained by the casino/gaming establishment from other sources, such as credit reports.

A casino/gaming establishment has no obligation to research a patron's financial status, even if it has the ability to do so. The "intent to defraud" element is not negated if the casino/gaming establishment merely had reason to believe sufficient funds were not on deposit, even if the casino/gaming establishment could have found out by the exercise of ordinary prudence. Actual knowledge by the casino/gaming establishment of the insufficiency of funds is required to negate the "intent to defraud" element.

If evidence of the casino/gaming establishment's actual knowledge that the Defendant did not have sufficient funds to cover the marker at the time it was issued is present, you should consider it in the light of all the other facts in evidence when deciding whether the State has proved beyond a reasonable doubt that the Defendant acted with intent to defraud.

NRS 205.130; *Zahavi v. State*, 131 Nev. 51, 52, 343 P.3d 595 (2015).

15.00: GRAND LARCENY (ALLEGED PURSUANT TO NRS 205.220(1))

The crime of GRAND LARCENY consists of the following elements:

(1) The Defendant intentionally;

(2) Steals, takes and carries away, leads away or drives away;

(3) [Personal goods or property, with a value of $1,200 or more] [bedding, furniture or other property, with a value of $1,200 or more, which the person, as a lodger, is to use in or with his or her lodging] [real property, with a value of $1,200 or more, that the person has converted into personal property by severing it from real property] [One or more head of livestock] [One or more domesticated animals or domesticated birds, with an aggregate value of $1,200 or more];

(4) Owned by another person.

"Steals, takes and carries away, leads away or drives away" means to take the personal property of another, without his or her consent, with the intent to permanently deprive the owner of his or her property.

The Defendant must have the intent to permanently deprive the owner of his or her property at the time of the taking.

[A taking with the intention of returning the property, or a taking without the intent to permanently deprive the owner of his or her property will not amount to Grand Larceny, even though the Defendant, after gaining possession of the property formed the intent to permanently deprive.]

"Property" means personal goods, personal property and motor vehicles; money, and negotiable instruments; and livestock, domesticated animals, and domesticated birds; and any other item of value.

The "owner" of any property includes any person who has a general or special property interest in the whole or any part thereof, or lawful possession thereof, either actual or constructive.

The phrase "owned by another person" includes any person who has a general or special property interest in the whole or any part thereof, or lawful possession thereof, either actual or constructive.

"Person" means a natural person; any form of business or social organization; the State of Nevada or any other state government or county which may lawfully own property within this State; and any other nongovernmental legal entity including, but not limited to, a corporation, partnership, association, trust or unincorporated organization.

"Personal Property" includes dogs and all domestic animals and birds, water, gas and electricity, all kinds or descriptions of money, chattels and effects, all instruments or writings completed and ready to be delivered or issued by the maker, whether actually delivered or issued or not, by which any claim, privilege, right, obligation or authority, or any right or title to property, real or personal, is or purports to be, or upon the happening of some future event may be evidenced, created, acknowledged, transferred, increased, diminished, encumbered, defeated, discharged or affected, and every right and interest therein.

"Real property" includes every estate, interest and right in lands, tenements and hereditaments, corporeal or incorporeal.

"Personal goods" include bonds, promissory notes, banknotes, bills of exchange, or other bills, orders, drafts, checks, traveler's checks, money orders, receipts or certificates, or warrants for or concerning money, goods or property, due, or to become due, or to be delivered, or any public security issued by the United States or by this State, and any deed or writing containing a conveyance of land or valuable contract, in force, or any release or defeasance, or any other instrument whatever.

NRS 205.2195; NRS 205.260; NRS 193.0195; NRS 193.0195; NRS 0.039; NRS 193.0205; NRS 205.218; NRS 205.2185; NRS 205.219; NRS 193.021; NRS 193.0235; NRS 205.260; NRS 205.220; *Harvey v. State*,78 Nev. 417, 419-20, 375 P.2d 225, 226 (1962).

15.01 GRAND LARCENY BY USE OF A DEBIT OR CREDIT CARD (ALLEGED UNDER NRS 205.220(2))

The crime of GRAND LARCENY by use of a Debit or Credit Card consists of the following elements:

(1) The Defendant intentionally;
(2) Uses a card or other device for automatically withdrawing or transferring money in a financial institution;
(3) To intentionally obtain money to which the person knows he or she is not entitled.

The "owner" of any property includes any person who has a general or special property interest in the whole or any part thereof, or lawful possession thereof, either actual or constructive.

The phrase "owned by another person" includes any person who has a general or special property interest in the whole or any part thereof, or lawful possession thereof, either actual or constructive.

"Person" means a natural person; any form of business or social organization; the State of Nevada or any other state government or county which may lawfully own property within this State; and any other nongovernmental legal entity including, but not limited to, a corporation, partnership, association, trust or unincorporated organization.

"Personal Property" includes dogs and all domestic animals and birds, water, gas and electricity, all kinds or descriptions of money, chattels and effects, all instruments or writings completed and ready to be delivered or issued by the maker, whether actually delivered or issued or not, by which any claim, privilege, right, obligation or authority, or any right or title to property, real or personal, is or purports to be, or upon the happening of some future event may be evidenced, created, acknowledged, transferred, increased, diminished, encumbered, defeated, discharged or affected, and every right and interest therein.

"Real property" includes every estate, interest and right in lands, tenements and hereditaments, corporeal or incorporeal.

"Personal goods" include bonds, promissory notes, banknotes, bills of exchange, or other bills, orders, drafts, checks, traveler's checks, money orders, receipts or certificates, or warrants for or concerning money, goods or property, due, or to become due, or to be delivered, or any public security issued by the United States or by this State, and any deed or writing containing a conveyance of land or valuable contract, in force, or any release or defeasance, or any other instrument whatever.

NRS 205.2195; NRS 205.260; NRS 193.0195; NRS 193.0195; NRS 0.039; NRS 193.0205; NRS 205.218; NRS 205.2185; NRS 205.219; NRS 193.021; NRS 193.0235; NRS 205.260; NRS 205.220.

15.02: GRAND LARCENY OF A FIREARM (ALLEGED UNDER NRS 205.226)

The crime of GRAND LARCENY OF A FIREARM consists of the following elements:

(1) The Defendant intentionally;
(2) Steals, takes and carries away;
(3) A firearm owned by another person.

"Steals, takes and carries away" means to take the personal property of another, without his or her consent, with the intent to permanently deprive the owner of his or her property.

The Defendant must have the intent to permanently deprive the owner of his or her property at the time of the taking.

[A taking with the intention of returning the property, or a taking without the intent to permanently deprive the owner of his or her property will not amount to Grand Larceny, even though the Defendant, after gaining possession of the property formed the intent to permanently deprive.]

The "owner" of any property includes any person who has a general or special property interest in the whole or any part thereof, or lawful possession thereof, either actual or constructive.

The phrase "owned by another person" includes any person who has a general or special property interest in the whole or any part thereof, or lawful possession thereof, either actual or constructive.

"Person" means a natural person; any form of business or social organization; the State of Nevada or any other state government or county which may lawfully own property within this State; and any other nongovernmental legal entity including, but not limited to, a corporation, partnership, association, trust or unincorporated organization.

"Personal Property" includes dogs and all domestic animals and birds, water, gas and electricity, all kinds or descriptions of money, chattels and effects, all instruments or writings completed and ready to be delivered or issued by the maker, whether actually delivered or issued or not, by which any claim, privilege, right, obligation or authority, or any right or title to property, real or personal, is or purports to be, or upon the happening of some future event may be evidenced, created, acknowledged, transferred, increased, diminished, encumbered, defeated, discharged or affected, and every right and interest therein.

"Real property" includes every estate, interest and right in lands, tenements and hereditaments, corporeal or incorporeal.

"Personal goods" include bonds, promissory notes, banknotes, bills of exchange, or other bills, orders, drafts, checks, traveler's checks, money orders, receipts or certificates, or warrants for or concerning money, goods or property, due, or to become due, or to be delivered, or any public security issued by the United States or by this State, and any deed or writing containing a conveyance of land or valuable contract, in force, or any release or defeasance, or any other instrument whatever.

NRS 205.2195; NRS 205.260; NRS 193.0195; NRS 193.0195; NRS 0.039; NRS 193.0205; NRS 205.218; NRS 205.2185; NRS 205.219; NRS 193.021; NRS 193.0235; NRS 205.260; NRS 205.226; *Harvey v. State*,78 Nev. 417, 419-20, 375 P.2d 225, 226 (1962).

15.03: GRAND LARCENY OF A MOTOR VEHICLE (ALLEGED UNDER NRS 205.228)

The crime of GRAND LARCENY OF A MOTOR VEHICLE consists of the following elements:

(1) The Defendant intentionally;
(2) Steals, takes and carries away, drives away, or otherwise removes;
(3) A motor vehicle owned by another person.

"Steals, takes and carries away, drives away, or otherwise removes" means to take the personal property of another, without his or her consent, with the intent to permanently deprive the owner of his or her property.

The Defendant must have the intent to permanently deprive the owner of his or her property at the time of the taking.

[A taking with the intention of returning the property, or a taking without the intent to permanently deprive the owner of his or her property will not amount to Grand Larceny, even though the Defendant, after gaining possession of the property formed the intent to permanently deprive.]

The "owner" of any property includes any person who has a general or special property interest in the whole or any part thereof, or lawful possession thereof, either actual or constructive.

The phrase "owned by another person" includes any person who has a general or special property interest in the whole or any part thereof, or lawful possession thereof, either actual or constructive.

"Person" means a natural person; any form of business or social organization; the State of Nevada or any other state government or county which may lawfully own property within this State; and any other nongovernmental legal entity including, but not limited to, a corporation, partnership, association, trust or unincorporated organization.

"Personal Property" includes dogs and all domestic animals and birds, water, gas and electricity, all kinds or descriptions of money, chattels and effects, all instruments or writings completed and ready to be delivered or issued by the maker, whether actually delivered or issued or not, by which any claim, privilege, right, obligation or authority, or any right or title to property, real or personal, is or purports to be, or upon the happening of some future event may be evidenced, created, acknowledged, transferred, increased, diminished, encumbered, defeated, discharged or affected, and every right and interest therein.

"Real property" includes every estate, interest and right in lands, tenements and hereditaments, corporeal or incorporeal.

"Personal goods" include bonds, promissory notes, banknotes, bills of exchange, or other bills, orders, drafts, checks, traveler's checks, money orders, receipts or certificates, or warrants for or concerning money, goods or property, due, or to become due, or to be delivered, or any public security issued by the United States or by this State, and any deed or writing containing a conveyance of land or valuable contract, in force, or any release or defeasance, or any other instrument whatever.

NRS 205.2195; NRS 205.260; NRS 193.0195; NRS 193.0195; NRS 0.039; NRS 193.0205; NRS 205.218; NRS 205.2185; NRS 205.219; NRS 193.021; NRS 193.0235; NRS 205.260; NRS 205.220; NRS 205.222; NRS 205.226; NRS 205.228; *Harvey v. State*, 78 Nev. 417, 419-20, 375 P.2d 225, 226 (1962); *Ibarra v. State*, 134 Nev. 582, 426 P.3d 16 (2018); *State v. Smith*, 33 Nev. 438, 117 P. 19, 23 (1911).

15.04: DETERMINATION OF VALUE OF PROPERTY INVOLVED IN LARCENY OFFENSE

The value of property involved in a larceny offense shall be deemed to be the highest value attributable to the property by any reasonable standard.

[The value of the property involved in larceny offenses committed by one or more persons pursuant to a scheme or continuing course of conduct may be aggregated in determining the grade of the larceny offenses.]

[As to negotiable instruments [and bonds, promissory notes, banknotes, bills of exchange, or other bills, orders, drafts, checks, traveler's checks, money orders, receipts or certificates, or warrants for or concerning money, goods or property, due, or to become due, or to be delivered, or any public security issued by the United States or by this State, and any deed or writing containing a conveyance of land or valuable contract, in force, or any release or defeasance, or any other instrument], the money due thereon, or secured thereby and remaining unsatisfied, or which in any event or contingency, might be due or collectible thereon, or the value of the property transferred or affected thereby, as the case may be, is deemed the value of the article stolen.]

NRS 205.251; NRS 205.260; *Stephans v. State*, 127 Nev. 712, 715-20, 262 P.3d 727, 730-33 (2011); *Dugan v. Gotsopoulos*, 117 Nev. 285, 288-90, 22 P.3d 205, 207-08 (2001); *Calbert v. State*, 99 Nev. 759, 759-60, 670 P.2d 576, 576 (1983); *Cleveland v. State*, 85 Nev. 635, 637, 461 P.2d 408, 409 (1969).

15.05: DEFENDANT'S JOINT OWNERSHIP OR INTEREST IN PROPERTY NOT A DEFENSE

It is not a defense to a charge of larceny that the accused was entitled to a commission out of the money or property appropriated as compensation for collecting or receiving the same for or on behalf of the owner thereof, or that the money or property appropriated was partly the property of another and partly the property of the accused.

[It does not constitute larceny, however, for any bailee, factor, pledgee, servant, attorney, agent, employee or trustee, executor, administrator, guardian, officer or other person to retain his or her reasonable collection fee or charges.]

NRS 205.265; *but see State v. Elsbury*, 63 Nev. 463, 175 P.2d 430 (1946) (the larceny statute does not apply where one partner appropriates partnership property during the existence of the partnership).

15.06: LARCENY FROM THE PERSON (ALLEGED UNDER NRS 205.270)

The crime of LARCENY FROM THE PERSON consists of the following elements:

(1) The Defendant takes the property;

(2) From the person of another;

(3) Without the person's consent;

(4) With the intent to steal or appropriate the property to his or her own use.

The crime of Larceny From The Person can occur openly or through either stealth or fraud. A person who is fraudulently induced to transfer possession of property to another has not consented to the transfer. A taking therefore occurs "without the person's consent" when a Defendant, with the intent to steal, obtains personal property from another by fraudulently inducing the other person to part with its possession. For example, where a Defendant through fraud persuades a person to let the Defendant use his or her property, asking to borrow the property temporarily while intending to steal it permanently, and where no consent would have been given if the real purpose had been disclosed, the taking has occurred "without the person's consent."

The crime of Larceny From The Person does not require violence, force, or fear, but does require an actual taking from the person of another. The crime is not committed if the property is taken only from a person's immediate presence, or from a person's constructive control or possession.

Property is taken "from the person of another" if it, at the time of the taking, is in some way actually upon or attached to the person, or carried or held in actual physical possession, such as clothing, apparel, or property held or carried in the hands, or by other means, upon the person, or things contained therein, or attached thereto.

Property is in a person's "immediate presence" if it is within his or her reach, inspection, observation, or control, but is not on his or her person.

A "taking" occurs when the offender secures dominion over the property.

"Steal" means to take the personal property of another, without his or her consent, with the intent to permanently deprive the owner of his or her property.

The Defendant must have the intent to permanently deprive the owner of his or her property at the time of the taking.

[A taking with the intention of returning the property, or a taking without the intent to permanently deprive the owner of his or her property will not amount to Larceny, even though the Defendant, after gaining possession of the property formed the intent to permanently deprive.]

NRS 205.270; NRS 205.251(1); NRS 205.251(2); NRS 205.260; NRS 205.265; NRS 205.2195; NRS 0.039; NRS 193.0205; *Ibarra v. State*, 134 Nev. 582, 426 P.3d 16 (2018); *Terral v. State*, 84 Nev. 412, 442 P.2d 465 (1968); *Guy v. State*, 108 Nev. 770, 775-76, 839 P.2d 578, 581-82 (1992); *Barkley v. State,* 114 Nev. 635, 637 n.1, 958 P.2d 1218, 1219 n.1 (1998); *Harvey v. State*, 78 Nev. 417, 419-20, 375 P.2d 225, 226 (1962); *Ibarra v. State*, 134 Nev. 582, 426 P.3d 16 (2018); *State v. Smith*, 33 Nev. 438, 117 P.2d 19, 23 (1911).

15.08: POSSESSING OR RECEIPT OF STOLEN PROPERTY

The crime of [POSSESSING, RECEIVING, BUYING] STOLEN PROPERTY consists of the following elements:

(1) The Defendant [buys, receives, possesses or withholds] property;

(a) Knowing that it is stolen property; or

(b) [Although lacking actual knowledge of the stolen nature of the property,] under such circumstances as should have caused a reasonable person to know that it is stolen property;

(2) For his or her own gain, or to prevent the owner from again, possessing the owner's property; and

(3) The value of the property is $1,200 or more.

NRS 205.275; *Gray v. State*, 100 Nev. 556, 557-58, 688 P.2d 313, 314 (1984); *Bain v. Sheriff*, 88 Nev. 699, 701, 504 P.2d 695, 696 (1972); *Dutton v. State*, 94 Nev. 461, 465, 581 P.2d 856, 858 (1978); *Stowe v. State*, 109 Nev. 743, 747, 857 P.2d 12, 17 (1993).

15.09: VALUE ENHANCEMENT INSTRUCTION

If you find that the Defendant committed the crime of [GRAND LARCENY] [LARCENY] [THEFT] [POSSESSING OR RECEIPT OF STOLEN PROPERTY], then you must further determine the whether the value of the property is [$5,000 or more but less than $25,000] [$25,000 or more but less than $100,000] [$100,000 or more]. The burden is on the State to prove the value of the property beyond a reasonable doubt.

NRS 205.275; NRS 205.222.

15.10: POSSESSING A STOLEN FIREARM (ALLEGED UNDER NRS 205.275(2)(C))

The crime of POSSESSING A STOLEN FIREARM consists of the following elements:

(1) The defendant [buys, receives, possesses or withholds] a firearm;

(2) (a) Knowing that it is a stolen firearm; or

(b) [Although lacking actual knowledge of the stolen nature of the firearm,] under such circumstances as should have caused a reasonable person to know that it is a stolen firearm;

(3) For his or her own gain, or to prevent the owner from again possessing the firearm.

A person can commit the crime of possession of stolen property without actual knowledge of the stolen nature of the goods, if the goods were possessed under such circumstances as should have caused a reasonable person to know that such goods or property were so obtained.

"Stolen Firearm" means a firearm that has been taken from its owner by larceny, robbery, burglary, embezzlement, theft or any other offense that is a crime against property, whether or not the person who committed the taking is or has been prosecuted or convicted for the offense.

The "owner" of any property includes any person who has a general or special property interest in the whole or any part thereof, or lawful possession thereof, either actual or constructive.

NRS 205.275;*Gray v. State*, 100 Nev. 556, 557-58, 688 P.2d 313, 314 (1984); *Bain v. Sheriff*, 88 Nev. 699, 701, 504 P.2d 695, 696 (1972); *Dutton v. State*, 94 Nev. 461, 465, 581 P.2d 856, 858 (1978); *Stowe v. State*, 109 Nev. 743, 747, 857 P.2d 12, 17 (1993).

15.11: LACK OF PROSECUTION OF PRINCIPAL NO DEFENSE

It is not a defense to a charge of possessing stolen property that the person who stole the property has not been prosecuted or convicted.

NRS 205.275.

15.13: RECEIPT OR TRANSFER OF A STOLEN VEHICLE (ALLEGED UNDER NRS 205.273(1)(A))

The crime of RECEIPT OR TRANSFER OF A STOLEN VEHICLE consists of the following elements:

(1) The Defendant:

(a) Receives possession of a motor vehicle from another person; or

(b) Transfers possession of a motor vehicle to another person;

(2) Either:

(a) Knowing that it is a stolen vehicle; or

(b) [Although lacking actual knowledge of the stolen nature of the property,] having reason to believe that it is a stolen vehicle;

(3) With the intent to procure or pass title to the vehicle.

15.14 - POSSESSION OF A STOLEN VEHICLE (ALLEGED UNDER NRS 205.273(1)(B))

The crime of POSSESSION OF A STOLEN VEHICLE consists of the following elements:

(1) The Defendant has a motor vehicle in [his or her] possession;

(2) Either:

(a) Knowing that it is a stolen vehicle; or

(b) [Although lacking actual knowledge of the stolen nature of the property,] having reason to believe that it is a stolen vehicle.

A person can commit the crime of possession of stolen property if the goods were possessed under such circumstances as should have caused a reasonable person to know that such goods or property were so obtained.

The "owner" of any property includes any person who has a general or special property interest in the whole or any part thereof, or lawful possession thereof, either actual or constructive.

"Person" means a natural person; any form of business or social organization; the State of Nevada or any other State government or county which may lawfully own property within this State; and any other nongovernmental legal entity including, but not limited to, a corporation, partnership, association, trust or unincorporated organization.

The value of a vehicle shall be deemed to be the highest value attributable to the vehicle by any reasonable standard.

NRS 205.273; NRS 193.0195; NRS 0.039; NRS 193.0205; NRS 205.271; *Montes v. State*, 95 Nev. 891, 893-95, 603 P.2d 1069, 1071-72 (1979); *Gray v. State*, 100 Nev. 556, 557-58, 688 P.2d 313, 314 (1984); *Bain v. Sheriff*, 88 Nev. 699, 701, 504 P.2d 695, 696 (1972); *Dutton v. State*, 94 Nev. 461, 465, 581 P.2d 856, 858 (1978); *Palmer v. State*, 112 Nev. 763, 769-70, 920 P.2d 112, 115-16 (1996).

15.15: POSSESSION MAY BE ACTUAL OR CONSTRUCTIVE

Possession may be actual or constructive.

A person who knowingly has direct physical control over a thing at a given time is then in actual possession of it.

A person who, although not in actual physical possession, knowingly has both the power and the intention to exercise dominion or control over a thing is in constructive possession of the thing.

[Constructive possession may be direct or exercised through another person. A person is in constructive possession of a thing that is in the actual possession of another person pursuant to the person's direction or permission if the person retains the right to exercise dominion or control over the item. Dominion or control may be evidenced by circumstantial evidence and reasonably drawn inferences.]

[Possession may be sole or joint. If one person alone has actual or constructive possession of a thing, then possession is sole. If two or more persons share actual or constructive possession of a thing, then possession is joint.]

[Mere presence in the area where ["stolen property"; "a stolen firearm"; etc.] is discovered or mere association with a person who possesses or controls the ["stolen property"; a "stolen firearm"; etc.] is insufficient to establish a person's possession of the item. However, the person's presence together with other circumstances may do so. Possession may be inferred when the ["stolen property"; "a stolen firearm"; etc.] is found in a location which is immediately and exclusively accessible to the person and subject to [his or her dominion and control.]

The possession element of the [insert crime alleged in case, e.g., Possession of a Stolen Firearm] is satisfied if you find beyond a reasonable doubt that the Defendant had either actual or constructive possession of [insert subject item alleged in case, e.g., "a stolen firearm"; "stolen property"; etc.] [whether the possession was sole or joint].

Palmer v. State, 112 Nev. 763, 768, 920 P.2d 112, 115 (1996); *Batin v. State*, 118 Nev. 61, 65-66, 38 P.3d 880, 883 (2002); *Glispey v. Sheriff*, 89 Nev. 221, 223-24, 510 P.2d 623, 624 (1973); *Marshall v. State*, 110 Nev. 1328, 1332-33, 885 P.2d 603,606 (1994); *Kinsey v. Sheriff*, 87 Nev. 361, 363, 487 P.2d 340, 341 (1971); *Dutton v. State*, 94 Nev. 461, 465, 581 P.2d 856, 858 (1978); *Maskaly v. State*, 85 Nev. 111, 114, 450 P.2d 790, 792 (1969); *Baker v. Sheriff*, 93 Nev. 11, 13, 558 P.2d 629, 629 (1977); *Oxborrow v. Sheriff*, 93 Nev. 321, 322, 565 P.2d 652, 653 (1977); *Sheriff v. Shade*, 109 Nev. 826, 830, 858 P.2d 840, 842 (1993); *Hicks v. State*, No. 68087, 2016 WL 4082451, at *2 (Unpublished Disposition, Nev. July 28, 2016).

15.16: ALTERNATE COUNTS OF GRAND LARCENY AND POSSESSION OF STOLEN PROPERTY

The State has alleged alternative counts of Grand Larceny and Possession of Stolen Property, as allowed by law.

However, a Defendant cannot be punished for both stealing personal property and then possessing the same stolen personal property. Therefore, the Defendant may not be convicted of both [insert count number, e.g., Count 1] Grand Larceny and [insert count number, e.g., Count 2] Possession of Stolen Property.

You should first fully and carefully examine the evidence as it applies to [insert count number, e.g., Count 1] Grand Larceny. If you unanimously agree that the Defendant is guilty of Grand Larceny, you should sign the appropriate Verdict form.

If you find the Defendant Guilty of [insert count number, e.g., Count 1] Grand Larceny, you should leave the verdict form for [insert count number, e.g., Count 2] Possession of Stolen Property blank.

If you cannot agree that the Defendant is guilty of Grand Larceny, you should then fully and carefully examine the evidence as it applies to [insert count number, e.g., Count 2] Possession of Stolen Property. If you unanimously agree that the Defendant is guilty of Possession of Stolen Property, you should sign the appropriate Verdict form.

If you find the Defendant guilty of [insert count number, e.g., Count 2] Possession of Stolen Property, you should leave the verdict form for [insert count number, e.g., Count 1] Grand Larceny blank.

The Defendant, of course, can be found Not Guilty of both of these offenses.

Stowe v. State, 109 Nev. 743, 744-47, 857 P.2d 12, 16-17 (1993); *Jenkins v. District Court*, 109 Nev. 337, 341, 849 P.2d 1055, 1057 (1993); *Hernandez v. State*, 118 Nev. 513, 523, 50 P.3d 1100, 1107 (2002); *Albitre v. State*, 103 Nev. 281, 284, 738 P.2d 1307, 1309 (1987), *disapproved of by Jackson v. State*, 128 Nev. 598, 291 P.3d 1274 (2012); *United States v. Gaddis*, 424 U.S. 544, 549-50, 96 S. Ct. 1023, 1027 (1976); *Green v. State*, 119 Nev. 542, 545-49, 80 P.3d 93, 95-97 (2003).

16.00: EMBEZZLEMENT [BAILEE-CONVERSION-WITH-INTENT-TO-STEAL THEORY ALLEGED PURSUANT TO NRS 205.300(1)]

The crime of EMBEZZLEMENT consists of the following elements:

(1) The Defendant is a bailee of any money, goods or property;

(2) With a value of [$1,200] or more;

(3) The Defendant converts the money, goods or property to his or her own use;

(4) With the intent to steal the money, goods or property or to defraud the owner or owners thereof.

The term "bailee" means all persons with whom any money, goods or property has been deposited, all persons to whom any goods or property has been loaned or hired, all persons to whom any goods or property has been delivered, and all persons who are, either as agent, collector or servant, empowered, authorized or entrusted to carry, collect or receive any money, goods or property of another.

"To defraud" means to deprive a person of property or interest, estate or right by fraud, deceit or artifice. An intent to defraud is thus an intent to deceive another person for the purpose of inducing him or her to part with property or to alter his or her position to his or her injury or risk, and to accomplish that purpose by some false statement, false representation of fact, wrongful concealment or suppression of truth, or by any other artifice or act calculated to deceive.

"To steal" means to take the personal property of another, without his or her consent, with the intent to permanently deprive the owner of his or her property.

The Defendant must intend to steal at the time of the taking. [A taking with the intention of returning the property, or a taking without the intent to permanently deprive the owner of his or her property will not amount to embezzlement, even though the Defendant, after gaining possession of the property formed the intent to permanently deprive.]

"Convert" refers to the wrongful possession or disposition of another's property as if it were one's own; an act or series of acts of willful interference, without lawful justification, with any property in a manner inconsistent with another's right, whereby that other person is deprived of the use and possession of the property.

As to any charge of embezzlement, the State is not required to prove an intent to defraud any particular person. The element of intent to defraud is satisfied if the State proves that the Defendant intended to defraud any person, association or body politic or corporation, whatever.

16.01(a):EMBEZZLEMENT [DIVERSION THEORY (INTENT TO STEAL NOT REQUIRED) ALLEGED PURSUANT TO NRS 205.300(1)]

The crime of EMBEZZLEMENT consists of the following elements:

(1) The Defendant is [an agent, manager or clerk of any person, corporation, association or partnership, or any person] with whom any money, property or effects have been deposited or entrusted;

(2) The money, property or effects have a value of [$1,200] or more; and

(3) The Defendant uses or appropriates the money, property or effects or any part thereof in any manner or for any other purpose than that for which they were deposited or entrusted.

The crime of Embezzlement does not require an intent to steal. The crime is complete whenever an appropriation is made in any manner or for any purpose other than that for which it was deposited or entrusted, even if the Defendant intended to restore the money or property at a later time.

16.01(b): EMBEZZLEMENT – JOINT INTEREST [APPLICABLE TO BOTH THEORIES OF EMBEZZLEMENT ALLEGED PURSUANT TO NRS 205.300(1)]

It is not a defense to a charge of embezzlement that the money or property appropriated or converted was partly the property of another and partly the property of the Defendant.

In order to be guilty of embezzlement, the Defendant must have been entrusted with lawful possession of the property prior to the conversion. Legal title to property is not required in order to entrust property to another.

NRS 193.040; NRS 205.300; NRS 205.220; NRS 205.222; NRS 205.226; NRS 205.228; *Arajakis v. State*, 108 Nev. 976, 984–85, 843 P.2d 800, 805–06 (1992); *Barron v. State*, 105 Nev. 767, 774–75, 783 P.2d 444, 449 (1989); *Rose v. State*, 86 Nev. 555, 556–58, 471 P.2d 262, 263–64 (1970); *State v. Boueri*, 99 Nev. 790, 793–94, 672 P.2d 33, 35 (1983); *Siriani v. Sheriff*, 93 Nev. 559, 560–61, 571 P.2d 111, 111–12 (1977); *Babcock v. State*, 91 Nev. 312, 313, 535 P.2d 786, 786 (1975); *Harvey v. State*, 78 Nev. 417, 419-20, 375 P.2d 225, 226 (1962).

16.01: ITEM SPECIFIC EMBEZZLEMENT

[Embezzlement of a firearm - use for bailee-conversion-with-intent-to-steal theory under NRS 205.300(1)]

The crime of EMBEZZLEMENT consists of the following elements:

(1) The Defendant is a bailee of a firearm;

(2) The Defendant converts the firearm to his or her own use;

(3) With the intent to steal the firearm, or to defraud the owner or owners thereof.

[Embezzlement of a motor vehicle - use for bailee-conversion-with-intent-to-steal theory under NRS 205.300(1)]

The crime of EMBEZZLEMENT consists of the following elements:

(1) The Defendant is a bailee of a motor vehicle;

(2) The Defendant converts the motor vehicle to his or her own use;

(3) With the intent to steal the motor vehicle, or to defraud the owner or owners thereof.

[Use only for bailee-conversion-with-intent-to-steal a firearm or motor vehicle theory under NRS 205.300(1)]

The term "bailee" means all persons with whom any money, goods or property has been deposited, all persons to whom any goods or property has been loaned or hired, all persons to whom any goods or property has been delivered, and all persons who are, either as agent, collector or servant, empowered, authorized or entrusted to carry, collect or receive any money, goods or property of another.

[Use only for bailee-conversion-with-intent-to-steal a firearm or motor vehicle theory under NRS 205.300(1)]

"To defraud" means to deprive a person of property or interest, estate or right by fraud, deceit or artifice. An intent to defraud is thus an intent to deceive another person for the purpose of inducing him or her to part with property or to alter his or her position to his or her injury or risk, and to accomplish that purpose by some false statement, false representation of fact, wrongful concealment or suppression of truth, or by any other artifice or act calculated to deceive.

"To steal" means to take the personal property of another, without his or her consent, with the intent to permanently deprive the owner of his or her property.

The Defendant must intend to steal at the time of the taking. [A taking with the intention of returning the property, or a taking without the intent to permanently deprive the owner of his or her property will not amount to embezzlement, even though the Defendant, after gaining possession of the property formed the intent to permanently deprive.]

As to any charge of embezzlement, the State is not required to prove an intent to defraud any particular person. The element of intent to defraud is satisfied if the State proves that the Defendant intended to defraud any person, association, or body politic or corporation, whatever.

[Embezzlement of a firearm - use for diversion theory (intent to steal not required) under NRS 205.300(1)]

The crime of EMBEZZLEMENT consists of the following elements:

(1) The Defendant is [an agent, manager or clerk of any person, corporation, association or partnership, or any person] with whom a firearm has been deposited or entrusted; and

(2) The Defendant uses or appropriates the firearm in any manner or for any other purpose than that for which it was deposited or entrusted.

[Embezzlement of a motor vehicle - use for diversion theory (intent to steal not required) under NRS 205.300(1)]

The crime of EMBEZZLEMENT consists of the following elements:

(1) The Defendant is [an agent, manager or clerk of any person, corporation, association or partnership, or any person] with whom a motor vehicle has been deposited or entrusted; and

(2) The Defendant uses or appropriates the motor vehicle in any manner or for any other purpose than that for which it was deposited or entrusted.

[Use only for diversion of a firearm or motor vehicle theory (intent to steal not required) under NRS 205.300(1)]

The crime of embezzlement does not require an intent to steal. The crime is complete whenever an appropriation is made in any manner or for any purpose other than that for which it was deposited or entrusted, even if the Defendant intended to restore the property later.

[Joint interest – use for both theories of embezzlement under NRS 205.300(1)]

It is not a defense to a charge of embezzlement that the property appropriated or converted was partly the property of another and partly the property of the Defendant.

In order to be guilty of embezzlement, the Defendant must have been entrusted with lawful possession of the property prior to the conversion. Legal title to property is not required in order to entrust property to another.

NRS 193.040; NRS 205.300; NRS 205.220; NRS 205.222; NRS 205.226; NRS 205.228; *Arajakis v. State*, 108 Nev. 976, 984–85, 843 P.2d 800, 805–06 (1992); *Barron v. State,* 105 Nev. 767, 774–75, 783 P.2d 444, 449 (1989); *Rose v. State*, 86 Nev. 555, 556–58, 471 P.2d 262, 263–64 (1970); *State v. Boueri,* 99 Nev. 790, 793–94, 672 P.2d 33, 35 (1983); *Siriani v. Sheriff,* 93 Nev. 559, 560–61, 571 P.2d 111, 111–12 (1977); *Babcock v. State*, 91 Nev. 312, 313, 535 P.2d 786, 786 (1975); *Harvey v. State*, 78 Nev. 417, 419-20, 375 P.2d 225, 226 (1962).

16.02: EMBEZZLEMENT VALUE

The value of all the money, goods, property or effects misappropriated in separate acts of embezzlement must be combined for the purpose of determining whether the property alleged in Count [insert number of embezzlement counts] has a value of [$1,200] or more if you find:

(1) The separate acts were committed against the same person within 6 months before the offense;

(2) None of the individual acts involved property valued at [$1,200] or more; and

(3) The cumulative value of all the money, goods, property and effects misappropriated is [$1,200] or more.

NRS 205.300(1); NRS 205.222.

16.03: EMBEZZLEMENT; INFERENCE REGARDING CONVERSION AND INTENT TO STEAL

Nevada law provides that you may, but are not required to, regard evidence of any use of money, goods or property by any bailee thereof, other than that for which it was borrowed, hired, deposited, carried, received or collected, as sufficient evidence of both: (1) conversion, and (2) intent to steal the same and defraud the owner or owners thereof.

However, the Defendant can only be found guilty of Embezzlement if, in light of all the evidence in the case, it has been proved beyond a reasonable doubt that the Defendant, with the intent to steal or defraud, converted money, goods or property to his or her own use, or, that the Defendant used or appropriated the money, goods or property or any part thereof in any manner or for any other purpose than that for which they were deposited or entrusted.

NRS 47.230; NRS 205.300;NRS 205.305;*Walsh v. State,* 110 Nev. 1385, 1388-89, 887 P.2d 1239, 1241 (1994); *Hollis v. State,* 96 Nev. 207, 208-09, 606 P.2d 534, 535-36 (1980); *Redeford v. State,* 93 Nev. 649, 653-54, 572 P.2d 219, 221-22 (1977); *Marshall v. State,* 95 Nev. 802, 803-04, 603 P.2d 283, 284 (1979); *Brackeen v. State,* 104 Nev. 547, 551-52, 763 P.2d 59, 62 (1988); *Ricci v. State,* 91 Nev. 373, 381, 536 P.2d 79, 83-84 (1975).

16.04: EMBEZZLEMENT - POSSESSION MAY BE ACTUAL OR CONSTRUCTIVE

In order to be guilty of Embezzlement, a Defendant must have been entrusted with lawful possession of the property prior to its conversion. However, the possession need not be actual; rather, the State may show that a Defendant had constructive possession of the property converted.

A person who knowingly has direct physical control over a thing at a given time is then in actual possession of it.

A person who, although not in actual physical possession, knowingly has both the power and the intention to exercise dominion or control over a thing is in constructive possession of the thing.

Constructive possession may be direct or exercised through another person. A person is in constructive possession of a thing that is in the actual possession of another person pursuant to the person's direction or permission if the person retains the right to exercise dominion or control over the item. Dominion or control may be evidenced by circumstantial evidence and reasonably drawn inferences. Dominion and control may be evidenced by circumstantial evidence and reasonably drawn inferences.

In proving constructive possession, a showing that a Defendant was given mere access to the property converted is insufficient. In order to be guilty of embezzlement based upon the constructive possession of property, a Defendant must have been entrusted with both access to and dominion and control over the property.

[Possession may be sole or joint. If one person alone has actual or constructive possession of a thing, then possession is sole. If two or more persons share actual or constructive possession of a thing, then possession is joint.]

Batin v. State, 118 Nev. 61, 65–67, 38 P.3d 880, 883–84 (2002); *Palmer v. State,* 112 Nev. 763, 768, 920 P.2d 112, 115 (1996); *Batin v. State,* 118 Nev. 61, 65–66, 38 P.3d 880, 883 (2002); *Glispey v. Sheriff,* 89 Nev. 221, 223–24, 510 P.2d 623, 624 (1973); *Marshall v. State*, 110 Nev. 1328, 1332–33, 885 P.2d 603, 606 (1994); *Kinsey v. Sheriff,* 87 Nev. 361, 363, 487 P.2d 340, 341 (1971); *Dutton v. State,* 94 Nev. 461, 465, 581 P.2d 856, 858 (1978); *Maskaly v. State,* 85 Nev. 111, 114, 450 P.2d 790, 792 (1969); *Baker v. Sheriff,* 93 Nev. 11, 13, 558 P.2d 629, 629 (1977).

16.05: EMBEZZLEMENT - FAILURE TO RETURN LEASED OR RENTED VEHICLE

The willful and intentional failure of a person who has leased or rented a vehicle to return the vehicle to its owner within 72 hours after the lease or rental agreement has expired is not sufficient in itself to establish his or her guilt. However, if such is proved, it may be considered by you in the light of all other evidence in deciding the question of guilt. The weight to which such circumstance is entitled is a matter for the jury to determine.

NRS 205.312; *Weber v. State*, 121 Nev. 554, 581–82, 119 P.3d 107, 126 (2005); *Walker v. State*, 113 Nev. 853, 870, 944 P.2d 762, 773 (1997); *Stiegler v. State*, 125 Nev. 1081, 281 P.3d 1222 (2009); *Rosky v. State*, 121 Nev. 184, 199, 111 P.3d 690, 699–700 (2005); *Carter v. State*, 121 Nev. 759, 770, 121 P.3d 592, 599 (2005); *McGuire v. State*, 86 Nev. 262, 266, 468 P.2d 12, 15 (1970); *Fritz v. Nevada*, No. 64770, 2016 WL 3941460, at 2 (Nev. App. June 11, 2016) (unpublished disposition); *Wells v. State*, No. 68242, 2016 WL 2745450, at 1 (Nev. May 9, 2016)(unpublished disposition).

16.06: VALUE ENHANCEMENT INSTRUCTION FOR EMBEZZLEMENT

If you find that the Defendant committed the crime of embezzlement, then you must further determine whether the value of the property is [$5,000 or more but less than $25,000] [$25,000 or more but less than $100,000] [$100,000 or more]. The burden is on the State to prove the value of the property beyond a reasonable doubt.

NRS 205.300; NRS 205.222.

17.00: OBTAINING MONEY, PROPERTY, RENT OR LABOR BY FALSE PRETENSES

The crime of OBTAINING [MONEY, PROPERTY, RENT, LABOR] BY FALSE PRETENSES consists of the following elements:

(1) The Defendant knowingly and designedly;
(2) By any false pretense;
(3) Causes any other person to suffer injury, loss, or damage by obtaining from the other person any [chose in action, money, goods, wares, chattels, effects, or other valuable thing, including rent or the labor of another person not his or her employee];
(4) With a value of [$1,200] or more;
(5) With the intent to cheat or defraud the other person.

Intent to defraud is an intent to deceive another person for the purpose of inducing him or her to part with property or to alter his or her position to his or her injury or risk, and to accomplish that purpose by some false statement, false representation of fact, wrongful concealment or suppression of truth, or by any other artifice or act calculated to deceive.

A false pretense is a representation of some fact or circumstance which is not true and is calculated to mislead. The representation may be implied from conduct or may consist of concealment or non-disclosure where there is a duty to speak. A false pretense may consist of any act, word, symbol or token calculated and intended to deceive. It may be made either expressly, or by implication.

[It is not required that the false pretense have been the sole inducement for the defrauded party to part with his or her money or thing of value. It is sufficient if the defrauded party was materially influenced by the false pretense to part with his or her property, although other motives may have operated to produce the result.]

[A "chose in action" is a right to bring an action to recover a debt, money, or thing.]

NRS 205.380; *Bright v. Sheriff*, 90 Nev. 168, 170-71, 521 P.2d 371, 372-73 (1974); *Watkins v. Sheriff*, 85 Nev. 246, 248, 253 P.2d 611-612 (1969); *Barron v. State*, 105 Nev. 767, 773-75, 783 P.2d 444, 448-49 (1998); *Amen v. State*, 106 Nev. 749, 754-55, 801 P.2d 1354, 1358 (1990); *State v. Bacha*, 44 Nev. 373, 194 P. 1066, 1069-70 (1921); *Gallegos v. Malco Enterprises of Nevada, Inc.*, 127 Nev. 579, 582, 255 P.3d 1287, 1289 (2011).

17.01: OBTAINING A CREDIT CARD OR DEBIT CARD WITHOUT CONSENT OF THE CARDHOLDER ALLEGED PURSUANT TO NRS 205.690(1)

The crime of OBTAINING A [CREDIT CARD, DEBIT CARD, OR IDENTIFYING DESCRIPTION OF CREDIT CARD, CREDIT ACCOUNT OR DEBIT CARD] WITHOUT CONSENT OF THE CARDHOLDER consists of the following elements:

(1) The Defendant steals, takes or removes;

(2) A [credit card or debit card];

(3) From the person, possession, custody or control of another;

(4) Without the cardholder's consent.

17.01(a): RECEIVING A STOLEN CREDIT CARD OR DEBIT CARD ALLEGED PURSUANT TO NRS 205.690(1)

The crime of RECEIVING A STOLEN [CREDIT CARD, DEBIT CARD, OR IDENTIFYING DESCRIPTION OF CREDIT CARD, CREDIT ACCOUNT, OR DEBIT CARD] consists of the following elements:

(1) The Defendant receives a [credit card or debit card];

(2) With knowledge that the [credit card or debit card] has been stolen, taken or removed from the person, possession, custody or control of another person without the cardholder's consent;

(3) With the intent:

(a) To circulate, use or sell it; or

(b) To transfer it to a person other than the issuer or the cardholder.

17.01(b): POSSESSING A CREDIT CARD OR DEBIT CARD WITHOUT THE CARDHOLDER'S CONSENT ALLEGED PURSUANT TO NRS 205.690(2)

The crime of POSSESSING A [CREDIT CARD, DEBIT CARD, OR IDENTIFYING DESCRIPTION OF CREDIT CARD, CREDIT ACCOUNT OR DEBIT CARD] WITHOUT THE CARDHOLDER'S CONSENT consists of the following elements:

(1) The Defendant possesses a [credit card or debit card];
(2) Without the cardholder's consent;
(3) With the intent to circulate, use, sell, or transfer the [credit card or debit card]; and
(4) With the intent to defraud.

["Credit card" means any instrument or device, whether known as a credit card, credit plate, or by any other name, issued with or without fee by an issuer for the use of the cardholder in obtaining money, property, goods, services or anything else of value on credit. "Credit card" includes, without limitation, the number or other identifying physical or electronic description of a credit card or credit account.]

["Debit card" means any instrument or device, whether known as a debit card or by any other name, that is issued with or without a fee by an issuer for the use of the cardholder in obtaining money, property, goods, services or anything else of value, subject to the issuer removing money from the checking account or savings account of the cardholder. "Debit card" includes, without limitation, the number or other identifying physical or electronic description of a credit card.]

["Cardholder" means the person or organization named on the face of the [credit card or debit card] to whom or for whose benefit the [credit card or debit card] is issued by an issuer.]

["Receives" or "receiving" means acquiring possession control or accepting as security for a loan.]

["Issuer" means the business organization, financial institution or a duly authorized agent of a business organization or financial institution which issues a credit card or debit card.]

"Intent to defraud" is an intent to deceive another person for the purpose of inducing him or her to part with property or to alter his or her position to his or her injury or risk, and to accomplish that purpose by some false statement, false representation of fact, wrongful concealment or suppression of truth, or by any other artifice or act calculated to deceive.

As to any charge of [insert relevant charge, e.g., POSSESSING A CREDIT CARD WITHOUT THE CARDHOLDER'S CONSENT], the State is not required to prove an intent to defraud any particular person. The element of intent to defraud is satisfied if the State proves that the Defendant intended to defraud any person, association or body politic or corporation, whatever.

[A person does not commit the crime of [OBTAINING A CREDIT CARD, DEBIT CARD, OR IDENTIFYING DESCRIPTION OF CREDIT CARD, CREDIT ACCOUNT OR DEBIT CARD WITHOUT CONSENT OF THE CARDHOLDER; RECEIVING A STOLEN CREDIT CARD, DEBIT CARD, OR IDENTIFYING DESCRIPTON OF CREDIT CARD, CREDIT ACCOUNT OR DEBIT CARD; POSSESSING A CREDIT CARD, DEBIT CARD OR IDENTIFYING DESCRIPTION OF CREDIT CARD, CREDIT ACCOUNT OR DEBIT CARD WITHOUT THE CARDHOLDER'S CONSENT] if the person is employed by or operating a business, including, but not limited to, a bank or other financial institution, credit bureau, collection agency or credit reporting agency, and the person, without the intent to defraud, lawfully furnishes to another person or obtains the number or other identifying physical or electronic description of a credit card, debit card or credit account in the ordinary course of that business or employment or pursuant to a financial transaction entered into without a customer.]

NRS 205.690; NRS 205.620; NRS 205.630; NRS 205.635; NRS 205.640; NRS 205.650; NRS 205.660; NRS 205.670; NRS 193.040; *State v. Jarman*, 84 Nev. 187, 190, 438 P.2d 250, 252-53 (1968); *Barron v. State*, 105 Nev. 767, 774-775, 783 P.2d 444, 448-449 (1989).

17.02: MULTIPLE CREDIT CARD INFERENCE

You may, but are not required to, regard evidence of a Defendant's possession of, or dominion and control over, two or more [credit cards or debit cards] issued in the name of another person as sufficient evidence that the Defendant obtained and possessed the [credit cards or debit cards] with the knowledge that they had been stolen and with the intent to circulate, use, sell or transfer them with the intent to defraud.

However, the Defendant can only be found guilty of [RECEIVING A STOLEN CREDIT CARD, DEBIT CARD, OR IDENTIFYING DESCRIPTION OF CREDIT CARD, CREDIT ACCOUNT OR DEBIT CARD; POSSESSING A CREDIT CARD, DEBIT CARD, OR IDENTIFYING DESCRIPTION OF A CREDIT CARD, CREDIT ACCOUNT OR DEBIT CARD WITHOUT THE CARDHOLDER'S CONSENT] if, in light of all the evidence in the case, it has been proved beyond a reasonable doubt that the Defendant obtained and possessed the [credit cards or debit cards] with the knowledge that they have been stolen and with the intent to circulate, use, sell or transfer them with the intent to defraud.

NRS 205.690; NRS 47.230; *Hollis v. State,* 96 Nev. 207, 208-09, 606 P.2d 534, 535-56 (1980); *Redeford v. State*, 93 Nev. 649, 653-54, 572 P.2d 219, 221-22 (1977); *Marshall v. State*, 95 Nev. 802, 803-04, 603 P.2d 283, 284 (1979); *Brackeen v. State,* 104 Nev. 547, 551-52, 763 P.2d 59, 62 (1988); *Ricci v. State,* 91 Nev. 373, 381, 536 P.2d 79, 83-83 (1975).

17.03: FRAUDULENT USE OF A CREDIT CARD OR DEBIT CARD ALLEGED PURSUANT TO NRS 205.760(1)(a)

The crime of FRAUDULENT USE OF A [CREDIT CARD OR DEBIT CARD] consists of the following elements:

(1) The Defendant uses a [credit card or debit card];

(2) To obtain money, goods, property, services or anything of value;

(3) With the intent to defraud; and

(4) The Defendant:

(a) [Knows the [credit card or debit card], was stolen, taken, or removed from the person, possession, custody, or control of another without the cardholder's consent; or

(b) Obtained or retained the [credit card or debit card] without the cardholder's consent and with the intent to circulate, use, sell or transfer the [credit card or debit card] with the intent to defraud; or

(c) Obtained or retained the [credit card or debit card] after having been signed by a person other than the cardholder or person authorized by the cardholder with the intent to defraud; or

(d) Knows the [credit card or debit card] is forged; or

(e) Knows the [credit card or debit card] is the expired or revoked [credit card or debit card] of another.]

17.03(a): FRAUDULENT USE OF A CREDIT CARD OR DEBIT CARD NUMBER OR OTHER IDENTIFYING PHYSICAL OR ELECTRONIC DESCRIPTION OF A CREDIT ACCOUNT OR DEBIT CARD ALLEGED PURSUANT TO NRS 205.760 (1)(b)

The crime of FRAUDULENT USE OF A [CREDIT CARD OR DEBIT CARD NUMBER OR OTHER IDENTIFYING PHYSICAL OR ELECTRONIC DESCRIPTION OF A CREDIT ACCOUNT OR DEBIT CARD] consists of the following elements:

(1) The Defendant uses [the number or other identifying physical or electronic description of a credit account, customarily evidenced by a credit card or the number or other identifying physical or electronic description of a debit card];
(2) To obtain money, goods, property, services, or anything of value;
(3) Without the consent of the cardholder;
(4) With the intent to defraud.

17.03(b): UNAUTHORIZED USE OF A CREDIT CARD OR DEBIT CARD ALLEGED PURSUANT TO NRS 205.760(1)(c)

The crime of UNAUTHORIZED USE OF A [CREDIT CARD OR DEBIT CARD] consists of the following elements:

(1) The Defendant obtains money, goods, property, services or anything else of value;

(2) By representing, without the consent of the cardholder, that the person is the authorized holder of a specified [credit card or debit card]; or representing that the person is the holder of a [credit card or debit card] where the card has not in fact been issued;

(3) With the intent to defraud.

17.03(c): USE OF A REVOKED OR EXPIRED CREDIT CARD OR DEBIT CARD ALLEGED PURSUANT TO NRS 205.760(2)

The crime of USE OF A REVOKED OR EXPIRED CREDIT CARD OR DEBIT CARD consists of the following elements:

(1) The Defendant uses a [credit card or debit card] issued in the Defendant's name;

(2) To obtain anything of value including money, goods, property, or services;

(3) Where the value of goods, property, services or other things of value so obtained in any 6-month period is $100 or more;

(4) Knowing the [credit card or debit card] is revoked or expired;

(5) With the intent to defraud.

17.03(d): USING A CREDIT CARD OR DEBIT CARD TO OBTAIN MONEY, GOODS, PROPERTY, SERVICES OR ANYTHING OF VALUE WITH INSUFFICIENT MONEY OR PROPERTY WITH WHICH TO PAY FOR THE EXTENSION OF CREDIT ALLEGED PURSUANT TO NRS 205.760(2)

The crime of USING A CREDIT CARD OR DEBIT CARD TO OBTAIN MONEY, GOODS, PROPERTY, SERVICES OR ANYTHING OF VALUE WITH INSUFFICIENT MONEY OR PROPERTY WITH WHICH TO PAY FOR THE EXTENSION OF CREDIT consists of the following elements:

(1) The Defendant uses a [credit card or debit card] issued in the Defendant's name;
(2) To obtain anything of value including money, goods, property, or services;
(3) Where the value of goods, property, services, or other things of value so obtained in any 6-month period is $100 or more;
(4) Knowing the Defendant does not have sufficient money or property with which [to pay for the extension of credit] or [to cover the debt from the account linked to his or her debit card];
(5) With the intent to defraud.

["Credit card" means any instrument or device, whether known as a credit card, credit plate, or by any other name, issued with or without fee by an issuer for the use of the cardholder in obtaining money, property, goods, services or anything else of value on credit.]

["Debit card" means any instrument or device, whether known as a debit card or by any other name, that is issued with or without a fee by an issuer for the cardholder in obtaining money, property, goods, services or anything else of value, subject to the issuer removing money from the checking account or savings account of the cardholder.]

["Cardholder" means the person or organization named on the face of the [credit card or debit card] to whom or for whose benefit the [credit card or debit card] is issued by an issuer.]

["Receives" or "receiving" means acquiring possession control or accepting as security for a loan.]

["Issuer" means the business organization, financial institution or a duly authorized agent of a business organization or financial institution which issues a credit card or debit card.]

["Expired credit card or debit card" means a credit card or debit card that is no longer valid because the term shown on it has elapsed.]

["Revoked credit card or debit card" means a credit card or debit card that is no longer valid because permission to use it has been suspended or terminated by the issuer.]

"To defraud" means to deprive a person of property or interest, estate or right by fraud, deceit or artifice. An intent to defraud is thus an intent to deceive another person for the purpose of inducing him or her to part with property or to alter his or her position to his or her injury or risk, and to accomplish that purpose by some false statement, false representation of fact, wrongful concealment or suppression of truth, or by any other artifice or act calculated to deceive.

"Intent to defraud" is an intent to deceive another person for the purpose of inducing him or her to part with property or to alter his or her position to his or her injury or risk, and to accomplish that purpose by some false statement, false representation of fact, wrongful concealment or suppression of truth, or by any other artifice or act calculated to deceive.

As to any charge of [insert relevant charge, e.g., USING A CREDIT CARD OR DEBIT CARD TO OBTAIN MONEY, GOODS, PROPERTY, SERVICES OR ANYTHING OF VALUE WITH INSUFFICIENT MONEY OR PROPERTY WITH WHICH TO PAY FOR THE EXTENSION OF CREDIT], the State is not required to prove an intent to defraud any particular person. The element of intent to defraud is satisfied if the State proves that the Defendant intended to defraud any person, association, or body politic or corporation, whatever.

NRS 205.760; NRS 205.690; NRS 205.620; NRS 205.630; NRS 205.635; NRS 205.640; NRS 205.650; NRS 205.660; NRS 205.670; NRS 193.040; *State v. Jarman,* 84 Nev. 187, 190, 438 P.2d 250, 252-253 (1968); *Barron v. State,* 105 Nev. 767, 774-775, 783 P.2d 444, 448-449 (1989).

18.00: POSSESSION OF LESS THAN 14 GRAMS OF A SCHEDULE I OR II CONTROLLED SUBSTANCE AND POSSESSION OF LESS THAN 28 GRAMS OF A SCHEDULE III, IV, OR V CONTROLLED SUBSTANCE ALLEGED PURSUANT TO NRS 453.336(2)(a)&(b)

The crime of POSSESSION OF A SCHEDULE [I, II, III, IV or V] CONTROLLED SUBSTANCE consists of the following elements:

(1) The Defendant knowingly or intentionally possesses;
(2) A Schedule [I, II, III, IV or V] controlled substance.

[Insert name of controlled substance(s) alleged in Information or Indictment, e.g.: "Cocaine"] [or any material, compound, mixture or preparation which contains any quantity of [insert name of alleged controlled substances(s), e.g.: "Cocaine"]] is a Schedule [include as appropriate for controlled substance alleged: I, II, III, IV, V] controlled substance.

["Compound" means a composite product formed or made by combining two or more different ingredients.]

To knowingly or intentionally possess a controlled substance, the Defendant must have had knowledge of the presence of the controlled substance and of its illegal nature at the time of possession. Knowledge may be shown by direct or circumstantial evidence and reasonably drawn inferences.

18.00(a): POSSESSION OF 14 GRAMS OR MORE, BUT LESS THAN 28 GRAMS, OF A SCHEDULE I OR II CONTROLLED SUBSTANCE ALLEGED PURSUANT TO NRS 453.336(2)(c)

The crime of POSSESSION OF 14 GRAMS OR MORE, BUT LESS THAN 28 GRAMS, OF A SCHEDULE [I or II] CONTROLLED SUBSTANCE consists of the following elements:

(1) The Defendant knowingly or intentionally possesses;
(2) 14 grams or more, but less than 28 grams, of a Schedule [I or II] controlled substance.

[Insert name of controlled substance(s) alleged in Information or Indictment, e.g.: "Cocaine"] [or any material, compound, mixture or preparation which contains any quantity of [insert name of alleged controlled substances(s), e.g.: "Cocaine"]] is a Schedule [include as appropriate for controlled substance alleged: I or II] controlled substance.

["Compound" means a composite product formed or made by combining two or more different ingredients.]

To knowingly or intentionally possess a controlled substance, the Defendant must have had knowledge of the presence of the controlled substance and of its illegal nature at the time of possession. Knowledge may be shown by direct or circumstantial evidence and reasonably drawn inferences.

18.00(b): POSSESSION OF 28 GRAMS OR MORE, BUT LESS THAN 200 GRAMS, OF A SCHEDULE III, IV OR V CONTROLLED SUBSTANCE ALLEGED PURSUANT TO NRS 543.336(2)(c)

The crime of POSSESSION OF 28 GRAMS OR MORE, BUT LESS THAN 200 GRAMS, OF A SCHEDULE [III, IV OR V] CONTROLLED SUBSTANCE consists of the following elements:

(1) The Defendant knowingly or intentionally possesses;
(2) 28 grams or more, but not more than 200 grams, of a Schedule [III, IV or V] controlled substance.

[Insert name of controlled substance(s) alleged in Information or Indictment, e.g.: "Benzphetamine"] [or any material, compound, mixture or preparation which contains any quantity of [insert name of alleged controlled substances(s), e.g.: "Benzphetamine"]] is a Schedule [include as appropriate for controlled substance alleged: III, IV or V] controlled substance.

["Compound" means a composite product formed or made by combining two or more different ingredients.]

To knowingly or intentionally possess a controlled substance, the Defendant must have had knowledge of the presence of the controlled substance and of its illegal nature at the time of possession. Knowledge may be shown by direct or circumstantial evidence and reasonably drawn inferences.

18.00(c): POSSESSION OF 28 GRAMS OR MORE, BUT LESS THAN 42 GRAMS, OF A SCHEDULE I OR II CONTROLLED SUBSTANCE ALLEGED PURSUANT TO NRS 453.336(2)(d)

The crime of POSSESSION OF 28 GRAMS OR MORE, BUT LESS THAN 42 GRAMS, OF A SCHEDULE [I or II] CONTROLLED SUBSTANCE consists of the following elements:

(1) The Defendant knowingly or intentionally possesses;

(2) 28 grams or more, but less than 42 grams, of a Schedule [I or II] controlled substance.

[Insert name of controlled substance alleged in Information or Indictment, e.g., "Cocaine"] {or any material, compound, mixture or preparation which contains any quantity of [insert name of alleged controlled substance(s), e.g.: "Cocaine"]] is Schedule [I or II] controlled substance.

["Compound" means a composite product formed or made by combining two or more different ingredients.]

To knowingly or intentionally possess a controlled substance, the Defendant must have had knowledge of the presence of the controlled substance and of its illegal nature at the time of possession. Knowledge may be shown by direct or circumstantial evidence and reasonably drawn inferences.

18.00(e): POSSESSION OF 200 GRAMS OR MORE OF A SCHEDULE III, IV OR V CONTROLLED SUBSTANCE ALLEGED PURSUANT TO NRS 453.336(2)(c)

The crime of POSSESSION OF 200 GRAMS OR MORE OF A SCHEDULE [III, IV OR V] CONTROLLED SUBSTANCE consists of the following elements:

(1) The Defendant knowingly or intentionally possesses;
(2) 200 grams or more of a Schedule [III, IV or V] controlled substance.

[Insert name of controlled substance(s) alleged in Information or Indictment, e.g.: "Benzphetamine"] [or any material, compound, mixture or preparation which contains any quantity of [insert name of alleged controlled substance(s), e.g.: "Benzphetamine"]] is a Schedule [include as appropriate for controlled substance alleged: III, IV or V] controlled substance.

["Compound" means a composite product formed or made by combining two or more different ingredients.]

To knowingly or intentionally possess a controlled substance, the Defendant must have had knowledge of the presence of the controlled substance and of its illegal nature at the time of possession. Knowledge may be shown by direct or circumstantial evidence and reasonably drawn inferences.

18.00(f): POSSESSION OF 42 GRAMS OR MORE, BUT LESS THAN 100 GRAMS, OF A SCHEDULE I OR II CONTROLLED SUBSTANCE ALLEGED PURSUANT TO NRS 453.336(2)(e)

The crime of POSSESSION OF 42 GRAMS OR MORE, BUT LESS THAN 100 GRAMS, OF A SCHEDULE [I or II] CONTROLLED SUBSTANCE consists of the following elements:

(1) The Defendant knowingly or intentionally possesses;
(2) 42 grams or more, but less than 100 grams, of a Schedule [I or II] controlled substance.

[Insert name of controlled substance alleged in Information or Indictment, e.g., "Cocaine:] [or any material, compound, mixture or preparation which contains any quantity of [insert name of alleged controlled substance(s), e.g.: "Cocaine"]] is a Schedule [I or II] controlled substance.

["Compound" means a composite product formed or made by combining two or more different ingredients.]

To knowingly or intentionally possess a controlled substance, the Defendant must have had knowledge of the presence of the controlled substance and of its illegal nature at the time of possession. Knowledge may be shown by direct or circumstantial evidence and reasonably drawn inferences.

18.00(g): POSSESSION OF FLUNITRAZEPAM OR GAMMA-HYDROXYBUTYRATE, OR ANY SUBSTANCE FOR WHICH FLUNITRAZEPAM OR GAMMA-HYDROXYBUTYRATE IS AN IMMEDIATE PRECURSOR, ALLEGED PURSUANT TO NRS 453.336(3)

The crime of POSSESSION OF [FLUNITRAZEPAM OR GAMMA-HYDROXYBUTYRATE, OR ANY SUBSTANCE FOR WHICH FLUNITRAZEPAM OR GAMMA-HYDROXYBUTYRATE IS AN IMMEDIATE PRECURSOR] consists of the following elements:

(1) The Defendant knowingly or intentionally possesses;
(2) [Flunitrazepam or gamma-hydroxybutyrate, or any substance for which flunitrazepam or gamma-hydroxybutyrate is an immediate precursor].

To knowingly or intentionally possess [flunitrazepam or gamma-hydroxybutyrate, or any substance for which flunitrazepam or gamma-hydroxybutyrate is an immediate precursor], the Defendant must have had knowledge of the presence of [substance] and of its illegal nature at the time of possession. Knowledge may be shown by direct or circumstantial evidence and reasonably drawn inferences.

18.00(h): POSSESSION OF MORE THAN 1 OUNCE OF MARIJUANA ALLEGED PURSUANT TO NRS 453.336(1) AND 453.336(4)

The crime of POSSESSION OF MORE THAN 1 OUNCE OF MARIJUANA consists of the following elements:

(1) The Defendant knowingly or intentionally possesses;
(2) More than 1 ounce of marijuana.

To knowingly or intentionally possess more than 1 ounce of marijuana, the Defendant must have had knowledge of the presence of the marijuana and of its illegal nature at the time of possession. Knowledge may be shown by direct or circumstantial evidence and reasonably drawn inferences.

"Marijuana" means:

(a) All parts of any plant of the genus *Cannabis*, whether growing or not;
(b) The seeds thereof;
(c) The resin extracted from any part of the plant, but not including concentrated cannabis; and
(d) Every compound, manufacture, salt, derivative, mixture or preparation of the plant, its seeds or resin, but not including concentrated cannabis.

"Marijuana" does not include:

(a) Hemp which is grown or cultivated pursuant to the provisions of Nevada Revised Statutes Chapter 557 or any commodity or product made using such hemp; or

(b) The mature stems of the plant, fiber produced from the stems, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture or preparation of the mature stems (except the resin extracted therefrom), fiber, oil or cake, or the sterilized seed of the plant which is incapable of germination; or

(c) Concentrated cannabis, which means the extracted or separated resin, whether crude or purified, containing THC or CBD from marijuana.

"CBD" means cannabidiol.

"THC" means:

1. Delta-9-tetrahydrocannabinol;
2. Delta-8-tetrahydrocannabinol; and
3. The optical isomers of such substances.

NRS 543.336; NRS 543.096; NRS 453.033; NRS 453.139; NRS 557.160; NRS 453.039; NRS 453.042; *Sheriff v. Shade,* 209 Nev. 826, 829-30, 858 P.2d 840, 842 (1993); *Sanders v. State*, 110 Nev. 434, 436, 874 P.2d 1239, 1240 (1994); NAC 453.510; NAC 453.520; NAC 453.530; NAC 453.540; NAC 453.550.

18.01: EXCEPTIONS TO POSSESSION OF A CONTROLLED SUBSTANCE ALLEGED PURSUANT TO NRS 453.336

[Possession of a Schedule [I, II, III, IV or V] controlled substance is not unlawful if the substance was obtained directly from, or pursuant to, a prescription or order of a [physician, physician assistant licensed pursuant to NRS Chapter 630 or Chapter 633, dentist, podiatric physician, optometrist, advanced practice registered nurse or veterinarian] while acting in the course of his or her professional practice.]

[Possession of a Schedule [I, II, III, IV or V] controlled substance is not unlawful if a person possesses a trace amount of a controlled substance and that trace amount is in or on a hypodermic device obtained from a sterile hypodermic device program pursuant to NRS 439.985 to 439.994.]

[Possession of peyote is not unlawful when used as a sacrament in religious rites of any bona fide religious organization.]

NRS 453.336; NRS 453.005; NRS 453.541.

18.02: POSSESSION OF MARIJUANA – AFFIRMATIVE DEFENSE FOR MEDICAL USE OF CANNABIS

It is an affirmative defense to a criminal charge of [possession, delivery or production of marijuana, or any other criminal offense in which possession, delivery or production of marijuana is an element] that the Defendant:

(A) Is a person who:

(1) Has been diagnosed with a chronic or debilitating medical condition within the 12-month period preceding his or her arrest and has been advised by his or her attending provider of health care that the medical use of cannabis may mitigate the symptoms or effects of that chronic or debilitating medical condition;

(2) Is engaged in the medical use of cannabis; and

(3) Does not at any one time, collectively possess, deliver or produce with another who is authorized to possess, deliver or produce more than:

(a) Two and one-half ounces of usable cannabis;

(b) Twelve cannabis plants, irrespective of whether the cannabis plants are mature or immature; and

(c) Maximum allowable quantity of cannabis products as established by regulation of the Board [or in excess of that amount if the Defendant proves by a preponderance of the evidence that the greater amount is medically necessary as determined by the person's attending provider of health care to mitigate the symptoms or effects of the assisted person's chronic or debilitating medical condition]; or

(B) Is a person who:

(1) Is assisting a person described in paragraph (A) in the medical use of cannabis; and

(2) Does not at one time, collectively possess, deliver or produce with another who is authorized to possess, deliver or produce more than

(a) Two and one-half ounces of usable cannabis;

(b) Twelve cannabis plants, irrespective of whether the cannabis plants are mature or immature; and

(c) Maximum allowable quantity of cannabis products as established by regulation of the Board [or in excess of that amount if the Defendant proves by a preponderance of the evidence that the greater amount is medically necessary as determined by the person's attending provider of health care to mitigate the symptoms or effects of the assisted person's chronic or debilitating medical condition.]

To prove something by a preponderance of the evidence is to prove that it is more likely true than not true. This is a lesser burden than proof beyond a reasonable doubt.

"Cannabis" means: marijuana.

"Usable cannabis" means: (a) The dried leaves and flowers of a plant of the genus *Cannabis*, and any mixture or preparation thereof, that are appropriate for the medical use of cannabis or the adult use of cannabis; and (b) The seeds of a plant of the genus *Cannabis.* Usable cannabis does not include the stalks and roots of the plants.

"Medical use of cannabis" means:

1. The possession, delivery, production or use of cannabis;
2. The possession, delivery or use of paraphernalia used to administer cannabis; or
3. Any combination of the acts described in subsections 1 and 2, as necessary for the exclusive benefit of a person to mitigate the symptoms or effects of his or her chronic or debilitating medical condition.

"Paraphernalia" means: accessories, devices, and other equipment that is necessary or useful for a person to engage in the medical use of cannabis or the adult use of cannabis.

"Chronic or debilitating medical condition" means:

(1) Acquired immune deficiency syndrome;
(2) An anxiety disorder;
(3) An autism spectrum disorder;
(4) An autoimmune disease;
(5) Anorexia nervosa;
(6) Cancer;
(7) Dependence upon or addiction to opioids;
(8) Glaucoma;
(9) A medical condition or treatment for a medical condition that produces, for a specific patient, one or more of the following:

(a) Cachexia;

(b) Muscle spasms, including, without limitation, spasms caused by multiple sclerosis;

(c) Seizures, including, without limitation, seizures caused by epilepsy;

(d) Nausea; or

(e) Severe or chronic pain;

(f) A medical condition related to the human immunodeficiency virus;

(10) A neuropathic condition, whether or not such condition causes seizures; or

(11) Any other medical condition or treatment for a medical condition that is:

(a) Classified as a chronic or debilitating medical condition by regulation of the Division; or

(b) Approved as a chronic or debilitating medical condition pursuant to a petition submitted to the Division.

"Attending provider of health care" means a provider of health care who:

(1) Is licensed or certified to practice a profession which authorizes the person to write a prescription for a medication to treat a chronic or debilitating medical condition; and

(2) Has responsibility for the care and treatment of a person diagnosed with a chronic or debilitating medical condition.

Pursuant to NRS 678C.300, this defense is unavailable for charges arising from certain enumerated acts. *See also* NRS 678C.310; NRS 678C.200; *Brown v. State,* 107 Nev. 164, 166, 807 P2d. 1379, 1380-81 (1991); *Moen v. State,* 2017 WL 4351371, 402 P.3d 1253 (Nev. Sept. 28, 2017)(unpublished disposition); NRS 678A.085; NRS 678A.215; NRS 678A.220; NRS 678C.030; NRS 678C.310.

18.03: POSSESSION/USE OF MARIJUANA – MEDICAL NECESSITY DEFENSE

It is a defense to a criminal charge pertaining to the medical use of cannabis that the Defendant:

(A) Is a person who:

(1) Is engaged in the medical use of cannabis for treatment of a specific disease or condition;

(2) Does not at any one time, collectively possess, deliver or produce with another who is authorized to possess, deliver or produce more than:

(a) Two and one-half ounces of usable cannabis;

(b) Twelve cannabis plants, irrespective of whether the cannabis plants are mature or immature; and

(c) Maximum allowable quantity of cannabis products as established by regulation of the Board; and

(3) Has taken steps to comply substantially with the provisions of NRS Chapter 678C – Medical Use of Cannabis; or

(B) Is a person who:

(1) Is assisting another in the medical use of cannabis for treatment of a specific disease or condition;

(2) Does not at any one time, collectively possess, deliver or produce with another who is authorized to possess, deliver or produce more than:

(a) Two and one-half ounces of usable cannabis;

(b) Twelve cannabis plants, irrespective of whether the cannabis plants are mature or immature; and

(c) Maximum allowable quantity of cannabis products as established by regulation of the Board; and

(3) Has taken steps to comply substantially with the provisions of NRS Chapter 678C – Medical Use of Cannabis.

"Cannabis" means: marijuana.

"Usable cannabis" means: (a) The dried leaves and flowers of a plant of the genus *Cannabis*, and any mixture or preparation thereof, that are appropriate for the medical use of cannabis; and (b) The seeds of a plant of the genus *Cannabis.* Usable cannabis does not include the stalks and roots of the plant.

"Medical use of cannabis" means:

(1) The possession, delivery, production or use of cannabis;

(2) The possession, delivery or use of paraphernalia used to administer cannabis; or

(3) Any combination of the acts described in subsection 1 and 2, as necessary for the exclusive benefit of a person to mitigate the symptoms or effects of his or her chronic or debilitating medical condition.

"Paraphernalia" means: accessories, devices and other equipment that is necessary or useful for a person to engage in the medical use of cannabis or the adult use of cannabis.

"Chronic or debilitating medical condition" means:

(1) Acquired immune deficiency syndrome;

(2) An anxiety disorder;

(3) An autism spectrum disorder;

(4) An autoimmune disease;

(5) Anorexia nervosa;

(6) Cancer;

(7) Dependence upon or addiction to opioids;

(8) Glaucoma;

(9) A medical condition or treatment for a medical condition that produces, for a specific patient, one or more of the following:

(a) Cachexia;

(b) Muscle spasms, including, without limitation, spasms caused by multiple sclerosis;

(c) Seizures, including, without limitation, seizures caused by epilepsy;

(d) Nausea; or

(e) Severe or chronic pain;

(10) A medical condition related to the human immunodeficiency virus;

(11) A neuropathic condition, whether or not such condition causes seizures; or

(12) Any other medical condition or treatment for a medical condition that is:

(a) Classified as a chronic or debilitating medical condition by regulation of the Division; or

(b) Approved as a chronic or debilitating medical condition pursuant to a petition submitted to the Division.

Pursuant to NRS 678C.300, this defense is unavailable for charges arising from certain enumerated acts. *See also* NRS 678C.310; NRS 678C.200; NRS 678A.085; NRS 678A.215; NRS 678A.220; NRS 678C.030; NRS 678C.310.

18.04: POSSESSION OF MARIJUANA – ADULT USE EXEMPTION

A Defendant who is 21 years of age or older is exempt from prosecution for POSSESSION OF MARIJUANA, to the extent that the Defendant:

(1) Is not employed by any agency or political subdivision of the State in a position which requires the person to be certified by the Peace Officers' Standards and Training Commission;

(2) Engages in the adult use of cannabis; and

(3) Does not, at any one time, possess more than:

(a) One ounce of usable cannabis;

(b) One-eighth of an ounce of concentrated cannabis;

(c) Six cannabis plants, irrespective of whether the cannabis plants are mature or immature; and

(d) A maximum allowable quantity of adult-use cannabis products as established by regulation of the Board;

[Unless the possession of cannabis is discovered because the Defendant engaged in the adult use of cannabis in:

(a) Any public place or in any place open to the public or exposed to public view; or

(b) Any local detention facility, county jail, state prison, reformatory or other correctional facility, including, without limitation, any facility for the detention of juvenile offenders; or

Unless the possession of cannabis occurs on school property.]

"Cannabis" means: marijuana.

"Adult use of cannabis" means: the possession, delivery, production or use of cannabis and/or cannabis paraphernalia, or any combination of such acts, by a person 21 years of age or older.

"Paraphernalia" means: accessories, devices and other equipment that is necessary or useful for a person to engage in the medical use of cannabis or the adult use of cannabis.

"Concentrated cannabis" means: the extracted or separated resin, whether crude or purified, containing THC or CBD from marijuana.

"Usable cannabis" means: (a) The dried leaves and flowers of a plant of the genus *Cannabis*, and any mixture or preparation thereof, that are appropriate for the medical use of cannabis or the adult use of cannabis; and (b) The seeds of a plant of the genus *Cannabis*. Usable cannabis does not include the stalks and roots of the plant.

NRS 678D.200; NRS 678D.300; NRS 453.336; NRS 678A.075; NRS 678A.085; NRS 678D.010; NRS 453.042; NRS 678D.040; NRS 678C.100.

18.05: POSSESSION FOR THE PURPOSE OF SALE OF SCHEDULE I, II, III, IV OR V CONTROLLED SUBSTANCE; POSSESSION OF FLUNITRAZEPAM, GAMMA-HYDROXYBUTYRATE, OR ANY SUBSTANCE FOR WHICH FLUNITRAZEPAM OR GAMMA-HYDROXYBUTYRATE IS AN IMMEDIATE PRECURSOR

The crime of [POSSESSION OF A SCHEDULE I, II, III, IV or V CONTROLLED SUBSTANCE] [POSSESSION OF FLUNITRAZEPAM, GAMMA-HYDROXYBUTYRATE, OR IMMEDIATE PRECURSORS] FOR THE PURPOSE OF SALE consists of the following elements:

(1) The Defendant knowingly or intentionally possesses;

(2) [A Schedule I, II, III, IV or V controlled substance] [flunitrazepam or gamma-hydroxybutyrate, or any substance for which flunitrazepam or gamma-hydroxybutyrate is an immediate precursor];

(3) For the purpose of sale.

[Insert name of controlled substance(s) alleged in Information or Indictment, e.g.: "Cocaine"] [or any material, compound, mixture or preparation which contains any quantity of [insert name of alleged controlled substance(s), e.g.: "Cocaine"]] is a Schedule [include as appropriate for controlled substance alleged: I, II, III, IV, V] controlled substance.

["Compound" means a composite product formed or made by combining two or more different ingredients.]

To knowingly or intentionally possess [a controlled substance] [flunitrazepam or gamma-hydroxybutyrate, or any substance for which flunitrazepam or gamma-hydroxybutyrate is an immediate precursor] for the purpose of sale, the Defendant must have had knowledge of the presence of [substance] and of its illegal nature at the time of possession. Knowledge may be shown by direct or circumstantial evidence and reasonably drawn inferences.

"Marijuana" means:

(a) All parts of any plant of the genus *Cannabis*, whether growing or not;

(b) The seeds thereof;

(c) The resin extracted from any part of the plant, but not including concentrated cannabis; and

(d) Every compound, manufacture, salt, derivative, mixture or preparation of the plant, its seeds or resin, but not including concentrated cannabis.

"Marijuana" does not include:

(a) Hemp which is grown or cultivated pursuant to the provisions of Nevada Revised Statutes Chapter 557 or any commodity or product made using such hemp; or

(b) The mature stems of the plant, fiber produced from the stems, oil or cake from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture or preparation of the mature stems (except the resin extracted therefrom), fiber, oil or cake, or the sterilized seed of the plant which is incapable of germination; or

(c) Concentrated cannabis, which means the extracted or separated resin, whether crude or purified, containing THC or CBD from marijuana.

"CBD" means cannabidiol.

"THC" means:

(1) Delta-9-tetrahydrocannabinol;

(2) Delta-8-tetrahydrocannabinol; and

(3) The optical isomer of such substances.

NRS 453.337; NRS 453.337; NRS 453.338; NRS 453.096; NRS 453.033; NRS 453.139; NRS 557.160; NRS 453.039; NRS 453.042; *Sheriff v. Shade*, 109 Nev. 826, 829-30, 858 P.2d 840, 842 (1993); *Sanders v. State*, 110 Nev. 434, 436, 874 P.2d 1239, 1240 (1994); *Figueroa-Beltran v. United States*, 136 Nev. 386, 467 P.3d 615 (2020); NAC 453.510; NAC 453.520; NAC 453.530; NAC 453.540; NAC 453.55.

18.06: CONTROLLED SUBSTANCE - POSSESSION DEFINED

Possession may be actual or constructive.

A person who knowingly has direct physical control over a thing at a given time is then in actual possession of it.

A person who, although not in actual physical possession, knowingly has both the power and the intention to exercise dominion or control over a thing is in constructive possession of the thing.

[Constructive possession may be direct or exercised through another person. A person is in constructive possession of a thing that is in the actual possession of another person pursuant to the person's direction or permission if the person retains the right to exercise dominion and control over the item.] Dominion and control may be evidenced by circumstantial evidence and reasonably drawn inferences.

[Possession may be sole or joint. If one person alone has actual or constructive possession of a thing, then possession is sole. If two or more persons share actual constructive possession of a thing, then possession is joint.]

[Mere presence in the area where a controlled substance is discovered or mere association with a person who possesses or controls the controlled substance is insufficient to establish a person's possession of the item. However, the person's presence together with other circumstances may do so. Possession may be inferred when the controlled substance is found in a location which is immediately and exclusively accessible to the person and subject to his or her dominion and control.]

The possession element of [insert crime alleged in case, e.g., Possession of a Controlled Substance for the Purpose of Sale] is satisfied if you find beyond a reasonable doubt that the Defendant had either actual or constructive possession of the controlled substance [whether the possession was sole or joint].

Palmer v. State, 112 Nev. 763, 768, 920 P.2d 112, 115 (1996); *Batin v. State*, 118 Nev. 61, 65-66, 38 P.3d 880, 883 (2002); *Glispey v. Sheriff*, 89 Nev. 221, 223-34, 510 P.2d 623, 624 (1973); *Marshall v. State*, 110 Nev. 1328, 1332-33, 885 P.2d 603, 606 (1994); *Kinsey v. Sheriff*, 87 Nev. 361, 363, 487 P.2d 340, 341 (1971); *Dutton v. State*, 94 Nev. 461, 465, 581 P.2d 856, 858 (1978); *Maskaly v. State*, 85 Nev. 111, 114, 450 P.2d 790, 792 (1969); *Baker v. Sheriff*, 93 Nev. 11, 13, 558 P.2d 629, 629 (1977); *Oxborrow v. Sheriff*, 93 Nev. 321, 322, 565 P.2d 652, 653 (1977); *Sheriff v. Shade*, 109 Nev. 826, 830, 858 P.2d 840, 842 (1993); *Hicks v. State*, No. 68087, 2016 WL 4082451, at *2 (Nev. July 28, 2016) (unpublished disposition).

18.07: SALE OF A CONTROLLED SUBSTANCE AND MANUFACTURE OF A COUNTERFEIT SUBSTANCE

[Sale, import, transport, exchange, barter, supply, prescription, dispensing, giving away or administering of a Schedule I, II, III, IV or V controlled substance or counterfeit substance; Offer or attempt to sell, import, exchange, barter, supply, prescribe, dispense, give away or administer a Schedule I, II, III, IV or V controlled substance or counterfeit substance]

The crime of [SALE, IMPORT, TRANSPORT, EXCHANGE, BARTER, SUPPLYING, PRESCRIBING, DISPENSING, GIVING AWAY OR ADMINISTERING OF A SCHEDULE I, II, III, IV or V CONTROLLED SUBSTANCE OR COUNTERFEIT SUBSTANCE] [OFFER OR ATTEMPT TO SELL, IMPORT, EXCHANGE, BARTER, SUPPLY, PRESCRIBE, DISPENSE, GIVE AWAY OR ADMINISTER A SCHEDULE I, II, III, IV or V CONTROLLED SUBSTANCE OR COUNTERFEIT SUBSTANCE] consists of the following elements:

(1) The Defendant knowingly;

(2) (a) [sells, imports, transports, exchanges, barters, supplies, prescribes, dispenses, gives away or administers]; or

(c) Offers to [sell, import, transport, exchange, barter, supply, prescribe, dispense, give away, or administer]; or

(d) Attempts to [sell, import, transport, exchange, barter, supply, prescribe, dispense, give away or administer];

(3) A Schedule [I, II, III, IV or V] controlled substance [or a counterfeit substance].

[Insert name of controlled substance(s) alleged in Information or Indictment, e.g.: "Cocaine"] [or any material, compound, mixture or preparation which contains any quantity of [insert name of alleged controlled substance(s), e.g.: "Cocaine"]] is a Schedule [include as appropriate for controlled substance alleged: I, II, III, IV, V] controlled substance.

"Compound" means a composite product formed or made by combining two or more different ingredients.

"Counterfeit substance" means a controlled substance which, or the container or labeling of which, without authorization, bears the trademark, trade name or other identifying mark, imprint, number or device, or any likeness thereof, of a manufacturer, distributed or dispensed the substance.

To knowingly [offer to] [attempt to] [sell, import, transport, exchange, barter, supply, prescribe, dispense, give away, or administer] a controlled substance, the Defendant must have had knowledge of the narcotic character of the controlled substance at the time he or she [insert illegal act(s) alleged, e.g., "sold the controlled substance"]. Knowledge may be shown by direct or circumstantial evidence and reasonably drawn inferences.

"Marijuana" means:

(a) All parts of any plant of the genus *Cannabis*, whether growing or not;

(b) The seeds thereof;

(c) The resin extracted from any part of the plant, but not including concentrated cannabis; and

(d) Every compound, manufacture, salt, derivative, mixture or preparation of the plant, its seeds or resin, but not including concentrated cannabis.

"Marijuana" does not include:

(a) Hemp which is grown or cultivated pursuant to the provisions of Nevada Revised Statutes Chapter 557 or any commodity or product made using such hemp; or

(b) The mature stems of the plant, fiber produced from the stems, oil or cake from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture or preparation of the mature stems (except the resin extracted therefrom), fiber, oil or cake, or the sterilized seed of the plant which is incapable of germination; or

(c) Concentrated cannabis, which means the extracted or separated resin, whether crude or purified, containing THC or CBD from marijuana.

"CBD" means cannabidiol.

"THC" means:

1. Delta-9-tetrahydrocannabinol;
2. Delta-8-tetrahydrocannabinol; and
3. The optical isomer of such substances.

18.07(a): SALE OF A SCHEDULE I, II, III, IV OR V CONTROLLED SUBSTANCE TO A MINOR

The crime of SALE OF A SCHEDULE [I, II, III, IV or V] CONTROLLED SUBSTANCE TO A MINOR consists of the following elements:

(1) The Defendant knowingly sells;

(2) A Schedule [I, II, III, IV or V] controlled substance;

(3) To a minor.

[Insert name of controlled substance(s) alleged in Information or Indictment, e.g.: "Cocaine"] [or any material, compound, mixture or preparation which contains any quantity of [insert name of alleged controlled substance(s), e.g.: "Cocaine"]] is a Schedule [include as appropriate for controlled substance alleged: I, II, III, IV, V] controlled substance.

["Compound" means a composite product formed or made by combining two or more different ingredients.]

"A minor" is a person less than 18 years old.

To knowingly sell a controlled substance to a minor, the Defendant must have had knowledge of the narcotic character of the controlled substance at the time he or she sold the controlled substance. Knowledge may be shown by direct or circumstantial evidence and reasonably drawn inferences.

"Marijuana" means:

(a) All parts of any plant of the genus *Cannabis*, whether growing or not;

(b) The seeds thereof;

(c) The resin extracted from any part of the plant, but not including concentrated cannabis; and

(d) Every compound, manufacture, salt, derivative, mixture or preparation of the plant, its seeds or resin, but not including concentrated cannabis.

"Marijuana" does not include:

(a) Hemp which is grown or cultivated pursuant to the provisions of Nevada Revised Statutes Chapter 557 or any commodity or product made using such hemp; or

(b) The mature stems of the plant, fiber produced from the stems, oil or cake from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture or preparation of the mature stems (except the resin extracted therefrom), fiber, oil or cake, or the sterilized seed of the plant which is incapable of germination; or

(c) Concentrated cannabis, which means the extracted or separated resin, whether crude or purified, containing THC or CBD from marijuana.

"CBD" means cannabidiol.

"THC" means:

1. Delta-9-tetrahydrocannabinol;
2. Delta-8-tetrahydrocannabinol; and
3. The optical isomer of such substances.

18.07(b): MANUFACTURE OR COMPOUND OF A COUNTERFEIT SUBSTANCE; OFFER OR ATTEMPT TO MANUFACTURE OR COMPOUND A COUNTERFEIT SUBSTANCE ALLEGED PURSUANT TO NRS 453.321(1)(b)and(c)

The crime of MANUFACTURE OR COMPOUND OF A COUNTERFEIT SUBSTANCE] [OFFER OR ATTEMPT TO MANUFACTURE OR COMPOUND A COUNTERFEIT SUBSTANCE] consists of the following elements:

(1) The Defendant knowingly;
(2) (a) Manufactures or compounds; or
(b) Offers to manufacture or compound; or
(c) Attempts to manufacture or compound;
(3) A counterfeit substance.

"Counterfeit substance" means a controlled substance which, or the container or labeling of which, without authorization, bears the trademark, trade name or other identifying mark, imprint, number or device, or any likeness thereof, of a manufacturer, distributor or dispenser other than the person who in fact manufactured, distributed or dispensed the substance.

[Insert name of controlled substance at issue] [or any material, compound, mixture or preparation] which contains any quantity of [insert name of controlled substance at issue] is a Schedule [include as appropriate: I, II, III, IV, or V] controlled substance.

["Compound" means a composite product formed or made by combining two or more different ingredients.]

["Compound" or "compounding" means to form or make up a composite product by combining two or more different ingredients.]

"Marijuana" means:

(a) All parts of any plant of the genus *Cannabis*, whether growing or not;

(b) The seeds thereof;

(c) The resin extracted from any part of the plant, but not including concentrated cannabis; and

(d) Every compound, manufacture, salt, derivative, mixture or preparation of the plant, its seeds or resin, but not including concentrated cannabis.

"Marijuana" does not include:

(a) Hemp which is grown or cultivated pursuant to the provisions of Nevada Revised Statutes Chapter 557 or any commodity or product made using such hemp; or

(b) The mature stems of the plant, fiber produced from the stems, oil or cake from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture or preparation of the mature stems (except the resin extracted therefrom), fiber, oil or cake, or the sterilized seed of the plant which is incapable of germination; or

(c) Concentrated cannabis, which means the extracted or separated resin, whether crude or purified, containing THC or CBD from marijuana.

"CBD" means cannabidiol.

"THC" means:

(1) Delta-9-tetrahydrocannabinol;

(2) Delta-8-tetrahydrocannabinol; and

(3) The optical isomer of such substances.

NRS 453.321; NRS 453.334; NRS 453.046; NRS 453.096; NRS 453.033; NRS 453.139; NRS 557.160; NRS 453.039; NRS 453.042; NRS 129.010; *Rowe v. State*, 91 Nev. 772, 773, 542 P.2d 1059 (1975); *Muller v. Sheriff*, 93 Nev. 686, 686-87, 572 P.2d 1245, 1245 (1977); NAC 453.510; NAC 453.520; NAC 453.530; NAC 453.540; NAC 453.550.

18.08: CONTROLLED SUBSTANCE - LOCATION ENHANCEMENT(S)

If you find the Defendant committed the offense of [insert charge violation of NRS 453.321 or 453.322, e.g., Sale of a Controlled Substance], then you must further determine whether the offense occurred [include as appropriate:

(1) On the grounds of a public or private school, a playground, public park, public swimming pool, recreational center for youths or a video arcade;
(2) On a campus of the Nevada System of Higher Education;
(3) Within 1,000 feet of the perimeter of such a school ground or campus, playground, park, pool, recreational center or arcade; or
(4) Within 1,000 feet of a school bus stop from 1 hour before school begins until 1 hour after school ends during scheduled school days.]

The burden is on the State to prove beyond a reasonable doubt that the offense occurred [include as appropriate, e.g., "on the grounds of a public school"].

["Playground" means any outdoor facility, intended for recreation, open to the public and in any portion thereof containing one or more apparatus intended for the recreation of children, such as a sliding board, teeterboard, sandbox or swing set.]

["Recreational center for youths" means a recreational facility or gymnasium which regularly provides athletic, civic or cultural activities for persons under 18 years of age.]

["School bus" means every motor vehicle owned by or under the control of a public or governmental agency or a private school and regularly operated for the transportation of children to or from school or a school activity or privately owned and regularly operated for compensation for the transportation of children to or from school or school activity.]

["School bus" does not include a passenger car operated under a contract to transport children to and from school, a common carrier or commercial vehicle under the jurisdiction of the Surface Transportation Board of the Nevada Transportation Authority when such a vehicle is operated in the regular conduct of its business in interstate or intrastate commerce within the State of Nevada.]

["Video arcade" means a facility legally accessible to persons under 18 years of age, intended primarily for the use of pinball and video game machines for amusement and which contains a minimum of 10 such machines.]

NRS 453. 3345; NRS 483.160.

18.09: MARIJUANA DELIVERY – ADULT EXEMPTION

A Defendant who is 21 years of age or older is exempt from prosecution for the delivery of one ounce or less of usable cannabis or one-eighth of an ounce or less of concentrated cannabis without renumeration to a person who is 21 years of age or older, so long as such delivery is not advertised or promoted to the public, provided that the Defendant:

(1) Is not employed by any agency or political subdivision of this State in a position which requires the person to be certified by the Peace Officers' Standards and Training Commission;

(2) Engages in the adult use of cannabis;

(3) Does not, at any one time, possess, deliver or produce more than:

(a) one ounce of usable cannabis;

(b) one-eighth of an ounce of concentrated cannabis;

(c) six cannabis plants, irrespective of whether the cannabis plants are mature or immature; and

(d) a maximum allowable quantity of adult-use cannabis products as established by regulation of the Board; and

(4) Cultivates, grows or produces not more than six cannabis plants:

(a) within an enclosed area that is not exposed to public view that is equipped with locks or other security devices which allow access only by an authorized person; and

(b) at a residence or upon the grounds of a residence in which not more than 12 cannabis plants are cultivated, grown, or produced.

[A Defendant who is 21 years or older is not exempt from state prosecution for knowingly delivering cannabis to another person who is not 21 years of age or older unless:

(1) The recipient holds a valid registry identification card or letter of approval issued to the person by the Board or its designee pursuant to NRS 678C.230 or 678C.270.

(2) The Defendant demanded and was shown bona fide documentary evidence of the age and identification of the recipient issued by a federal, state, county or municipal government, or subdivision or agency thereof.]

"Cannabis" means: marijuana.

"Adult use of cannabis" means: the possession, delivery, production or use of cannabis and/or cannabis paraphernalia, or any combination of such acts, by a person 21 years of age or older.

"Paraphernalia" means: accessories, devices and other equipment that is necessary or useful for a person to engage in the medical use of cannabis or the adult use of cannabis.

"Concentrated cannabis" means: the extracted or separated resin, whether crude or purified, containing THC or CBD from marijuana.

"Usable cannabis" means: (1) The dried leaves or flowers of a plant of the genus *Cannabis,* and any mixture or preparation thereof, that are appropriate for the medical use of cannabis or the adult use of cannabis; and (2) The seeds of a plant of the genus *Cannabis.* Usable cannabis does not include the stalks and roots of the plant.

"Registry identification card" means a document issued by the Division of Public and Behavioral Health of the Department of Health and Human Services or its designee that identifies: (1) A person who is exempt from state prosecution for engaging in the medical use of cannabis; or (2) The designated primary caregiver, if any, of a person described in subsection (1).

"Letter of approval" means a document issued by the Division to an applicant who is under 10 years of age pursuant to NRS 678C.230 which provides that the applicant is exempt from state prosecution for engaging in the medical use of cannabis.

"Designated primary caregiver" means a person who:

(a) Is 18 years of age or older;

(b) Has significant responsibility for managing the well-being of a person diagnosed with a chronic or debilitating medical condition; and

(c) Is designated as such in the manner required pursuant to NRS 678C.270.

The term does not include the attending provider of health care of a person diagnosed with a chronic or debilitating medical condition.

NRS 678D.200; NRS 678D.300; NRS 678A.075; NRS 678A.085; NRS 678D.010; NRS 453.042; NRS 678D.040; NRS 678C.100; NRS 678C.080; NRS 678C.040; NRS 678C.050; NRS 678C.070.

18.10: CONTROLLED SUBSTANCE - PROCURING AGENT DEFENSE

A procuring agent cannot be guilty of Selling a Controlled Substance [or Possession of a Controlled Substance for the Purpose of Sale]. A procuring agent is a person who acts, not on his or her own behalf or for a seller or supplier, but solely for the buyer or recipient in a controlled substance transaction initiated by a third party, and who acts without any profit motive or arrangement to receive benefit. A procuring agent, in other words, is merely a conduit for the buyer or recipient in the transaction, and in no way benefits from the transaction.

In order to prove the Defendant guilty of Sale of a Controlled Substance [or Possession of a Controlled Substance for the Purpose of Sale], the burden is on the State to prove beyond a reasonable doubt that the Defendant is not a procuring agent.

[The procuring agent defense does not apply if a Defendant receives or arranged to receive part of the controlled substance involved in the transaction for his or her own use or any amount of money in consideration for conducting the transaction for the buyer.]

[The procuring agent defense does not apply if the Defendant already had possession of the controlled substance at the time the buyer requested its delivery.]

[The procuring agent defense does not apply if the Defendant was acting on behalf of the seller or supplier of the controlled substance [or if the Defendant obtains the controlled substance from a person with whom the Defendant is associated in selling drugs.]]

[The procuring agent defense does not apply to the crimes of Possession of a Controlled Substance or Trafficking of a Controlled Substance based on a Possession theory, and the Defendant may be found guilty of those offenses even if he or she was acting as a procuring agent. The elements of those offenses are located elsewhere in these instructions.]

Adam v. State, 127 Nev. 601, 604-08, 261 P.3d 1063, 1064-67 (2011); *Colon v. State,* 113 Nev. 484, 490-91, 938 P.2d 714, 718 (1997); *Sheriff, Clark Cty. V. Roylance,* 110 Nev. 334, 338, 871 P.2d 359, 361-62 (1994), *overruled on other grounds by Adam v. State*, 127 Nev. 601, 261 P.3d 1063 (2011);*Love v. State,* 111 Nev. 545, 548-52, 893 P.2d 376, 378-80 (1995 *overruled on other grounds by Adam v. State*, 127 Nev. 601, 261 P.3d 1063 (2011)); *Dent v. State,* 112 Nev. 1365, 1367-69, 929 P.2d 891, 892-93 (1996); *Dixon v. State,* 94 Nev. 662, 664, 584 P.2d 693, 694-95 (1978).

18.11: TRAFFICKING IN MARIJUANA

The crime of TRAFFICKING IN MARIJUANA consists of the following elements:

(1) The Defendant knowingly or intentionally;
(2) (a) Sells, manufactures, delivers or brings into this State; or
(b) Possesses, actually or constructively;
(3) [50 pounds or more, but less than 1,000 pounds;]
[1,000 pounds or more, but less than 5,000 pounds;]
[5,000 pounds or more;]
(4) Of marijuana.

To knowingly or intentionally traffic in marijuana, the Defendant must have had knowledge of the narcotic character of the marijuana at the time he or she [insert illegal act(s) alleged, e.g., "possessed the marijuana"]. Knowledge may be shown by direct or circumstantial evidence and reasonably drawn inferences.

"Marijuana" means all parts of any plant of the genus *Cannabis*, whether growing or not.

"Marijuana" does not include:
(a) Hemp which is grown or cultivated pursuant to the provisions of Nevada Revised Statutes Chapter 557 or any commodity or product made using hemp; or
(b) Concentrated cannabis, which means the extracted or separated resin, whether cure or purified, containing THC or CBD from marijuana.

"CBD" means cannabidiol.

"THC" means:

(1) Delta-9-tetrahydrocannabinol;

(2) Delta-8-tetrahydrocannabidol;

(3) The optical isomers of such substances.

"Hemp" means any plant of the genus *Cannabis Sativa L.* and any part of such a plant, including, without limitation, the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts and salts of isomers, whether growing or not, with a THC concentration that does not exceed the maximum THC concentration established by federal law for hemp.

The weight of marijuana [or concentrated cannabis] is its weight when seized or as soon as practicable thereafter. [If marijuana and concentrated cannabis are seized together, each must be weighed separately and treated as separate substances.]

[The weight of marijuana as represented by the person selling or delivering it is determinative if the weight as represented is greater than the actual weight of the marijuana.]

The State is not required to prove that the Defendant was aware of the amount of illegal marijuana he or she possessed, or that the Defendant was aware that the amount of illegal marijuana he or she possessed might subject him or her to a charge of trafficking.

NRS 453.3383; NRS 453.339; NRS 453.3393; NRS 557.160; *but see* marijuana and cannabis establishment exemptions at NRS 453A.200(5); NRS 678C.200(5); *see also Andrews v. State,* 134 Nev. 95, 99-101, 412 P.3d 37, 40-42 (2018); *State v. Second Judicial District Court,* 108 Nev. 1030, 1031-33, 842 P.2d 733, 734-35 (1992); *Sheriff v. Lang,* 104 Nev. 539, 543, 763 P.2d 56, 59 (1988); *Adam v. State,* 127 Nev. 601, 606-07, 261 P.3d 1063, 1066 (2011); NAC 453.510; NAC 453.520; NAC 453.530; NAC 453.540; NAC 453.550.

18.12: TRAFFICKING IN CONCENTRATED CANNABIS

The crime of TRAFFICKING IN CONCENTRATED CANNABIS consists of the following elements:

(1) The Defendant knowingly or intentionally;
(2) (a) Sells, manufactures, delivers or brings into this State; or
(b) Possesses, actually or constructively;
(3) [1 pound or more, but less than 20 pounds;]
[20 pounds or more, but less than 100 pounds;]
[100 pounds or more;]
(4) Of concentrated cannabis.

To knowingly or intentionally traffic in concentrated cannabis, the Defendant must have had knowledge of the narcotic character of the concentrated cannabis at the time he or she [insert illegal acts(s) alleged, e.g., "possessed the concentrated cannabis"]. Knowledge may be shown by direct or circumstantial evidence and reasonably drawn inferences.

"Concentrated cannabis" means the extracted or separated resin, whether crude or purified, containing THC or CBD from marijuana.

"CBD" means cannabidiol.

"THC" means:
(1) Delta-9-tetrahydrocannabinol;
(2) Delta-8-tetrahydrocannabidol;
(3) The optical isomers of such substances.

"Marijuana" means all parts of any plant of the genus *Cannabis*, whether growing or not.

"Marijuana" does not include:

(a) Hemp which is grown or cultivated pursuant to the provisions of Nevada Revised Statutes Chapter 557 or any commodity or product made using such hemp; or

(b) Concentrated cannabis.

"Hemp" means any plant of the genus *Cannabis Sativa L.* and any part of such a plant, including, without limitation, the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts and salts of isomers, whether growing or not, with a THC concentration that does not exceed the maximum THC concentration established by federal law for hemp.

The weight of concentrated cannabis [or marijuana] is its weight when seized or as soon as practicable thereafter. [If concentrated cannabis and marijuana are seized together, each must be weighed separately and treated as separate substances.]

[The weight of concentrated cannabis as represented by the person selling or delivering it is determinative if the weight as represented is greater than the actual weight of the concentrated cannabis.]

The State is not required to prove that the Defendant was aware of the amount of illegal concentrated cannabis he or she possessed, or that the defendant was aware that the amount of illegal concentrated cannabis he or she possessed might subject him or her to a charge of trafficking.

NRS 453.3383; NRS 453.339; NRS 453.3393; NRS 557.160; *but see* marijuana and cannabis establishment exemptions at NRS 453A.200(5); NRS 678C.200(5); *see also Andrews v. State,* 134 Nev. 95, 99-101, 412 P.3d 37, 40-42 (2018); *State v. Second Judicial District Court,* 108 Nev. 1030, 1031-33, 842 P.2d 733, 734-35 (1992); *Sheriff v. Lang,* 104 Nev. 539, 543, 763 P.2d 56, 59 (1988); *Adam v. State,* 127 Nev. 601, 606-07, 261 P.3d 1063, 1066 (2011); NAC 453.510; NAC 453.520; NAC 453.530; NAC 453.540; NAC 453.550.

18.13: TRAFFICKING IN FLUNITRAZEPAM, GAMMA-HYDROXYBUTYRATE, AND SCHEDULE I OR II CONTROLLED SUBSTANCES EXCEPT MARIJUANA

The crime of TRAFFICKING IN [FLUNITRAZEPAM, GAMMA-HYDROXYBUTYRATE, A SCHEDULE I OR II CONTROLLED SUBSTANCE EXCEPT MARIJUANA] consists of the following elements:

(1) The Defendant knowingly or intentionally;

(2) (a) Sells, manufactures, delivers or brings into this State; or

(b) Possesses, actually or constructively;

(3) [100 grams or more, but less than 400 grams;]
[400 grams or more]

(4) Of [a Schedule I or II controlled substance [except marijuana] or any mixture which contains a Schedule I or II controlled substance] [flunitrazepam, gamma-hydroxybutyrate, or any substance for which flunitrazepam or gamma-hydroxybutyrate is an immediate precursor].

[Insert name of controlled substance(s) alleged in Information or Indictment, e.g.: "Cocaine"] [or any material, compound, mixture or preparation which contains any quantity of [insert name of alleged controlled substance(s), e.g.: "Cocaine"]] is a Schedule [I or II] controlled substance.

["Compound" means a composite product formed or made by combining two or more different ingredients.]

To knowingly or intentionally traffic in [Flunitrazepam, Gamma-hydroxybutyrate, a Schedule I or II Controlled Substance], the Defendant must have had knowledge of the narcotic character of the controlled substance at the time he or she [insert illegal act(s) alleged, e.g., "possessed the controlled substance"]. Knowledge may be shown by direct or circumstantial evidence and reasonably drawn inferences.

"Marijuana" means:

(a) all parts of any plant of the genus *Cannabis,* whether growing or not;

(b) The seeds thereof;

(c) The resin extracted from any part of the plant, but not including concentrated cannabis; and

(d) Every compound, manufacture, salt, derivative, mixture or preparation of the plant, its seeds or resin, but not including concentrated cannabis.

"Marijuana" does not include:

(a) Hemp which is grown or cultivated pursuant to the provisions of Nevada Revised Statutes Chapter 557 or any commodity or product made using such hemp; or

(b) The mature stems of the plant, fiber produced from the stems, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture or preparation of the mature stems (except the resin extracted therefrom), fiber, oil or cake, or the sterilized seed of the plant which is incapable of germination; or

(c) Concentrate cannabis, which means the extracted or separated resin, whether crude or purified, containing THC or CBD from marijuana.

"CBD" means cannabidiol.

"THC" means:

(1) Delta-9-tetrahydrocannabinol;

(2) Delta-8-tetrahydrocannabidol;

(3) The optical isomers of such substances.]

["100 grams or more, but less than 400 grams"] ["400 grams or more"] refers to the aggregate weight of the entire mixture rather than the weight of the controlled substance that is contained in the mixture.

[The weight of the controlled substance as represented by the person selling or delivering it is determinative if the weight as represented is greater than the actual weight of the controlled substance.]

The State is not required to prove that the Defendant was aware of the amount of illegal drugs he or she possessed, or that the Defendant was aware that the amount of illegal drugs he or she possessed might subject him or her to a charge of trafficking.

[A Defendant's simultaneous possession of different Schedule I or II controlled substances [or separate mixtures, each of which contains a different Schedule I or II controlled substance] constitutes a separate offense for each different Schedule I or II controlled substance [or each different mixture] possessed.]

[The weight of each different Schedule I or II controlled substance [or each mixture which contains a different Schedule I or II controlled substance] must be considered separately when determining whether each substance [or mixture] weighs [100 grams or more, but less than 400 grams] [400 grams or more].

NRS 453.3383; NRS 453.3385; NRS 453.039; NRS 453.096; NRS 453.336(6)(b); NRS 453.042; NRS 453.033; NRS 453.139; NRS 557.160; *Andrews v. State,* 134 Nev. 95, 99-101, 412 P.3d 37, 40-42 (2018); *State v. Second Judicial District Court,* 108 Nev. 1030, 1031-33, 842 P.2d 733, 734-35 (1992); *Sheriff v. Lang,* 104 Nev. 539, 543, 763 P.2d 56, 59 (1988); *Adam v. State*, 127 Nev. 601, 606-07, 261 P.2d 1063, 1066 (2011); NAC 453.510; NAC 453.520; NAC 453.530; NAC 453.540; NAC 453.550.

18.14: CONTROLLED SUBSTANCE - PROOF OF AMOUNT FOR CONVICTION

[For offenses which do not require proof of a particular quantity of controlled substance.]

The amount of a controlled substance needed to sustain a conviction of a person for [insert charged offense, e.g., "Sale of a Schedule I Controlled Substance"] is that amount necessary for identification as a controlled substance by a witness qualified to make such identification.

[For controlled substance and trafficking offenses which require proof of a particular quantity of controlled substance or mixture containing a controlled substance]

The amount of controlled substance present in a substance or mixture that is needed to identify the substance or mixture as "a Schedule [I, II, III, IV, or V] controlled substance" or "any mixture which contains a Schedule [I, II, III, IV, or V] controlled substance" is that amount necessary for identification as a controlled substance by a witness qualified to make such identification.

NRS 453.570.

18.15: MAINTAINING A PLACE FOR CONTROLLED SUBSTANCE USE OR SALE

The crime of OPENING OR MAINTAINING A PLACE FOR UNLAWFUL SALE, GIFT, OR USE OF A CONTROLLED SUBSTANCE consists of the following elements:

(1) The Defendant knowingly opens or maintains;
(2) Any place;
(3) For the purpose of unlawfully selling, giving away, or using any controlled substance.

[Insert name of controlled substance(s) at issue, e.g.: "Cocaine and Heroin"] [or any material, compound, mixture or preparation which contains any quantity of [insert name of controlled substance(s) at issue, e.g.: "Cocaine and Heroin"]] is a controlled substance.

[The crime of OPENING AND MAINTAINING A PLACE FOR UNLAWFUL SALE, GIFT, OR USE OF A CONTROLLED SUBSTANCE requires more than merely furnishing or making accessible a place for isolated instances of drug use or isolated instances of drug sales.]

["Compound" means a composite product formed or made by combining two or more different ingredients.]

NRS 453.316; NRS 453.039; *Shrader v. State*, 101 Nev. 499, 505-06, 706 P.2d 834, 838-39 (1985), *overruled on other grounds by Foster v. State*, 116 Nev. 1088, 13 P.3d 61 (2000), *and overruled on other grounds by Miller v. State*, 121 Nev. 92, 110 P.3d 53 (2005); NAC 453.510; NAC 453.520; NAC 453.530; NAC 453.540; NAC 453.550.

18.15: MANUFACTURING OR COMPOUNDING A CONTROLLED SUBSTANCE OTHER THAN MARIJUANA ALLEGED PURSUANT TO NRS 453.322(a)

The crime of MANUFACTURING OR COMPOUNDING A CONTROLLED SUBSTANCE, OTHER THAN MARIJUANA, consists of the following elements:

(1) The Defendant knowingly or intentionally;
(2) Manufactures or compounds a controlled substance other than marijuana.

"Manufacture" means the production, preparation, propagation, compounding, conversion or processing of a substance, either directly or indirectly by extraction from substances of natural origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, and includes any packaging or repackaging of the substance or labeling or relabeling of its container.

["Manufacture" does not include the preparation, compounding, packaging or labeling of a substance by a pharmacist, physician, physician assistant licensed pursuant to Chapter 630 or 633 of NRS, dentist, podiatric physician, advanced practice registered nurse or veterinarian:

(a) As an incident to the administering or dispensing of a substance in the course of his or her professional practice; or
(b) By an authorized agent under his or her supervision, for the purpose of, or as an incident to, research, teaching or chemical analysis and not for sale.]

"Compounding" means to form or make up a composite product by combining two or more different ingredients.

"Production" includes the manufacturing of a controlled substance and the planting, cultivation, growing or harvesting of a plant from which a controlled substance is derived.

[Insert name of controlled substance(s) at issue, e.g.: "Cocaine and Heroin"] [or any material, compound, mixture or preparation] which contains any quantity of [insert name of controlled substance(s) at issue, e.g.: Cocaine and Heroin"] is a controlled substance.

["Compound" means a composite product formed or made by combining two or more different ingredients.]

18.16: POSSESSION OF CERTAIN CHEMICAL(S) WITH INTENT TO MANUFACTURE OR COMPOUND A CONTROLLED SUBSTANCE OTHER THAN MARIJUANA ALLEGED PURSUANT TO NRS 453.322(b)

The crime of POSSESSION OF CERTAIN CHEMICAL(S) WITH INTENT TO MANUFACTURE OR COMPOUND A CONTROLLED SUBSTANCE OTHER THAN MARIJUANA consists of the following elements:

(1) The Defendant possessed either:

(a) the following chemical(s): [Include as alleged]:

[Acetic anhydride.
Acetone.
N-Acetylanthranilic acid, its esters and its salts.
Anthranilic acid, its esters and its salts.
Benzaldehyde, its salts, isomers and salts of isomers.
Benzyl chloride.
Benzyl cyanide.
1, 4-Butanediol.
2-Butanone (or methyl ethyl ketone or MEK).
Ephedrine, its salts, isomers and salts of isomers.
Ergonovine and its salts.
Ergotamine and its salts.
Ethylamine, its salts, isomers and salts of isomers.
Ethyl ether.
Gamma butyrolactone.
Hydriodic acid, its salts, isomers and salts of isomers.
Hydrochloric gas.
Iodine.
Isosafrole, its salts, isomers and salts of isomers.

Lithium metal.

Methylamine, its salts, isomers and salts of isomers.

3, 4-Mehtylenedioxy-phenyl-2-propanone.

N-Methylephedrine, its salts, isomers and salts of isomers.

Methyl isobutyl ketone (MIBK).

N-Methylpseudoephedrine, its salts, isomers and salts of isomers.

Nitroethane, its salts, isomers and salts of isomers.

Norpseuoephedrine, its salts, isomers and salts of isomers.

Phenylacetic acid, its esters and its salts.

Phenylpropanolamine, its salts, isomers and salts of isomers.

Piperidine and its salts.

Piperonal, its salts, isomers and salts of isomers.

Potassium permanganate.

Propionic anhydride, its salts, isomers and salts of isomers.

Pseudoephedrine, its salts, isomers and salts of isomers.

Red phosphorous.

Safrole, its salts, isomers and salts of isomers.

Sodium metal.

Sulfuric acid.

Toluene]; or

(b) Any chemical which is proven by expert testimony to be commonly used in manufacturing or compounding a controlled substance other than marijuana;

(2) With the intent of the chemical[s] to be used to manufacture or compound a controlled substance other than marijuana.

"Manufacture" means the production, preparation, propagation, compounding, conversion or processing of a substance, either directly or indirectly by extraction from substances of natural origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, and includes any packaging or repackaging of the substance or labeling or relabeling of its container.

["Manufacture" does not include the preparation, compounding, packaging, or labeling of a substance by a pharmacist, physician, physician assistant licensed pursuant to Chapter 630 or 633 of NRS, dentist, podiatric physician, advanced practice registered nurse or veterinarian:

(a) As an incident to the administering or dispensing of a substance in the course of his or her professional practice; or

(b) By an authorized agent under his or her supervision, for the purpose of, or as in incident to, research, teaching or chemical analysis and not for sale.]

"Compounding" means to form or make up a composite product by combining two or more different ingredients.

"Production" includes the manufacturing of a controlled substance and the planting, cultivating, growing or harvesting of a plant from which a controlled substance is derived.

[Insert name of controlled substance(s) at issue, e.g.: "Cocaine and Heroin"] [or any material, compound, mixture or preparation which contains any quantity of [insert name of controlled substance(s) at issue, e.g.: "Cocaine and Heroin"]] is a controlled substance.

["Compound" means a composite product formed or made by combining two or more different ingredients.]

[A person who, without the intent to commit an unlawful act, possesses any chemical at a laboratory that is licensed to store the chemical cannot be guilty of the crime of Possession of Certain Chemical(s) with Intent to Manufacture or Compound a Controlled Substance Other Than Marijuana.]

18.17: SALE, EXCHANGE, BARTER, SUPPLYING, PRESCRIBING, DISPENSING OR GIVING AWAY OF CERTAIN CHEMICAL(S) WITH INTENT TO MANUFACTURE OR COMPOUND A CONTROLLED SUBSTANCE OTHER THAN MARIJUANA ALLEGED PURSUANT TO NRS 453.322(b)

The crime of SALE, EXCHANGE, BARTER, SUPPLYING, PRESCRIBING, DISPENSING OR GIVING AWAY OF CERTAIN CHEMICAL(S) WITH INTENT TO MANUFACTURE OR COMPOUND A CONTROLLED SUBSTANCE OTHER THAN MARIJUANA consists of the following elements:

(1) The Defendant sold, exchanged, bartered, supplied, prescribed, dispensed or gave away;

(a) The following chemical(s): [Include as alleged]:

[Acetic anhydride.
Acetone.
N-Acetylanthranilic acid, its esters and its salts.
Anthranilic acid, its esters and its salts.
Benzaldehyde, its salts, isomers and salts of isomers.
Benzyl chloride.
Benzyl cyanide.
1, 4-Butanediol.
2-Butanone (or methyl ethyl ketone or MEK).
Ephedrine, its salts, isomers and salts of isomers.
Ergonovine and its salts.
Ergotamine and its salts.
Ethylamine, its salts, isomers and salts of isomers.
Ethyl ether.
Gamma butyrolactone.
Hydriodic acid, its salts, isomers and salts of isomers.

Hydrochloric gas.
Iodine.
Isosafrole, its salts, isomers and salts of isomers.
Lithium metal.
Methylamine, its salts, isomers and salts of isomers.
3, 4-Mehtylenedioxy-phenyl-2-propanone.
N-Methylephedrine, its salts, isomers and salts of isomers.
Methyl isobutyl ketone (MIBK).
N-Methylpseudoephedrine, its salts, isomers and salts of isomers.
Nitroethane, its salts, isomers and salts of isomers.
Norpseuoephedrine, its salts, isomers and salts of isomers.
Phenylacetic acid, its esters and its salts.
Phenylpropanolamine, its salts, isomers and salts of isomers.
Piperidine and its salts.
Piperonal, its salts, isomers and salts of isomers.
Potassium permanganate.
Propionic anhydride, its salts, isomers and salts of isomers.
Pseudoephedrine, its salts, isomers and salts of isomers.
Red phosphorous.
Safrole, its salts, isomers and salts of isomers.
Sodium metal.
Sulfuric acid.
Toluene]; or

b. Any chemical which is proven by expert testimony to be commonly used in manufacturing or compounding a controlled substance other than marijuana;

(3) with the intent that the chemical[s] be used to manufacture or compound a controlled substance other than marijuana.

"Manufacture" means the production, preparation, propagation, compounding, conversion or processing of a substance, either directly or indirectly by extraction from substances of natural origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, and includes any packaging or repackaging of the substance or labeling or relabeling of its container.

["Manufacture" does not include the preparation, compounding, packaging, or labeling of a substance by a pharmacist, physician, physician assistant licensed pursuant to Chapter 630 or 633 of NRS, dentist, podiatric physician, advanced practice registered nurse or veterinarian:

(a) As an incident to the administering or dispensing of a substance in the course of his or her professional practice; or

(b) By an authorized agent under his or her supervision, for the purpose of, or as in incident to, research, teaching or chemical analysis and not for sale.]

"Compounding" means to form or make up a composite product by combining two or more different ingredients.

"Production" includes the manufacturing of a controlled substance and the planting, cultivating, growing or harvesting of a plant from which a controlled substance is derived.

[Insert name of controlled substance(s) at issue, e.g.: "Cocaine and Heroin"] [or any material, compound, mixture or preparation which contains any quantity of [insert name of controlled substance(s) at issue, e.g.: "Cocaine and Heroin"]] is a controlled substance.

["Compound" means a composite product formed or made by combining two or more different ingredients.]

A person who, without the intent to commit an unlawful act, possesses any chemical at a laboratory that is licensed to store the chemical cannot be guilty of the crime of Possession of Certain Chemical(s) with Intent to Manufacture or Compound a Controlled Substance Other Than Marijuana.

NRS 453.322; NRS 453.039; NRS 453.091; NRS 453.131; NRS 453.096; NRS 453.033; NRS 453.139; NRS 557.160; NAC 453.510; NAC 453.520; NAC 453.530; NAC 453.540; NAC 453.550.

18.18 ALLOWING A CHILD TO BE PRESENT DURING THE USE OR SALE OF A CONTROLLED SUBSTANCE

If you find the Defendant committed the offense of [insert charged violation of NRS 453.011 to 453.552 involving (1) use of a controlled substance other than marijuana; or (2) sale, exchange, barter, supplying, prescribing, dispensing, giving away, or administering a controlled substance other than marijuana; e.g., Sale of a Controlled Substance], or conspired with another person to commit that offense, or aided or abetted another person to commit that offense, then you must further determine whether:

(1) The Defendant intentionally allowed;

(2) A child;

(3) To be present in the conveyance or upon the premises wherein [the controlled substance was being used; the controlled substance was being sold, exchanged, bartered, supplied, prescribed, dispensed, given away or administered] when [the controlled substance was being used; the controlled substance was being sold, exchanged, bartered, supplied, prescribed, dispensed, given away or administered].

[If you find that a child was present [include as appropriate, e.g., "upon the premises wherein the controlled substance was being sold"], you must also determine whether the child's presence during the [insert charged violation of NRS 453.011 to 453.552, e.g., Sale of a Controlled Substance] proximately caused substantial bodily harm to the child [or proximately caused the death of the child]].

The burden is on the State to prove beyond reasonable doubt that a child was present [include as appropriate, e.g., "upon the premises wherein the controlled substance was being used when the controlled substance was being used"].

[The burden is also on the State to prove beyond a reasonable doubt that the child's presence during the [insert charged violation of NRS 453.011 to 453.552, e.g., Sale of a Controlled Substance] proximately caused substantial bodily harm to the child [or proximately caused the death of a child].]

"Child" means a person who is less than 18 years of age.

["Conveyance" means any vessel, boat, vehicle, airplane, glider, house trailer, travel trailer, motor home or railroad car, or other means of conveyance.]

["Premises" means any temporary or permanent structure, including, without limitation, any building, house, room, apartment, tenement, shed, carport, garage, shop, warehouse, store, mill, barn, table, outhouse or tent, whether located aboveground or underground and whether inhabited or not.]

18.19: ALLOWING A CHILD TO BE PRESENT WHERE A CONTROLLED SUBSTANCE IS BEING OR HAS BEEN MANUFACTURED

If you find the Defendant committed the offense of [insert charged manufacturing or compounding offense involving a controlled substance other than marijuana in violation of NRS 453.011 to 453.552, e.g., Manufacturing or Compounding a Controlled Substance], or conspired with another person to commit that offense, or aided or abetted another person to commit that offense, then you must further determine whether:

(1) The Defendant intentionally allowed;

(2) A child;

(3) To be present in the conveyance or upon the premises wherein the controlled substance [other than marijuana] was being manufactured or compounded or had been manufactured or compounded.

[If you find that a child was present [include as appropriate, e.g., "upon the premises wherein the controlled substance was being manufactured or compounded"], you must also determine whether the child's presence during the [insert charged violation of NRS 453.011 to 453.552, e.g., Manufacturing or Compounding a Controlled Substance] proximately caused substantial bodily harm to the child [or proximately caused the death of the child]].

The burden is on the State to prove beyond a reasonable doubt that a child was present [include as appropriate, e.g., "upon the premises wherein the controlled substance had been manufactured or compounded"].

[The burden is also on the State to prove beyond a reasonable doubt that the child's presence during the [insert charged violation of NRS 453.011 to 453.552, e.g., Manufacturing or Compounding a Controlled Substance] proximately caused substantial bodily harm to the child [or proximately caused the death of the child].]

"Child" means a person who is less than 18 years of age.

["Conveyance" means any vessel, boat, vehicle, airplane, glider, house trailer, travel trailer, motor home or railroad car, or other means of conveyance.]

["Premises" means any temporary or permanent structure, including, without limitation, any building, house, room, apartment, tenement, shed, carport, garage, shop, warehouse, store, mill, barn, table, outhouse or tent, whether located aboveground or underground and whether inhabited or not.]

NRS 453.3325.

19.00: DRIVING UNDER THE INFLUENCE OF ALCOHOL

The crime of DRIVING UNDER THE INFLUENCE OF ALCOHOL consists of the following elements:

(1) The Defendant willfully;
  (a) Drives a vehicle; or
  (b) Is in actual physical control of a vehicle;
(2) On a highway or on premises to which the public has access;
(3) [Include as alleged or applicable:]
  (a) While he or she is under the influence of intoxicating liquor; or
  (b) Having a concentration of alcohol of 0.08 or more in his or her blood or breath; or
  (c) Having been found by measurement within 2 hours after driving or being in actual physical control of a vehicle to have a concentration of alcohol of 0.08 or more in his or her blood or breath.

The requirement of willfulness applies only to the Defendant's driving or actual physical control of the vehicle. In other words, the State must prove that the Defendant willfully drove or was in actual physical control of a vehicle. The State is not required, however, to prove that the Defendant willfully became intoxicated or had knowledge that he or she was intoxicated.

"Willfully" is defined elsewhere in these instructions.

[It is not a defense to the charge of DRIVING UNDER THE INFLUENCE that the Defendant lacked knowledge of his or her intoxication, or that the Defendant had a mistaken belief about his or her blood alcohol level.]

NRS 484C.110; *Whisler v. State*, 121 Nev. 401, 408, 116 P.3d 59,64 (2005); *Slinkard v. State*, 106 Nev. 393, 395-96, 793 P.2d 1330, 1331-32 (1990); "Willfully" is defined in Section 28 herein.

19.01: DRIVING UNDER THE INFLUENCE DEFINITIONS

[Include as appropriate]

"Vehicle" means every device in, upon or by which any person or property is or may be transported or drawn upon a highway, except: [include as appropriate]

(1) [Devices moved by human power or used exclusively upon stationary rails;

(2) Electric bicycles;

(3) Electric personal assistive mobility devices; and

(4) An electric scooter.]

["Electric personal assistive mobility device" means a self-balancing, two non-tandem wheeled device, designed to transport only one person, with an electric propulsion system that limits the maximum speed of the device to 15 miles per hour or less.]

["Electric scooter" means a vehicle:

(1) With handlebars and an electric motor that is designed to be ridden on in an upright or seated position or is propelled by its electric motor or by propulsion provided by the rider;

(2) That does not weigh more than 100 pounds without a rider; and

(3) That has a maximum speed of not more than 20 miles per hour when powered solely by its electric motor.]

[“Electric bicycle” means a device upon which a person may ride, having two or three wheels, or every such device generally recognized as a bicycle that has fully operable pedals and is propelled by a small electric engine which produces not more than 1 gross brake horsepower and which produces not more than 750 watts final output, and;

(1) Is designed to travel on not more than three wheels in contact with the ground but is not a tractor; and

(2) Powered solely by such a small electric engine, is capable of a maximum speed of not more than 20 miles per hour on a flat surface while carrying an operator who weighs 170 pounds. The term does not include moped or electric scooter.]

“Highway” means the entire width between the boundary lines of every way dedicated to a public authority when any part of the way is open to the use of the public for purpose of vehicular traffic, whether or not the public authority is maintaining the way.

“Public authority” means the Department of Transportation or the local authority having jurisdiction to enact laws or ordinances or adopt regulations relating to traffic over a highway.

“Premises to which the public has access” means property in private or public ownership onto which members of the public regularly enter, are reasonably likely to enter, or are invited or permitted to enter as invitees or licensees, whether or not access to the property by some members of the public is restricted or controlled by a person or a device. The term includes, but is not limited to:

(a) A parking deck, parking garage or other parking structure.

(b) A paved or unpaved parking lot or other paved or unpaved area where vehicles are parked or are reasonably likely to be parked.

(c) A way that provides access to or is appurtenant to:

(i) A place of business;

(ii) A governmental building;

(iii) An apartment building;

(iv) A mobile home park;

(v) A residential area or residential community which is gated or enclosed or the access to which is restricted or controlled by a person or device; or

(vi) Any other similar area, community, building or structure.

The term does not include:

(a) A private way on a farm.

(b) The driveway of an individual dwelling.

"Private way" or "driveway" means every way or place in private ownership and used for vehicular travel by the owner and those having express or implied permission from the owner, but not by other persons.

"Under the influence" means impaired to a degree that renders a person incapable of safely driving or exercising actual physical control of a vehicle.

"Concentration of alcohol of 0.08 or more in his or her blood or breath" means 0.08 grams or more of alcohol per 100 milliliters of blood of a person or per 210 liters of his or her breath.

NRS 484A.320; NRS 482.029; NRS 482.0287; NRS 482A.082; NRS 484A.185; NRS 484A.095; NRS 484C.105; NRS 484C.020; NRS 484A.190; NRS 484A.195.

19.02: PROXIMATE CAUSE OF SUBSTANTIAL BODILY HARM OR DEATH DEFINED

A proximate cause of substantial bodily harm or a death is a cause which, in natural and continuous sequence, produces the harm or death, and without which the harm or death would not have occurred.

There may be more than one proximate cause of substantial bodily harm or a death. When the conduct of two or more persons contributes to bringing about the harm or death, each person is a proximate cause of the harm or death.

A Defendant will not be relieved of criminal liability when his or her action was a proximate cause of substantial bodily harm or death, even if the negligent conduct of another person also contributed to the harm or death, and even if the injury inflicted by the Defendant was not the only cause of the harm or death.

The negligent conduct of another person will only relieve the Defendant of criminal liability if: (1) the other person's conduct occurred after the Defendant's criminal act or neglect of duty, and (2) the other person's conduct broke the chain of causation from the Defendant's act so that the conduct of the other person became the sole cause of the substantial bodily harm or death.

Negligent conduct is the failure to exercise that degree of care in a given situation which a reasonable person under similar circumstances would exercise.

Etcheverry v. State, 107 Nev. 782, 785, 821 P.2d 350, 351-52 (1991); *Williams v. State*, 118 Nev. 536, 550-51, 50 P.3d 1116, 1125-26 (2002); *Cornella v. Justice Court*, 132 Nev. 587, 594, 377 P.3d 97, 102 (2016); *Lay v. State*, 110 Nev. 1189, 1192-93, 886 P.2d 448, 450 (1994); *Bostic v. State*, 104 Nev. 367, 370, 760 P.2d 1241, 1243 (1988).

19.03: DRIVING UNDER THE INFLUENCE - DUTIES

The driver of a vehicle has a duty to [include as alleged or applicable, e.g.:

(1) Refrain from driving or operating a vehicle at a rate of speed greater than is reasonable or proper, having due regard for the traffic, surface and width of the highway, the weather and other highway conditions;

(2) Refrain from driving or operating a vehicle at such a rate of speed as to endanger the life, limb or property of any person;

(3) Refrain from driving or operating a vehicle at a rate of speed greater than that posted by a public authority for the particular portion of highway being traversed, and in any event to refrain from driving faster than 80 miles per hour;

(4) Use due care to decrease his or her speed, even if the speed of the vehicle to begin with is lower than the prescribed limits, [when approaching and crossing an intersection, when approaching and going around a curve, when approaching a hill crest, when travelling upon any narrow or winding highway, or when special hazards exist or may exist with respect to pedestrians or other traffic, or by reason of weather or other highway conditions,] as may be necessary to avoid colliding with any person, vehicle or other conveyance;

(5) Exercise due care to decrease his or her speed, even if the speed of the vehicle to begin with is lower than the prescribed limits, as may be necessary to avoid colliding with any person, vehicle or other conveyance entering a highway;

(6) Exercise due care to avoid collision with a pedestrian;

(7) Give an audible warning with the horn of a vehicle if appropriate and when necessary to avoid a collision with a pedestrian;

(8) Exercise proper caution upon observing a pedestrian:

(a) On or near a highway, street or road;
(b) At or near a bus stop or bench, shelter or transit stop for passengers of public mass transportation or in the act of boarding a bus or other public transportation vehicle; or
(c) In or near a school zone or a marked school crossing zone or a marked or unmarked crosswalk.

(9) [include as applicable any other duties contained in NRS Chapter 484, or elsewhere]]

A pedestrian has a duty to [include as alleged or applicable, e.g.:

(1) Yield the right-of-way to vehicles upon the highway when crossing the highway at any point other than within a marked crosswalk or within an unmarked crosswalk at an intersection;

(2) Yield the right-of-way to vehicles upon the highway when crossing the highway at a point where pedestrian tunnel or overhead pedestrian crossing has been provided;

(3) Cross adjacent intersections at which official traffic-control devices are in operation only within the marked crosswalk;

(4) Refrain from crossing an intersection diagonally unless authorized by official traffic-controlling devices.]

A person operating a bicycle, electric bicycle or electric scooter on a roadway has a duty to [include as alleged or applicable, e.g.:

(1) Ride as near to the right side of the roadway as practicable, exercising due care when passing a standing vehicle or one proceeding in the same direction, except:

(a) When traveling at a lawful rate of speed commensurate with the speed of any nearby traffic;

(b) When preparing to turn left; or

(c) When doing so would not be safe.

(2) Refrain from riding more than two abreast except on paths or parts of roadways set aside for the exclusive use of bicycles, electric bicycles and electric scooters;

(3) Refrain from carrying any package, bundle or article which prevents the driver from keeping at least one hand upon the handle bars;

(4) Refrain from attaching the same or himself or herself to any vehicle upon a roadway.]

NRS Chapter 484B, *et seq.*

19.04: DRIVING UNDER THE INFLUENCE - SUBSTANTIAL BODILY HARM OR DEATH

The crime of DRIVING UNDER THE INFLUENCE CAUSING SUBSTANTIAL BODILY HARM OR DEATH consists of the following elements:

(1) The Defendant willfully;

(a) Drives a vehicle; or

(b) Is in actual physical control of a vehicle;

(2) On a highway or on premises to which the public has access;

(3) [include as alleged or applicable:

(a) While he or she is under the influence of intoxicating liquor;

(b) Having a concentration of alcohol of 0.08 or more in his or her blood or breath;

(c) Having been found by measurement within 2 hours after driving or being in actual physical control of a vehicle to have concentration of alcohol of 0.08 or more in his or her blood or breath;

(d) While under the influence of a controlled substance;

(e) While under the combined influence of intoxicating liquor and a controlled substance;

(f) Having inhaled, ingested, applied or otherwise used any chemical, poison or organic solvent, or any compound or combination of any of these, to a degree which renders him or her incapable of safely driving or exercising actual physical control of a vehicle;

(g) With an amount of [insert name of prohibited substance(s) alleged, e.g., methamphetamine] in his or her blood or urine that is equal to or greater than [insert corresponding quantity from NRS 484C.110(3) and/or NRS 484C.110(4), e.g. 500 grams of methamphetamine per milliliter of urine and/or 100 nanograms of methamphetamine per milliliter of blood]];

(4) Does any act or neglects any duty imposed by law while driving or in actual physical control of the vehicle; and

(5) That act or neglect of duty proximately causes the death of, or substantial bodily harm to, another person.

The requirement of willfulness only applies to the Defendant's driving or actual physical control of the vehicle. In other words, the State must prove that the Defendant willfully drove or was in actual physical control of a vehicle. The State is not required, however, to prove that the Defendant willfully became intoxicated or had knowledge that he or she was intoxicated.

[It is not a defense to the charge of DRIVING UNDER THE INFLUENCE that the Defendant lacked knowledge of his or her intoxication, or that the Defendant had a mistaken belief about the amount or level of chemical, drug, or prohibited substance in his or her blood.]

"Willfully" is defined elsewhere in these instructions.

"Substantial Bodily Harm" is defined elsewhere in these instructions.

NRS 484C.110; *Whisler v. State*, 121 Nev. 401, 408, 116 P.3d 59, 64 (2005); *Slinkard v. State*, 106 Nev. 393, 395-96, 793 P.2d 1330, 1331-32 (1990); NAC 453.510; NAC 453.520; NAC 453.530; NAC 453.540; NAC 453.550; "Willfully" is defined in Section 28 herein; "Substantial Bodily Harm" is defined in Section 8 herein.

19.05: DRIVING UNDER THE INFLUENCE - CONTROLLED OR PROHIBITED SUBSTANCE

The crime of DRIVING UNDER THE INFLUENCE OF A CONTROLLED OR PROHIBITED SUBSTANCE consists of the following elements:

(1) The Defendant willfully;

(a) Drives a vehicle; or

(b) Is in actual physical control of a vehicle;

(2) On a highway or on premises to which the public has access;

(3) [Include as applicable or alleged:

(a) While he or she is under the influence of a controlled substance; or

(b) While he or she is under the combined influence of intoxicating liquor and a controlled substance;

(c) Having inhaled, ingested, applied or otherwise used any chemical, poison or organic solvent, or any compound or combination of any of these, to a degree which renders him or her incapable of safely driving or exercising actual physical control of a vehicle; or

(d) With an amount of [insert name of prohibited substance(s) alleged, e.g., methamphetamine] in his or her blood or urine that is equal to or greater than [insert corresponding quantity from NRS 484C.110(3) and/or NRS 484C.110(4), e.g., 500 nanograms of methamphetamine per milliliter of urine and/or 100 nanograms of methamphetamine per milliliter of blood]].

[Insert name of controlled substance(s) alleged in Information or Indictment, e.g.: "Cocaine"] is a controlled substance.

The requirement of willfulness only applies to the Defendant's driving or control of the vehicle. In other words, the State must prove that the Defendant willfully drove or was in actual physical control of a vehicle. The State is not required, however, to prove that the Defendant willfully became intoxicated or had knowledge that he or she was intoxicated.

[It is not a defense to the charge of DRIVING UNDER THE INFLUENCE that the Defendant lacked knowledge of his or her intoxication, or that the Defendant had a mistaken belief about the amount or level of chemical, drug, or prohibited substance in his or her blood.]

[The fact that the Defendant is or has been entitled to use [that drug] [those drugs] under the laws of this State is not a defense against any charge of DRIVING UNDER THE INFLUENCE.]

"Willfully" is defined elsewhere in these instructions.

NRS 484C.110; *Whistler v. State,* 121 Nev. 401, 408, 116 P.3d 59, 64 (2005); *Slinkard v. State,* 106 Nev. 393, 395-96, 793 P.2d 1330, 1331-32 (1990); NAC 453.510; NAC 453.520; NAC 453.530; NAC 453.540; NAC 453.550; "Willfully" is defined in Section 28.

19.06: ACTUAL PHYSICAL CONTROL DEFINED

A person is in actual physical control of a vehicle when the person has existing or present bodily restraint, directing influence, domination, or regulation of the vehicle.

In deciding whether someone has such existing or present bodily restraint, directing influence, domination, or regulation of a vehicle, you must weigh a number of considerations, including where, and in what position, the person was found in the vehicle; whether the vehicle's engine was running or not; whether the occupant was awake or asleep; whether, if the person was apprehended at night, the vehicle's lights were on; the location of the vehicle's keys; whether the person was trying to move the vehicle or moved the vehicle; whether the property on which the vehicle was located is public or private; and whether the person must, of necessity, have driven to the location where apprehended.

A person shall be deemed not to be in actual physical control of a vehicle if:

(1) The person is asleep inside the vehicle;

(2) The person is not in the driver's seat of the vehicle;

(3) The engine of the vehicle is not running;

(4) The vehicle is lawfully parked; and

(5) Under the facts presented, it is evident that the person could not have driven the vehicle to the location while under the influence of intoxicating liquor, a controlled substance or a prohibited substance.

Rogers v. State, 105 Nev. 230, 233-34, 773 P.2d 1226, 1227-28 (1989); NRS 484C.109; *Barnier v. State*, 119 Nev. 129, 133-34, 67 P.3d 320, 323 (2003).

19.07: DRIVING UNDER THE INFLUENCE - POST-DRIVING CONSUMPTION DEFENSE

The State has alleged, as an alternative theory of DRIVING UNDER THE INFLUENCE, that the Defendant was found by measurement within 2 hours after driving or being in actual physical control of a vehicle to have a concentration of alcohol of 0.08 or more in his or her blood or breath.

It is a defense to this alternative theory that the Defendant consumed a sufficient quantity of alcohol after driving or being in actual physical control of the vehicle, and before his or her blood or breath was tested, to cause the Defendant to have a concentration of alcohol of 0.08 or more in his or her blood or breath.

The burden of proof is upon the Defendant to establish this defense by a preponderance of the evidence. To prove something by the preponderance of the evidence is to prove that it is more likely true than not true. This is a lesser burden than proof beyond a reasonable doubt.

If you find by a preponderance of the evidence that the Defendant consumed a sufficient quantity of alcohol after driving or being in actual physical control of the vehicle, and before his or her blood or breath was tested, to cause the Defendant to have a concentration of alcohol of 0.08 or more in his or her blood or breath, then you should find the Defendant not guilty of DRIVING UNDER THE INFLUENCE OF ALCOHOL.

[This defense does not apply to the alternative theories that the Defendant was under the influence of [include as appropriate, e.g., "intoxicating liquor or had a concentration of alcohol of 0.08 or more in his or her blood or breath at the time the Defendant was driving or in actual physical control of the vehicle."]]

NRS 484C.110; NRS 484C.130; NRS 484C.430; *Kelso v. State,* 95 Nev. 37, 41, 588 P.2d 1035, 1038-39 (1979); *Smith v. United States,* 568 U.S. 106, 108-113 S. Ct. 714, 718-21 (2013).

20.00: VEHICLE OFFENSES DEFINITIONS

[Include as appropriate]

"Vehicle" means every device in, upon or by which any person or property is or may be transported or drawn upon a highway, except: [include as appropriate]

(1) [Devices moved by human power or used exclusively upon stationary rails;

(2) Electrical bicycles;

(3) Electric personal assistive mobility devices; and

(4) An electric scooter.]

"Motor vehicle" means every vehicle which is self-propelled but not operated upon rails. The term does not include an electric bicycle or an electric scooter.

"Electric personal assistive mobility device" means a self-balancing, two non-tandem wheeled device, designed to transport only one person, with an electric propulsion system that limits the maximum speed of the device to 15 miles per hour or less.

"Electric scooter" means a vehicle:

(1) With handlebars and an electric motor that is designed to be ridden on in an upright or seated position and is propelled by its electric motor or by propulsion provided by the rider;

(2) That does not weigh more than 100 pounds without a rider; and

(3) That has a maximum speed of not more than 20 miles per hour when powered solely by its electric motor.

"Electric bicycle" means a device upon which a person may ride, having two or three wheels, or every such device generally recognized as a bicycle that has fully operable pedals and is propelled by a small electric engine which produces not more than 1 gross brake horsepower, and which produces not more than 750 watts final output, and:

(1) Is designed to travel on not more than three wheels in contact with the ground but is not a tractor; and

(2) Powered solely by such a small electric engine, is capable of a maximum speed of not more than 20 miles per hour on a flat surface while carrying an operator who weighs 170 pounds.

The term does not include a moped or an electric scooter.

"Highway" means the entire width between the boundary lines of every way dedicated to a public authority when any part of the way is open to the use of the public for purposed of vehicular traffic, whether or not the public authority is maintaining the way.

"Public authority" means the Department of Transportation or the local authority having jurisdiction to enact laws or ordinances or adopt regulations relating to traffic over a highway.

"Premises to which the public has access" means property in private or public ownership onto which members of the public regularly enter, are reasonably likely to enter, or are invited or permitted to enter as invitees or licenses, whether or not access to the property of some members or the public is restricted or controlled by a person or a device. The term includes, but is not limited to:

(a) A parking deck, parking garage or other parking structure.

(b) A paved or unpaved parking lot or other paved or unpaved area where vehicles are parked or are reasonably likely to be parked.

(c) A way that provides access to or is appurtenant to:

(i) A place of business;

(ii) A governmental building;

(iii) An apartment building;

(iv) A mobile home park;

(v) A residential area or residential community which is gated or enclosed or the access to which is restricted or controlled by a person or a device; or

(vi) Any other similar area, community, building or structure.

The term does not include:

(a) A private way on a farm.

(b) The driveway of an individual dwelling.

["Private way" or "driveway" means every way or place in private ownership and used for vehicular travel by the owner and those having express or implied permission from the owner, but not by other persons.]

"Peace officer" includes [as alleged or appropriate based upon NRS 289.010 and NRS 289.150 to 289.360, inclusive, e.g.: "Sheriffs of counties and of metropolitan police departments, their deputies and correctional officers" or "Marshals, police officers and correctional officers of cities and towns"].

NRS 484A.320; NRS 484A.130; NRS 482.029; NRS 482.0287;NRS 484A.082; NRS 484A.185; NRS 484A.095; NRS 484C.105; NRS 484C.020; NRS 484A.190; NRS 484A.195; NRS 289.010; NRS 289.150; NRS 289.152; NRS 289.155; NRS 289.160; NRS 289.170; NRS 289.175; NRS 289.180; NRS 289.190; NRS 289.200; NRS 289.210; NRS 289.220; NRS 289.230; NRS 289.240; NRS 289.250; NRS 289.260; NRS 289.270; NRS 289.280; NRS 289.290; NRS 289.300; NRS 289.310; NRS 289.320; NRS 289.330; NRS 289.340; NRS 289.350; NRS 289.355; NRS 289.360.

20.01: RECKLESS DRIVING - SUBSTANTIAL BODILY HARM OR DEATH

The crime of RECKLESS DRIVING CAUSING SUBSTANTIAL BODILY HARM OR DEATH consists of the following elements:

(1) The Defendant drives or is in actual physical control of any vehicle;
(2) On a highway or on premises to which the public has access;
(3) In willful or wanton disregard of the safety of persons or property;
(4) Does any act or neglects any duty imposed by law; and
(5) The act or neglect of duty proximately causes the death of or substantial bodily harm to another person.

"Wantonly" is to unreasonably or maliciously risk harm while being utterly indifferent to the consequences.

"Maliciously" imports an evil intent, wish or design to vex, annoy or injure another person, and may be inferred from an act done in willful disregard of the rights of another, or an act wrongfully done without just cause or excuse, or an act or omission of duty betraying a willful disregard of social duty.

"Substantial Bodily Harm" is defined elsewhere in these instructions.

NRS 484B.653; NRS 193.0175; "Substantial Bodily Harm" is defined in Section 8 herein.

20.02: RECKLESS DRIVING CAUSING SUBSTANTIAL BODILY OR DEATH - PROXIMATE CAUSE

See Instruction 19.02.

20.03: RECKLESS DRIVING - DUTIES

See Instruction 19.03.

20.04: LEAVING THE SCENE OF A CRASH INVOLVING PERSONAL INJURY OR DEATH

The crime of LEAVING THE SCENE OF A CRASH INVOLVING PERSONAL INJURY OR DEATH consists of the following elements:

(1) The Defendant was the driver of a vehicle;

(2) The vehicle driven by the Defendant was involved in a crash on a highway or on premises to which the public has access;

(3) The Defendant knew or should have known that the vehicle he or she was driving was involved in the crash;

(4) The crash resulted in bodily injury to or death of a person;

and

(5) The Defendant failed to:

(a) Immediately stop the vehicle at the scene of the crash or as close thereto as possible; and

(b) Remain at the scene of the crash until he or she had:

(i) Given his or her name, address and the registration number of the vehicle he or she was driving, and upon request and if available exhibited his or her license to operate a motor vehicle to any person injured in such crash or to the driver or occupant of or person attending any vehicle or other property damaged in such crash;

(ii) Given his or her name, address and the registration number of the vehicle he or she was driving, and upon request and if available exhibited his or her license to operate a motor vehicle to any police officer at the scene of the crash or who is investigating the crash;

(iii) Upon request manually surrender his or her license to operate a motor vehicle to any police officer at the scene of a crash or who is investigating the crash;

(iv) Rendered to any person injured in such crash reasonable assistance, including the carrying, or the making of arrangements for carrying, of such person to a physician, surgeon or hospital for medical or surgical treatment if it is apparent that such treatment is necessary, or if such carrying is requested by the injured person;

(c) If no police officer was present, after fulfilling all of the previous requirements insofar as possible on his or her part to be performed, forthwith reported such crash to the nearest office of a police authority or of the Nevada Highway Patrol and submitted thereto the Defendant's name, address and the registration number of the vehicle he or she was driving, and upon request andif available exhibited his or her license to operate a motor vehicle.

A driver "should have known" that the vehicle he or she was driving was involved in a crash if the circumstances are such as to induce in a reasonable person a belief that a crash has occurred.

The State is not required to prove the Defendant had knowledge that the crash resulted in injury or death.

NRS 484E.010; 484E.030; *Clancy v. State*, 129 Nev. 840, 846-47, 313 P.3d 226, 230-31 (2013); *Dettloff v. State*, 120 Nev. 588, 594-95, 97 P.3d 586, 590 (2004).

20.05: ELUDING OR FLIGHT FROM A POLICE OFFICER

The crime of ELUDING OR FLIGHT FROM A POLICE OFFICER [ENDANGERING OR LIKELY TO ENDANGER ANOTHER'S PERSON OR PROPERTY] [CAUSING DAMAGE TO PROPERTY] [CAUSING BODILY HARM OR DEATH] consists of the following elements:

(1) The Defendant drives a motor vehicle on a highway or on premises to which the public has access;

(2) The Defendant willfully fails or refuses to bring the vehicle to a stop or otherwise flees or attempts to elude a peace officer in a readily identifiable vehicle of any police department or regulatory agency;

(3) When given a signal by the peace officer to bring the vehicle to a stop by flashing red lamp and siren; and

(4) [Include as appropriate:

(a) Is the proximate cause of damage to the property of any other person;

(b) Operates the motor vehicle in a manner which endangers or is likely to endanger any other person or the property of any other person; or

(c) Is the proximate cause of the death of or bodily harm to any other person.]

NRS 484B.550.

20.06: ELUDING - PROXIMATE CAUSE

A proximate cause of [property damage, bodily harm or death] is a cause which, in natural and continuous sequence, produces the [property damage, bodily harm or death,] and without which the [property damage, bodily harm or death] would not have occurred.

There may be more than one proximate cause of [property damage, bodily harm or death]. When the conduct of two or more persons contributes to bringing about the [property damage, bodily harm or death,] each person is a proximate cause of the [property damage, bodily harm or death.]

A Defendant will not be relieved of criminal liability when his or her action was a proximate cause of [property damage, bodily harm or death], even if the negligent conduct of another person also contributed to the [property damage, bodily harm or death,] and even if the injury inflicted by the Defendant was not the only cause of the [property damage, bodily harm or death.]

The negligent conduct of another person will only relieve the Defendant of criminal liability if: (1) the other person's conduct occurred after the Defendant's conduct constituting eluding or flight from a peace officer, and (2) the other person's conduct broke the chain of causation from the Defendant's conduct so that the act of the other person became the sole cause of the [property damage, bodily harm, or death.]

Negligent conduct is the failure to exercise that degree of care in a given situation which a reasonable person under similar circumstances would exercise.

Etcheverry v. State, 107 Nev. 782, 785, 821 P.2d 350, 351-52 (1991); *Williams v. State,* 118 Nev. 536, 550-51, 50 P.3d 1116, 1125-26 (2002); *Cornella v. Justice Court,* 132 Nev. 587, 594, 377 P.3d 97, 102 (2016); *Lay v. State,* 110 Nev. 1189, 1192-93, 886 P.2d 448, 450 (1994); *Bostic v. State,* 104 Nev. 367, 370, 760 P.2d 1241, 1243 (1988).

21.00: CHILD ABUSE OR NEGLECT

The crime of CHILD ABUSE OR NEGLECT [RESULTING IN SUBSTANTIAL BODILY OR MENTAL HARM] consists of the following elements:

(1) The Defendant willfully causes;

(2) A child who is less than 18 years of age;

(3) (a) to suffer unjustifiable physical pain or mental suffering; or

(b) to be placed in a situation where the child may suffer physical pain or mental suffering;

(4) As the result of abuse or neglect. [; and

(5) Substantial bodily or mental harm results to the child.]

"Abuse or neglect" means [include as alleged or applicable]:

(1) Physical injury of a nonaccidental nature; or

(2) Mental injury of a nonaccidental nature; or

(3) Sexual abuse; or

(4) Sexual exploitation; or

(5) Negligent treatment or maltreatment;

under circumstances which indicate that the child's health or welfare is harmed or threatened with harm.

"Physical injury" means:

(1) permanent or temporary disfigurement; or

(2) impairment of any bodily function or organ of the body.

"Mental injury" means an injury to the intellectual or psychological capacity or the emotional condition of a child as evidenced by an observable and substantial impairment of the ability of the child to function within a normal range of performance or behavior.

[Excessive corporal punishment may result in physical or mental injury constituting abuse or neglect of a child.]

"Sexual abuse" includes acts upon a child constituting [include as alleged or applicable]:

(1) Incest;

(2) Lewdness with a child;

(3) Sado-masochistic abuse;

(4) Sexual assault;

(5) Statutory sexual seduction;

(6) Open or gross lewdness; and

(7) Mutilation of the genitalia of a female child, aiding, abetting, encouraging or participating in the mutilation of the genitalia of a female child, or removal of a female child from this State for the purpose of mutilating the genitalia of a child.

"Incest" means fornication, adultery, or intermarriage between persons who are nearer of kin than second cousins or cousins of the half blood.

[For lewdness with a child, include offense definition or indicate that "The definition of lewdness with a child is provided elsewhere in these instructions."]

"Sado-masochistic abuse" means:

(1) flagellation or torture practiced by or upon a person whether or not clad in undergarments, a mask or bizarre costume; or

(2) the condition of being fettered, bound or otherwise physically restrained.

[For sexual assault, include offense definition or indicate "The definition of sexual assault is provided elsewhere in these instructions."]

[For statutory sexual seduction, include offense definition or indicate that "The definition of statutory sexual seduction is provided elsewhere in these instructions."]

[For open or gross lewdness, include offense definition or indicate that "The definition of open or gross lewdness is provided elsewhere in these instructions."]

"Mutilation of the genitalia of a female child" means the removal or infibulation in whole or in part of the clitoris, vulva, labia majora or labia minora for nonmedical purposes.

It is not a defense that:

(1) the person engaging in mutilation of the genitalia of a female child believes that the conduct is necessary or appropriate as a matter of custom, ritual or standard practice; or

(2) the child, the parent or legal guardian of the child, or another person legally responsible for the child has consented to the mutilation of the genitalia of a female child.

"Sexual exploitation" includes forcing, allowing, or encouraging a child:

(1) To solicit for or engage in prostitution;

(2) To view a pornographic film or literature; and

(3) To engage in:

(a) Filming, photographing or recording on videotape the exhibition of a child's genitals or any sexual conduct with the child; or

(b) Posing, modeling, depiction or a live performance before an audience, which involves the exhibition of a child's genitals or any sexual conduct with the child.

"Sexual conduct" means sexual intercourse, lewd exhibition of the genitals, fellatio, cunnilingus, bestiality, anal intercourse, excretion, sado-masochistic abuse, masturbation, or the penetration of any part of a person's body or of any object manipulated or inserted by a person into the genital or anal opening of the body of another.

"Negligent treatment or maltreatment" occurs if a child has been subjected to harmful behavior that is terrorizing, degrading, painful or emotionally traumatic, has been abandoned, is without proper care, control or supervision or lacks the subsistence, education, shelter, medical care or other care necessary for the well-being of the child because of the faults or habits of the person responsible for the welfare of the child or the neglect or refusal of the person to provide them when able to do so.

A person is responsible for a child's welfare if the person is the child's parent, guardian, a stepparent with whom the child lives, an adult person continually or regularly found in the same household as the child, a public or private home, institution or facility where the child actually resides or is receiving care outside of the home for all or a portion of the day, or a person directly responsible or serving as a volunteer for or employed by such a home, institution or facility.

"Substantial mental harm" means an injury to the intellectual or psychological capacity or the emotional condition of a child as evidenced by an observable and substantial impairment of the ability of the child to function within his or her normal range of performance or behavior.

[The definition of Substantial Bodily Harm appears in Chapter 8 of these instructions.]

[A child is not abused or neglected, nor is the child's health or welfare harmed or threatened for the sole reason that his or her parent or guardian, in good faith, selects and depends upon nonmedical remedial treatment for such child, if such treatment is recognized and permitted under the laws of this State in lieu of medical treatment.]

NRS 200.508; NRS 432B.070; NRS 432B.100; NRS 432B.110; NRS 432B.130; NRS 432B.140; NRS 432B.150; NRS 200.5083; NRS 200.5085; NRS 201.180; NRS 201.262; NRS 200.700(3); *Clay v. Eighth Judicial Dist. Court*, 129 Nev. 445, 452, 305 P.3d 898, 903 (2013); *Ramirez v. State,* 126 Nev. 203, 208-09, 235 P.3d 619, 623 (2010); *Childers v. State,* 100 Nev. 280, 282-83, 680 P.2d 589, 599 (1984); *Smith v. State,* 112 Nev. 1269, 1276-80, 927 P.2d 14, 18-21 (1996).

21.01: CHILD ENDANGERMENT

The crime of CHILD ENDANGERMENT [RESULTING IN SUBSTANTIAL BODILY OR MENTAL HARM] consists of the following elements:

(1) The Defendant is responsible for the safety or welfare of a child who is less than 18 years of age;
(2) The Defendant permits or allows the child;
(3) (a) to suffer unjustifiable physical pain or mental suffering; or
(b) to be placed in a situation where the child may suffer physical pain or mental suffering;
(4) As a result of abuse or neglect. [; and
(5) Substantial bodily or mental harm results to the child.]

A person is responsible for a child's welfare if the person is the child's parent, guardian, a stepparent with whom the child lives, an adult person continually or regularly found in the same household as a child, a public or private home, institution or facility where the child actually resides or is receiving care outside of the home for all or a portion of the day, or a person directly responsible or serving as a volunteer for or employed by such a home, institution or facility.

"Permit" means permission that a reasonable person would not grant, and which amounts to a neglect of responsibility attending the care, custody and control of a minor child.

"Allow" means to do nothing to prevent or stop the abuse or neglect of a child in circumstances where the person knows or has reason to know that the child is abused or neglected.

"Abuse or neglect" means [include as alleged or applicable]:

(1) Physical injury of a nonaccidental nature;

(2) Mental injury of a nonaccidental nature;

(3) Sexual abuse;

(4) Sexual exploitation; or

(5) Negligent treatment or maltreatment; under circumstances which indicate that the child's health or welfare is harmed or threatened with harm.

"Physical injury" means:

(1) permanent or temporary disfigurement; or

(2) impairment of any bodily function or organ of the body.

"Mental injury" means an injury to the intellectual or psychological capacity, or the emotional condition of a child as evidenced by an observable and substantial impairment of the ability of the child to function within a normal range of performance or behavior.

[Excessive corporal punishment may result in physical or mental injury constituting abuse or neglect of a child.]

"Sexual abuse" includes acts upon a child constituting [include as alleged or applicable]:

(1) Incest;

(2) Lewdness with a child;

(3) Sado-masochistic abuse;

(4) Sexual assault;

(5) Statutory sexual seduction;

(6) Open or gross lewdness; and

(7) Mutilation of the genitalia of a female child, aiding, abetting, encouraging or participating in the mutilation of the genitalia of a female child, or removal of a female child from this State for the purpose of mutilating the genitalia of the child.

"Incest" means fornication, adultery, or intermarriage between persons who are nearer of kin than second cousins or cousins of the half blood.

[For lewdness with a child, include offense definition or indicate that "The definition of lewdness with a child is provided elsewhere in these instructions."]

"Sado-masochistic abuse" means:

(1) flagellation or torture practiced by or upon a person whether or not clad in undergarments, a mask or bizarre costume; or

(2) the condition of being fettered, bound or otherwise physically restrained.

[For sexual assault, include offense definition or indicate the "The definition of sexual assault is provided elsewhere in these instructions."]

[For statutory sexual seduction, include offense definition or indicate that "The definition of statutory sexual seduction is provided elsewhere in these instructions."]

[For open or gross lewdness, include offense definition or indicate that "The definition of open or gross lewdness is provided elsewhere in these instructions."]

"Mutilation of the genitalia of a female child" means the removal or infibulation in whole or in part of the clitoris, vulva, labia majora or labia minora for nonmedical purposes.

It is not a defense that:

(1) the person engaging in mutilation of the genitalia of a female child believes that the conduct is necessary or appropriate as a matter of custom, ritual or standard practice; or

(2) the child, the parent or legal guardian of the child, or another person legally responsible for the child has consented to the mutilation of the genitalia of a female child.

"Sexual exploitation" includes forcing, allowing or encouraging a child:

(1) To solicit for or engage in prostitution;

(2) To view a pornographic film or literature; and

(3) To engage in:

(a) Filming, photographing or recording on videotape the exhibition of a child's genitals or any sexual conduct with the child; or

(b) Posing, modeling, depiction or a live performance before an audience, which involves the exhibition of a child's genitals or any sexual conduct with the child.

"Sexual conduct" means sexual intercourse, lewd exhibition of the genitals, fellatio, cunnilingus, bestiality, anal intercourse, excretion, sado-masochistic abuse, masturbation, or the penetration of any part of a person's body or of any object manipulated or inserted by a person into the genital or anal opening of the body of another.

"Negligent treatment or maltreatment" occurs if a child has been subjected to harmful behavior that is terrorizing, degrading, painful or emotionally traumatic, has been abandoned, is without proper care, control or supervision or lacks the subsistence, education, shelter, medical care or other care necessary for the well-being of the child because of the faults or habits of the person responsible for the welfare of the child or the neglect or refusal of the person to provide them when able to do so.

"Substantial mental harm" means an injury to the intellectual or psychological capacity, or the emotional condition of a child as evidenced by an observable and substantial impairment of the ability of the child to function within his or her normal range of performance or behavior.

[The definition of Substantial Bodily Harm appears in Chapter 8 of these instructions.]

[A child is not abused or neglected, nor is the child's health or welfare harmed or threatened for the sole reason that his or her parent or guardian, in good faith, selects and depends upon nonmedical remedial treatment for such child, if such treatment is recognized and permitted under the laws of this State in lieu of medical treatment.]

NRS 200.508; NRS 432B.070; NRS 432B.100; NRS 432B.110; NRS 432B.130; NRS 432B.140; NRS 432B.150; NRS 201.180; NRS 201.262; NRS 200.5083; NRS 200.5085; NRS 200.700(3); *Clay v. Eighth Judicial Dist. Court*, 129 Nev. 445, 452, 305 P.3d 898, 903 (2013); *Ramirez v. State,* 126 Nev. 203, 208-09, 235 P.3d 619, 623 (2010); *Childers v. State,* 100 Nev. 280, 282-83, 680 P.2d 589, 599 (1984); *Smith v. State,* 112 Nev. 1269, 1276-80, 927 P.2d 14, 18-21 (1996).

22.01: POSSESSION OF A SHORT-BARRELED RIFLE OR SHORT-BARRELED SHOTGUN

The crime of [POSSESSION, MANUFACTURE, DISPOSITION OF] A SHORT-BARRELED RIFLE OR SHORT-BARRELED SHOTGUN consists of the following elements:

(1) The Defendant knowingly or willfully;
(2) [Possesses, manufactures or disposes of];
(3) Any short-barreled [rifle or shotgun].

["Short-barreled rifle" means:
(1) a rifle having one or more barrels less than 16 inches in length; or
(2) any weapon made from a rifle, whether by alteration, modification or other means, with an overall length of less than 26 inches.]

["Short-barreled shotgun" means:
(1) a shotgun having one or more barrels less than 18 inches in length; or
(2) any weapon made from a shotgun, whether by alteration, modification or other means, with an overall length of less than 26 inches.]

[Include definition of "Possession" or indicate that "The definition of possession is provided elsewhere in these instructions"].

NRS 202.275; "Possession" has been defined herein in Section 18.06.

22.02: DISCHARGING A FIREARM WITHIN OR FROM A STRUCTURE OR VEHICLE

The crime of DISCHARGING A FIREARM WITHIN OR FROM A [STRUCTURE OR VEHICLE] consists of the following elements:

(1) The Defendant is in, on, or under a [structure or vehicle]; and
(2) Maliciously or wantonly;
(3) Discharges a firearm or causes a firearm to be discharged;
(4) Within or from the [structure or vehicle];
(5) While within an area designated by city or county ordinance as a populated area for the purpose of prohibiting the discharge of weapons.

"Firearm" means any device designed to be used as a weapon from which a projectile may be expelled through the barrel by the force of any explosion or other form of combustion.

["Structure" means any temporary or permanent structure, including, but not limited to, any tent, house, room, apartment, tenement, shop, warehouse, store, mill, barn, stable, outhouse or other building.]

["Vehicle" means any motor vehicle or trailer designed for use with a motor vehicle, whether or not it is self-propelled, operated on rails or propelled by electric power obtained from overhead wires.]

To act "wantonly" is to unreasonably or maliciously risk harm while being utterly indifferent to the consequences.

To act "maliciously" is to act with an evil intent, wish or design to vex, annoy or injure another person. The condition of mind described by "maliciously" may also be inferred from an act done in willful disregard of the rights of another, or an act wrongfully done without just cause or excuse, or an act or omission of duty betraying a willful disregard of social duty.

NRS 202.287; NRS 202.253; NRS 193.0175; Black's Law Dictionary (10th ed. 2014); *Ewish v. State*, 110 Nev. 221, 229 n.4, 871 P.2d 306, 312 n.4 (1994); *State v. Second Judicial District Court*, 136 Nev. 191, 195–99, 462 P.3d 671, 674–77 (2020); *Washington v. State*, 132 Nev. 655, 662, 376 P.3d 802, 807–08 (2016); *McCurdy v. State*, 107 Nev. 275, 278, 809 P.2d 1265, 1266–67 (1991); *Hern v. State*, 97 Nev. 529, 532, 635 P.2d 278, 280 (1981).

22.03: DISCHARGING A FIREARM AT OR INTO A STRUCTURE OR VEHICLE

The crime of DISCHARGING A FIREARM AT OR INTO AN OCCUPIED [STRUCTURE, VEHICLE, AIRCRAFT OR WATERCRAFT] consists of the following elements:

(1) The Defendant willfully and maliciously;

(2) Discharges a firearm;

(3) At or into any occupied [house, room, apartment, tenement, shop, warehouse, store, mill, barn, stable, outhouse or other building, tent, vessel, aircraft, vehicle, vehicle trailer, semitrailer or house trailer, railroad locomotive, car or tender].

"Firearm" means any device designed to be used as a weapon from which a projectile may be expelled through the barrel by the force of any explosion or other form of combustion.

["Building" includes every house, shed, boat, watercraft, railway car, tent or booth, whether completed or not, suitable for affording shelter for any human being, or as a place where any property is or will be kept for use, sale or deposit.]

["Boat" includes ships, steamers and other structures adapted to navigation or movement from place to place by water.]

To act "maliciously" is to act with an evil intent, wish or design to vex, annoy or injure another person. The condition of mind described by "maliciously" may also be inferred from an act done in willful disregard of the rights of another, or an act wrongfully done without just cause or excuse, or an act or omission of duty betraying a willful disregard of social duty.

[Include definition of "Willfully" or indicate that "The definition of willfully is provided elsewhere in these instructions"].

NRS 202.285; NRS 202.253; NRS 193.0125; NRS 193.011; NRS 193.014; NRS 193.023; NRS 193.0175; *Washington v. State,* 132 Nev. 655, 659–66, 376 P.3d 802, 806–10 (2016); *Ewish v. State,* 110 Nev. 221, 229 n.4, 871 P.2d 306, 312 n.4 (1994); *State v. Second Judicial District Court*, 136 Nev. 191, 195–99, 462 P.3d 671, 674–77 (2020); *McCurdy v. State*, 107 Nev. 275, 278, 809 P.2d 1265, 1266–67 (1991)*; Hern v. State*, 97 Nev. 529, 532, 635 P.2d 278, 280 (1981); "Willfully" is defined herein in section 25.

22.04: MANUFACTURING, IMPORTING, OR POSSESSING BLACKJACK, SLUNGSHOT, BILLY, SAND-CLUB, SANDBAG OR METAL KNUCKLES

The crime of [MANUFACTURING, IMPORTING INTO THE STATE, KEEPING, OFFERING, EXPOSING FOR SALE, GIVING, LENDING, OR POSSESSING] A [BLACKJACK, SLUNGSHOT, BILLY, SAND-CLUB, SANDBAG, OR METAL KNUCKLES] consists of the following elements:

(1) The Defendant knowingly [manufactured or caused to be manufactured, imported into the State, kept, offered or exposed for sale, gave, loaned or possessed];

(2) Any instrument or weapon of the kind commonly known as a [blackjack, slungshot, billy, sand-club, sandbag or metal knuckles].

A person commits the offense of [MANUFACTURING, IMPORTING INTO THE STATE, KEEPING, OFFERING, EXPOSING FOR SALE, GIVING, LENDING, OR POSSESSING] A [BLACKJACK, SLUNGSHOT, BILLY, SAND-CLUB, SANDBAG, OR METAL KNUCKLES] if he or she knowingly [manufactures or causes to be manufactured, imports into the State, keeps, offers or exposes for sale, gives, loans or possesses] the instrument or weapon. The person need not have known that his or her possession of the instrument or weapon was illegal and need not have intended to violate the law. Ignorance or misapprehension of the law is not a defense to this crime.

[Include definitions of "possession" and "knowingly" as required or indicate that "The definition of [possession][knowingly] is provided elsewhere in these instructions"].

NRS 202.350; *Hager v. State*, 135 Nev. 246, 249, 447 P.3d 1063, 1066 (2019); "Possession" is defined herein in Section 18; "Knowingly" is defined herein in Section 25.

22.05: MANUFACTURING, IMPORTING, POSSESSING, OR USING A MACHINE GUN OR SILENCER

The crime of [MANUFACTURING, CAUSING TO MANUFACTURE, IMPORTING INTO THE STATE, KEEPING, OFFERING OR EXPOSING FOR SALE, GIVING, LENDING, POSSESSING, OR USING] A [MACHINE GUN OR SILENCER] consists of the following elements:

(1) The Defendant knowingly [manufactured or caused to be manufactured, imported into the State, kept, offered or exposed for sale, gave, loaned, possessed, or used];

(2) A [machine gun or silencer].

["Machine gun" means any weapon which shoots, is designed to shoot or can be readily restored to shoot more than one shot, without manual reloading, by a single function of the trigger.]

["Silencer" means any device for silencing, muffling or diminishing the report of a firearm, including any combination of parts, designed or redesigned, and intended for use in assembling or fabricating a silencer or muffler, and any part intended only for use in such assembly or fabrication.]

[Include definitions of "possession" and "knowingly" as required or indicate that "The definition of [possession][knowingly] is provided elsewhere in these instructions"].

A person commits the offense of [MANUFACTURING, IMPORTING INTO THE STATE, KEEPING, OFFERING, EXPOSING FOR SALE, GIVING, LENDING, OR POSSESSING] A [MACHINE GUN OR SILENCER] if he or she knowingly [manufactures or causes to be manufactured, imports into the State, keeps, offers or exposes for sale, gives, loans, possesses, or uses] the [machine gun or silencer]. The person need not have known that his or her possession of the [machine gun or silencer] was illegal and need not have intended to violate the law. Ignorance or misapprehension of the law is not a defense to this crime.

NRS 202.350; NRS 202.253; *Hager v. State*, 135 Nev. 246, 249, 447 P.3d 1063, 1066 (2019).

22:06: DEFENSE TO MANUFACTURING, IMPORTING, POSSESSING, OR USING A MACHINE GUN OR SILENCER

It is not a crime to [manufacture, import into the State, keep, offer or expose for sale, give, lend, possess, or use] a [machine gun or silencer] if a person is licensed, authorized or permitted to possess or use a [machine gun or silencer] pursuant to federal law.

The Defendant has the burden of establishing federal licensure, authorization or permission by a preponderance of the evidence. To prove something by the preponderance of the evidence is to prove that it is more likely true than not true. This is a lesser burden than proof beyond a reasonable doubt.

If you find by a preponderance of the evidence that the Defendant is licensed, authorized or permitted to possess or use a [machine gun or silencer] pursuant to federal law, you must find the Defendant not guilty of the crime of [MANUFACTURING, IMPORTING INTO THE STATE, KEEPING, OFFERING OR EXPOSING FOR SALE, GIVING, LENDING, POSSESSING, OR USING] A [MACHINE GUN OR SILENCER].

NRS 202.350; *Smith v. United States*, 568 U.S. 106, 110–11, 133 S. Ct. 714, 719 (2013); *See* NRS 202.350(4)(a) if the Defendant is a law enforcement officer.

22.07: POSSESSING OR USING A NUNCHAKU OR TREFOIL

The crime of [POSSESSION OR USE] OF A [NUNCHAKU OR TREFOIL] consists of the following elements:

(1) The Defendant knowingly [possessed or used];
(2) A [nunchaku or trefoil];
(3) With the intent to inflict harm upon the person of another.

["Nunchaku" means an instrument consisting of two or more sticks, clubs, bars or rods connected by a rope, cord, wire or chain used as a weapon in combat.]

["Trefoil" means an instrument consisting of a metal plate having three or more radiating points with sharp edges, designed in the shape of a star, cross or other geometric figure and used as a weapon for throwing.]

[Include definitions of "possession" and "knowingly" as required or indicate that "The definition of [possession][knowingly] is provided elsewhere in these instructions"].

NRS 202.350; "Possession" is defined herein in Section 18.06; "Knowingly" is defined herein in Section 25.

22.08: CARRYING A CONCEALED WEAPON

The crime of CARRYING A CONCEALED WEAPON consists of the following elements:

(1) The Defendant knowingly carried;
(2) Concealed upon his or her person;
(3) Any [pistol, revolver or other firearm, other dangerous or deadly weapon or pneumatic gun].

["Firearm" means any device designed to be used as a weapon from which a projectile may be expelled through the barrel by the force of any explosion or other form of combustion. There is no requirement that the firearm be loaded or operable.]

["Pneumatic gun" means any implement designed as a gun that may expel a ball bearing or a pellet by action of pneumatic pressure. The term includes, without limitation, a paintball gun that expels plastic balls filled with paint for the purpose of marking the point of impact.]

["Dangerous or deadly weapon" means any device, instrument, material or substance, whether or not designed and constructed for use as a weapon, which is capable of causing substantial bodily harm or death and which is being carried for use as a weapon. Circumstances relevant to the determination of whether a device, instrument, material or substance is being carried for use as a weapon may include, without limitation, the nature of the device, instrument, material, or substance itself, the circumstances under which it is carried, including time, place, and situation in which the carrier is found in possession, the manner in which it is carried, and possible peaceful uses therefor which the possessor might have.]

"Concealed" means carried upon a person in such a manner as not to be discernible by ordinary observation.

[Include definition of "knowingly" as required or indicate that "The definition of "knowingly" is provided elsewhere in these instructions"].

NRS 202.350; NRS 202.253; NRS 202.265; NRS 202.3653; NRS 193.165; *Knight v. State*, 116 Nev. 140, 145–48, 993 P.2d 67, 71–73 (2000); *Berry v. State*, 125 Nev. 265, 273–77, 212 P.3d 1085, 1091–94 (2009); *Huebner v. State*, 103 Nev. 29, 31, 731 P.2d 1330, 1332 (1987); "Knowingly" is defined herein in Section 25.

22.09: CARRYING A CONCEALED EXPLOSIVE SUBSTANCE

The crime of CARRYING A CONCEALED EXPLOSIVE SUBSTANCE consists of the following elements:

(1) The Defendant knowingly carried;
(2) Concealed upon his or her person;
(3) Any explosive substance, other than ammunition or any components thereof.

"Concealed" means carried upon a person in such a manner as not to be discernible by ordinary observation.

[Include definition of "knowingly" as required or indicate that "The definition of "knowingly" is provided elsewhere in these instructions"].

NRS 202.350; NRS 202.253; NRS 202.265; NRS 202.3653; NRS 193.165; *Knight v. State*, 116 Nev. 140, 145-48, 993 P.2d 67, 71-73 (2000); *Berry v. State*, 125 Nev. 265, 273-77, 212 P.3d 1085, 1091-94 (2009); *Huebner v. State*, 103 Nev. 29, 31, 731 P.2d 1330, 1332 (1987); "Knowingly" is defined herein in Section 25.

22.10: CARRYING A CONCEALED MACHETE

The crime of CARRYING A CONCEALED MACHETE consists of the following elements:

(1) The Defendant knowingly carried;
(2) Concealed upon his or her person;
(3) Any machete.

"Concealed" means carried upon a person in such a manner as not to be discernible by ordinary observation.

[Include definition of "knowingly" as required or indicate that "The definition of "knowingly" is provided elsewhere in these instructions"].

NRS 202.350; "Knowingly" is defined herein in Section 25.

22.11: CHANGING, ALTERING, REMOVING, OR OBLITERATING THE SERIAL NUMBER OF A FIREARM

The crime of CHANGING, ALTERING, REMOVING, OR OBLITERATING THE SERIAL NUMBER OF A FIREARM consists of the following elements:

(1) The Defendant intentionally;
(2) Changed, altered, removed, or obliterated;
(3) The serial number upon any firearm.

"Firearm" means any device designed to be used as a weapon from which a projectile may be expelled through the barrel by the force of any explosion or other form of combustion.

[Include definition of "intentionally" as required or indicate that "The definition of "intentionally" is provided elsewhere in these instructions"].

NRS 202.277; NRS 202.253; "Intentionally" is defined herein in Section 25.

22.12: POSSESSING A FIREARM WITH A CHANGED, ALTERED, REMOVED OR OBLITERATED SERIAL NUMBER

The crime of POSSESSING A FIREARM WITH A CHANGED, ALTERED, REMOVED OR OBLITERATED SERIAL NUMBER consists of the following elements:

(1) The Defendant knowingly;
(2) Possessed a firearm;
(3) On which the serial number had been intentionally changed, altered, removed or obliterated.

"Firearm" means any device designed to be used as a weapon from which a projectile may be expelled through the barrel by the force of any explosion or other form of combustion.

[Include definitions of "possession," "intentionally" and "knowingly" as required or indicate that "The definition of [possession][intentionally][knowingly] is provided elsewhere in these instructions"].

NRS 202.277; NRS 202.253; "Possession" is defined herein in Section 18; "Knowingly" is defined herein in Section 25; "Intentionally" is defined herein in Section 25.

22.13: AIMING FIREARM AT OR TOWARD A HUMAN BEING

The crime of AIMING FIREARM AT OR TOWARD A HUMAN BEING consists of the following elements:

(1) The Defendant willfully;
(2) Aimed any gun, pistol, revolver or other firearm, whether loaded or not;
(3) At or toward any human being.

"Firearm" means any device designed to be used as a weapon from which a projectile may be expelled through the barrel by the force of any explosion or other form of combustion.

[Include definition of "willfully" as required or indicate that "The definition of willfully is provided elsewhere in these instructions"].

NRS 202.290; NRS 202.253; "Willfully" is defined herein in Section 25.

22.14: OWNERSHIP OR POSSESSION OF A FIREARM BY A PERSON CONVICTED OF BATTERY CONSTITUTING DOMESTIC VIOLENCE

The crime of [OWNERSHIP OR POSSESSION] OF A FIREARM BY [A PERSON CONVICTED OF BATTERY CONSTITUTING DOMESTIC VIOLENCE; A PROHIBITED PERSON] consists of the following elements:

(1) The Defendant knowingly owned or had in his or her possession or under his or her custody or control;
(2) Any firearm;
(3) Having been convicted in this State or any other state of the crime of battery which constitutes domestic violence.

"The crime of battery which constitutes domestic violence" must have been committed against or upon:

(a) the spouse or former spouse of the Defendant;
(b) Any other person with whom the Defendant has had or is having a dating relationship;
(c) Any other person with whom the Defendant has a child in common;
(d) The parent of the Defendant; or
(e) The child of the Defendant or a child for whom the Defendant is the legal guardian.

"Firearm" means any device designed to be used as a weapon from which a projectile may be expelled through the barrel by the force of any explosion or other form of combustion. There is no requirement that the firearm be loaded or operable.

"Dating relationship" means frequent, intimate associations primarily characterized by the expectation of affectional or sexual involvement. The term does not include a casual relationship or an ordinary association between persons in a business or social context.

[Include definitions of "possession" and "knowingly" as required or indicate that "The definition of [possession][knowingly] is provided elsewhere in these instructions"].

A person commits the offense of [OWNERSHIP OR POSSESSION] OF A FIREARM BY [A PERSON CONVICTED OF BATTERY CONSTITUTING DOMESTIC VIOLENCE; A PROHIBITED PERSON] if he or she knowingly owns or possesses a firearm, having been convicted of a misdemeanor crime of domestic violence. The person need not have known that his or her possession of the firearm was illegal and need not have intended to violate the law. Ignorance or misapprehension of the law is not a defense to this crime.

NRS 202.360; NRS 33.018; NRS 202.253; *Hager v. State*, 135 Nev. 246, 249, 447 P.3d 1063, 1066 (2019); *State v. Fourth Jud. Dist. Ct. in & for Cnty. of Elko*, 137 Nev. 37, 41, 481 P.3d 848, 852 (2021); "Possession" is defined herein in Section 18.06; "Knowingly" is defined herein in Section 25.

22.15: OWNERSHIP OR POSSESSION OF A FIREARM BY A PERSON CONVICTED OF A FELONY; FELON; PROHIBITED PERSON

The crime of [OWNERSHIP OR POSSESSION] OF A FIREARM BY A [PERSON CONVICTED OF A FELONY; FELON; PROHIBITED PERSON] consists of the following elements:

(1) The Defendant knowingly owned or had in his or her possession or under his or her custody or control;
(2) Any firearm;
(3) Having been convicted of a felony [in Nevada, or any other state, or in any political subdivision thereof, or of a felony in violation of the laws of the United States of America].

"Firearm" means any device designed to be used as a weapon from which a projectile may be expelled through the barrel by the force of any explosion or other form of combustion. There is no requirement that the firearm be loaded or operable.

[Include definitions of "possession" and "knowingly" as required or indicate that "The definition of [possession][knowingly] is provided elsewhere in these instructions"].

A person commits the offense of [OWNERSHIP OR POSSESSION] OF A FIREARM BY A [PERSON CONVICTED OF A FELONY; FELON; PROHIBITED PERSON] if he or she knowingly owns or possesses a firearm, having been convicted of a felony in Nevada, another state, or under the laws of the United States. The person need not have known that his or her possession of the firearm was illegal and need not have intended to violate the law. Ignorance or misapprehension of the law is not a defense to this crime.

[Ownership or possession of a firearm by a person convicted of a felony is not a crime if the person has received a pardon and the pardon does not restrict his or her right to bear arms.]

NRS 202.360; NRS 202.253; *Hager v. State*, 135 Nev. 246, 249, 447 P.3d 1063, 1066 (2019); *State v. Fourth Jud. Dist. Ct. in & for Cnty. of Elko*, 137 Nev. 37, 41, 481 P.3d 848, 852 (2021); "Possession" is defined herein in Section 18.06; "Knowingly" is defined herein in Section 25.

22.16: OWNERSHIP OR POSSESSION OF A FIREARM BY A PERSON CONVICTED OF STALKING

The crime of [OWNERSHIP OR POSSESSION] OF A FIREARM BY A [PERSON CONVICTED OF STALKING; PROHIBITED PERSON] consists of the following elements:

(1) The Defendant knowingly owned or had in his or her possession or under his or her custody or control;

(2) Any firearm;

(3) Having been convicted of Stalking [or a law of any other state that prohibits the same or substantially similar conduct]; and

(4) The Court entered a finding in the judgment of conviction or admonishment of rights that:

(a) the crime of stalking in violation of NRS 200.575 was committed against [insert one or more of the following:

(i) The Defendant's spouse or former spouse;

(ii) Any person to whom the Defendant is related by blood or marriage;

(iii) Any person with whom the Defendant has had or is having a dating relationship;

(iv) Any person with whom the defendant has a child in common;

(v) The minor child of the Defendant's spouse or former spouse, any person to whom the Defendant is related by blood or marriage, any person with whom the Defendant has had or is having a dating relationship, or any person with whom the Defendant has a child in common;

(vi) The Defendant's minor child; or

(vii) Any person who has been appointed the custodian or legal guardian for the Defendant's minor child.]; and

(b) That the victim has an ongoing, reasonable fear of physical harm.

A person commits the offense of [OWNERSHIP OR POSSESSION] OF A FIREARM BY A [PERSON CONVICTED OF STALKING; PROHIBITED PERSON] if he or she knowingly owns or possesses a firearm, having been convicted of Stalking in violation of NRS 200.575 [or a law of any other state that prohibits the same or substantially similar conduct]. The person need not have known that his or her possession of the firearm was illegal, and need not have intended to violate the law. Ignorance or misapprehension of the law is not a defense to this crime.

"Firearm" means any device designed to be used as a weapon from which a projectile may be expelled through the barrel by the force of any explosion or other form of combustion. There is no requirement that the firearm be loaded or operable.

"Dating relationship" means frequent, intimate associations primarily characterized by the expectation of affectional or sexual involvement. The term does not include a casual relationship or an ordinary association between persons in a business or social context.

[Include definitions of "possession" and "knowingly" as required or indicate that "The definition of [possession][knowingly] is provided elsewhere in these instructions"].

NRS 202.360; NRS 202.253; NRS 33.018; NRS 200.575; *Hager v. State*, 135 Nev. 246, 249, 447 P.3d 1063, 1066 (2019); *State v. Fourth Jud. Dist. Ct. in & for Cnty. of Elko*, 137 Nev. 37, 41, 481 P.3d 848, 852 (2021); "Possession" is defined herein in Section 18.06; "Knowingly" is defined herein in Section 25.

22.17: OWNERSHIP OR POSSESSION OF A FIREARM BY A PERSON SUBJECT TO AN ORDER FOR PROTECTION AGAINST DOMESTIC VIOLENCE

The crime of [OWNERSHIP OR POSSESSION] OF A FIREARM BY A [PERSON SUBJECT TO AN ORDER FOR PROTECTION AGAINST DOMESTIC VIOLENCE; PROHIBITED PERSON] consists of the following elements:

(1) The Defendant knowingly;
(2) Owned, or had in his or her possession or under his or her custody or control;
(3) Any firearm;
(4) While currently subject to [an extended order for protection against domestic violence pursuant to NRS 33.017 to 33.100, inclusive, which includes a statement that the Defendant is prohibited from possessing or having under his or her custody or control any firearm while the order is in effect; or an equivalent order in any other state].

"Firearm" means any device designed to be used as a weapon from which a projectile may be expelled through the barrel by the force of any explosion or other form of combustion. There is no requirement that the firearm be loaded or operable.

[Include definitions of "possession" and "knowingly" as required or indicate that "The definition of [possession][knowingly] is provided elsewhere in these instructions"].

A person commits the offense of [OWNERSHIP OR POSSESSION] OF A FIREARM BY A [PERSON SUBJECT TO AN ORDER FOR PROTECTION AGAINST DOMESTIC VIOLENCE; PROHIBITED PERSON] if he or she knowingly owns or possesses a firearm while subject to [an extended order for protection against domestic violence pursuant to NRS 33.017 to 33.100, inclusive, which includes a statement that the Defendant is prohibited from possessing or having under his or her custody or control any firearm while the order is in effect; or an equivalent order in any other state]. The person need not have known that his or her ownership or possession of the firearm was illegal, and need not have intended to violate the law. Ignorance or misapprehension of the law is not a defense to this crime.

NRS 202.360; NRS 202.253; NRS 33.031; *Hager v. State*, 135 Nev. 246, 249, 447 P.3d 1063, 1066 (2019); "Possession" is defined herein in Section 18.08; "Knowingly" is defined herein in Section 25.

22.18: OWNERSHIP OR POSSESSION OF A FIREARM BY A FUGITIVE FROM JUSTICE

The crime of [OWNERSHIP OR POSSESSION] OF A FIREARM BY A [FUGITIVE FROM JUSTICE; PROHIBITED PERSON] consists of the following elements:

(1) The Defendant knowingly;
(2) owned or had in his or her possession or under his or her custody or control;
(3) Any firearm;
(4) While being a fugitive from justice.

"Firearm" means any device designed to be used as a weapon from which a projectile may be expelled through the barrel by the force of any explosion or other form of combustion. There is no requirement that the firearm be loaded or operable.

"Fugitive from justice" means a person who has been found in Nevada after:

(1) Being charged in another state with the commission of a felony and fleeing from that state to avoid prosecution for the felony; or
(2) Fleeing from another state to avoid giving testimony in any criminal proceeding.

[Include definitions of "possession" and "knowingly" as required or indicate that "The definition of [possession][knowingly] is provided elsewhere in these instructions"].

A person commits the offense of [OWNERSHIP OR POSSESSION] OF A FIREARM BY A [FUGITIVE FROM JUSTICE; PROHIBITED PERSON] if he or she knowingly owns or possesses a firearm while being a fugitive from justice. The person need not have known that his or her possession of the firearm was illegal and need not have intended to violate the law. Ignorance or misapprehension of the law is not a defense to this crime.

NRS 202.360; NRS 202.253; NRS 33.031; *Hager v. State*, 135 Nev. 246, 249, 447 P.3d 1063, 1066 (2019); *State v. Fourth Jud. Dist. Ct. in & for Cnty. of Elko*, 137 Nev. 37, 41, 481 P.3d 848, 852 (2021); "Possession" is defined herein in Section 18.06; "Knowingly" is defined herein in Section 25.

22.19: OWNERSHIP OR POSSESSION OF A FIREARM BY A CONTROLLED SUBSTANCE USER OR ADDICT

The crime of [OWNERSHIP OR POSSESSION] OF A FIREARM BY A [CONTROLLED SUBSTANCE USER OR ADDICT; PROHIBITED PERSON] consists of the following elements:

(1) The Defendant knowingly owned, or had in his or her possession or under his or her custody or control;
(2) Any firearm;
(3) While being [an unlawful user of any controlled substance or addicted to any controlled substance].

"Firearm" means any device designed to be used as a weapon from which a projectile may be expelled through the barrel by the force of any explosion or other form of combustion. There is no requirement that the firearm be loaded or operable.

"An unlawful user of any controlled substance" means a person who regularly uses any controlled substance, in a manner not medically prescribed, over a period of time proximate to, or contemporaneous with, possession of a firearm. A single use of a controlled substance is insufficient to establish a person as an unlawful user.

"Addicted to any controlled substance" means a person habitually and intemperately uses any controlled substance frequently and without the ability to stop on his or her own.

The term "controlled substance" includes [include as appropriate: Methamphetamine, cocaine, heroin, ecstasy, psilocybin, psilocin, oxycodone, hydrocodone, etc.]. [The term "controlled substance" does not include distilled spirits, wine, malt beverages, or tobacco].

[Include definitions of "possession" and "knowingly" as required or indicate that "The definition of [possession][knowingly] is provided elsewhere in these instructions"].

A person commits the offense of [OWNERSHIP OR POSSESSION] OF A FIREARM BY [AN UNLAWFUL USER OF OR ADDICT TO ANY CONTROLLED SUBSTANCE; PROHIBITED PERSON] if he or she knowingly owns or possesses a firearm while being an unlawful user of or addicted to any controlled substance. The person need not have known that his or her possession of the firearm was illegal, and need not have intended to violate the law. Ignorance or misapprehension of the law is not a defense to this crime.

NRS 202.360; NRS 202.253; NRS 202.005; 21 U.S.C. § 802; NAC 453.510; NAC 453.520; NAC 453.530; NAC 453.540; NAC 453.550; *Hager v. State*, 135 Nev. 246, 249, 447 P.3d 1063, 1066 (2019); *State v. Fourth Jud. Dist. Ct. in & for Cnty. of Elko*, 137 Nev. 37, 41, 481 P.3d 848, 852 (2021); "Possession" is defined herein in Section 18.06; "Knowingly" is defined herein in Section 25.

23.01 THEFT BY CONTROL OF PROPERTY

The crime of THEFT consists of the following elements:

(1) The Defendant knowingly and without lawful authority;
(2) Controls any property of another person;
(3) With the intent to deprive that person of the property; and
(4) The value of the property is $1,200 or more.

"Control" means to act so as to prevent a person from using his or her own property except on the actor's terms.

"Deprive" means to withhold a property interest of another person permanently or for so long a time that a substantial portion of its value, usefulness or enjoyment is lost, or to withhold it with the intent to restore it only upon the payment of a reward or other compensation, or to transfer or dispose of it so that it is unlikely to be recovered.

"Property of another person" means real, personal or intangible property in which any person other than the Defendant has an interest which the Defendant is not privileged to infringe, including, without limitation, property in which the Defendant also has an interest, notwithstanding that the other person might be precluded from civil recovery because the property was used in an unlawful transaction or was subject to forfeiture as contraband. Property in the possession of the Defendant in which another person has only a security interest shall be deemed not to be the property of that other person, even if that person holds legal title to the property pursuant to a security agreement.

"Intangible property" means property that lacks a physical existence yet possesses value, including, without limitation, customer lists, trade secrets, copyrighted material or other confidential information.

"Value" means the fair market value of the property at the time of the theft. [The value of a written instrument which does not have a readily ascertainable market value is the greater of the face amount of the instrument less the portion satisfied or the amount of economic loss to the owner of the instrument resulting from the deprivation of the instrument.] The trier of fact shall determine the value of all other property whose value is not readily ascertainable, and may, in making that determination, consider all relevant evidence, including evidence of the value of the property to its owner.

[Include definition of "knowingly" as required or indicate that "The definition of "knowingly" is provided elsewhere in these instructions"].

NRS 205.0832; NRS 205.0834; NRS 205.0833; NRS 205.0835; NRS 205.0822; NRS 205.0823; NRS 205.0824; NRS 205.0825; NRS 205.08255; NRS 205.0826; NRS 205.0827; NRS 205.0828; NRS 205.0829; NRS 205.083; NRS 205.0831; Black's Law Dictionary 333 (7th Ed. 1999); "Knowingly" is defined herein in Section 25.

23.02: THEFT BY CONVERSION OR TRANSFER OF PROPERTY

The crime of THEFT consists of the following elements:

(1) The Defendant knowingly and without lawful authority;

(2) [include as appropriate]

(a) Converts any property of another person;

(b) Makes an unauthorized transfer of an interest in any property of another person;

(c) Without authorization controls any property of another person;

(d) Without authorization uses the [services] [property] of another person;

(3) Where the [services were] [property was] entrusted to him or her or placed in his or her possession for a limited, authorized period of determined or prescribed duration or for a limited use; and

(4) The value of the property or services is $1,200 or more.

"Control" means to act so as to prevent a person from using his or her own property except on the actor's terms.

"Convert" refers to the wrongful possession or disposition of another's property as if it were one's own; an act or series of acts of willful interference, without lawful justification, with any property in a manner inconsistent with another's right, whereby that other person is deprived of the use and possession of the property.

"Deprive" means to withhold a property interest of another person permanently or for so long a time that a substantial portion of its value, usefulness or enjoyment is lost, or to withhold it with the intent to restore it only upon the payment of a reward or other compensation, or to transfer or dispose of it so that it is unlikely to be recovered.

"Transfer" means to change the possession or control of property.

"Property of another person" means real, personal or intangible property in which any person other than the Defendant has an interest which the Defendant is not privileged to infringe, including, without limitation, property in which the Defendant also has an interest, notwithstanding that the other person might be precluded from civil recovery because the property was used in an unlawful transaction or was subject to forfeiture as contraband. Property in the possession of the Defendant in which another person has only a security interest shall be deemed not to be the property of that other person, even if that person holds legal title to the property pursuant to a security agreement.

"Intangible property" means property that lacks a physical existence yet possesses value, including, without limitation, customer lists, trade secrets, copyrighted material or other confidential information.

"Services" includes labor, professional services, transportation, cable television or other video service, telephone, gas or electricity services, accommodations in hotels, restaurants, leased premises or elsewhere, admissions to exhibitions and the use of vehicles or other movable property.

"Value" means the fair market value of the property or services at the time of the theft. The value of a written instrument which does not have a readily ascertainable market value is the greater of the face amount of the instrument less the portion satisfied or the amount of economic loss to the owner of the instrument resulting from the deprivation of the instrument. The trier of fact shall determine the value of all other property whose value is not readily ascertainable, and may, in making that determination, consider all relevant evidence, including evidence of the value of the property to its owner.

[Include definition of "knowingly" as required or indicate that "The definition of "knowingly" is provided elsewhere in these instructions"].

NRS 205.0832; NRS 205.0834; NRS 205.0833; NRS 205.0835; NRS 205.0822; NRS 205.0823; NRS 205.0824; NRS 205.0825; NRS 205.08255; NRS 205.0826; NRS 205.0827; NRS 205.0828; NRS 205.0829; NRS 205.083; NRS 205.0831; Black's Law Dictionary 333 (7th Ed. 1999); "Knowingly" is defined herein in Section 25.

23.03: THEFT BY MATERIAL MISREPRESENTATION

The crime of THEFT consists of the following elements:

(1) The Defendant knowingly and without lawful authority;

(2) [include as appropriate]

(a) Obtains real, personal or intangible property of another person by a material misrepresentation; or

(b) Obtains the services of another person by a material misrepresentation;

(3) With intent to deprive that person of the [property] [services]; and

(4) The value of the [property] [services] is $1,200 or more.

"Material misrepresentation" means the use of any pretense, or the making of any promise, representation or statement of present, past or future fact, which is fraudulent and which, when used or made, is instrumental in causing the wrongful control or transfer of property or services. The pretense may be verbal, or it may be a physical act.

"Control" means to act so as to prevent a person from using his or her own property except on the actor's terms.

"Deprive" means to withhold a property interest of another person permanently or for so long a time that a substantial portion of its value, usefulness or enjoyment is lost, or to withhold it with the intent to restore it only upon the payment of a reward or other compensation, or to transfer or dispose of it so that it is unlikely to be recovered.

"Obtain" means to bring about or receive the transfer of any interest in property, or to secure performance of a service.

"Property of another person" means real, personal or intangible property in which any person other than the Defendant has an interest which the Defendant is not privileged to infringe, including, without limitation, property in which the Defendant also has an interest, notwithstanding that the other person might be precluded from civil recovery because the property was used in an unlawful transaction or was subject to forfeiture as contraband. Property in the possession of the Defendant in which another person has only a security interest shall be deemed not to be the property of that other person, even if that person holds legal title to the property pursuant to a security agreement.

"Intangible property" means property that lacks a physical existence yet possesses value, including, without limitation, customer lists, trade secrets, copyrighted material or other confidential information.

"Services" includes labor, professional services, transportation, cable television or other video service, telephone, gas or electricity services, accommodations in hotels, restaurants, leased premises or elsewhere, admissions to exhibitions and the use of vehicles or other movable property.

"Transfer" means to change the possession or control of property.

"Value" means the fair market value of the property or services at the time of the theft. The value of a written instrument which does not have a readily ascertainable market value is the greater of the face amount of the instrument less the portion satisfied or the amount of economic loss to the owner of the instrument resulting from the deprivation of the instrument. The trier of fact shall determine the value of all other property whose value is not readily ascertainable, and may, in making that determination, consider all relevant evidence, including evidence of the value of the property to its owner.

[Include definition of "knowingly" as required or indicate that "The definition of "knowingly" is provided elsewhere in these instructions"].

NRS 205.0832; NRS 205.0834; NRS 205.0833; NRS 205.0835; NRS 205.0822; NRS 205.0823; NRS 205.0824; NRS 205.0825; NRS 205.08255; NRS 205.0826; NRS 205.0827; NRS 205.0828; NRS 205.0829; NRS 205.083; NRS 205.0831; Black's Law Dictionary 333 (7th Ed. 1999); "Knowingly" is defined herein in Section 25.

23.04: THEFT OF LOST OR MISLAID PROPERTY

The crime of THEFT consists of the following elements:

(1) The Defendant knowingly, without lawful authority;
(2) Comes into control of lost, mislaid or misdelivered property of another person;
(3) Under circumstances providing means of inquiry as to the true owner; and
(4) Appropriates that property to his or her own use [or that of another person] without reasonable efforts to notify the true owner; and
(5) The value of the property is $1,200 or more.

"Control" means to act so as to prevent a person from using his or her own property except on the actor's terms.

"Property of another person" means real, personal or intangible property in which any person other than the Defendant has an interest which the Defendant is not privileged to infringe, including, without limitation, property in which the Defendant also has an interest, notwithstanding that the other person might be precluded from civil recovery because the property was used in an unlawful transaction or was subject to forfeiture as contraband. Property in the possession of the Defendant in which another person has only a security interest shall be deemed not to be the property of that other person, even if that person holds legal title to the property pursuant to a security agreement.

"Intangible property" means property that lacks a physical existence yet possesses value, including, without limitation, customer lists, trade secrets, copyrighted material or other confidential information.

"Value" means the fair market value of the property or services at the time of the theft. The value of a written instrument which does not have a readily ascertainable market value is the greater of the face amount of the instrument less the portion satisfied or the amount of economic loss to the owner of the instrument resulting from the deprivation of the instrument. The trier of fact shall determine the value of all other property whose value is not readily ascertainable, and may, in making that determination, consider all relevant evidence, including evidence of the value of the property to its owner.

[Include definition of "knowingly" as required or indicate that "The definition of "knowingly" is provided elsewhere in these instructions"].

NRS 205.0832; NRS 205.0834; NRS 205.0833; NRS 205.0835; NRS 205.0822; NRS 205.0823; NRS 205.0824; NRS 205.0825; NRS 205.08255; NRS 205.0826; NRS 205.0827; NRS 205.0828; NRS 205.0829; NRS 205.083; NRS 205.0831; Black's Law Dictionary 333 (7th Ed. 1999); "Knowingly" is defined herein in Section 25.

23.05: THEFT BY CONTROL OF STOLEN PROPERTY

The crime of THEFT consists of the following elements:

(1) The Defendant knowingly and without lawful authority;
(2) Controls property of another person;
(3) Knowing or having reason to know that the property was stolen; and
(4) The value of the property is $1,200 or more.

"Control" means to act so as to prevent a person from using his or her own property except on the actor's terms.

"Property of another person" means real, personal or intangible property in which any person other than the Defendant has an interest which the Defendant is not privileged to infringe, including, without limitation, property in which the Defendant also has an interest, notwithstanding that the other person might be precluded from civil recovery because the property was used in an unlawful transaction or was subject to forfeiture as contraband. Property in the possession of the Defendant in which another person has only a security interest shall be deemed not to be the property of that other person, even if that person holds legal title to the property pursuant to a security agreement.

"Intangible property" means property that lacks a physical existence yet possesses value, including, without limitation, customer lists, trade secrets, copyrighted material or other confidential information.

"Value" means the fair market value of the property or services at the time of the theft. The value of a written instrument which does not have a readily ascertainable market value is the greater of the face amount of the instrument less the portion satisfied or the amount of economic loss to the owner of the instrument resulting from the deprivation of the instrument. The trier of fact shall determine the value of all other property whose value is not readily ascertainable, and may, in making that determination, consider all relevant evidence, including evidence of the value of the property to its owner.

[Include definition of "knowingly" as required or indicate that "The definition of "knowingly" is provided elsewhere in these instructions"].

NRS 205.0832; NRS 205.0834; NRS 205.0833; NRS 205.0835; NRS 205.0822; NRS 205.0823; NRS 205.0824; NRS 205.0825; NRS 205.08255; NRS 205.0826; NRS 205.0827; NRS 205.0828; NRS 205.0829; NRS 205.083; NRS 205.0831; Black's Law Dictionary 333 (7th Ed. 1999); "Knowingly" is defined herein in Section 25.

23.06: THEFT OF SERVICES

The crime of THEFT consists of the following elements:

(1) The Defendant knowingly and without lawful authority;

(2) [include as appropriate]

(a) Obtains services, [including, without limitation, audio or visual services,] or parts, products or other items related to such services which the person knows [or, in the case of audio or visual services, should have known] are available only for compensation, without paying or agreeing to pay compensation;

(b) Diverts the services of another person to his or her own benefit or that of another person without lawful authority to do so; and

(3) The value of the services [parts, products, or other items] is $1,200 or more.

"Obtain" means to bring about or receive the transfer of any interest in property, or to secure performance of a service.

"Services" includes labor, professional services, transportation, cable television or other video service, telephone, gas or electricity services, accommodations in hotels, restaurants, leased premises or elsewhere, admissions to exhibitions and the use of vehicles or other movable property.

"Value" means the fair market value of the property or services at the time of the theft. The value of a written instrument which does not have a readily ascertainable market value is the greater of the face amount of the instrument less the portion satisfied or the amount of economic loss to the owner of the instrument resulting from the deprivation of the instrument. The trier of fact shall determine the value of all other property whose value is not readily ascertainable, and may, in making that determination, consider all relevant evidence, including evidence of the value of the property to its owner.

[Include definition of "knowingly" as required or indicate that "The definition of "knowingly" is provided elsewhere in these instructions"].

NRS 205.0832; NRS 205.0834; NRS 205.0833; NRS 205.0835; NRS 205.0822; NRS 205.0823; NRS 205.0824; NRS 205.0825; NRS 205.08255; NRS 205.0826; NRS 205.0827; NRS 205.0828; NRS 205.0829; NRS 205.083; NRS 205.0831; Black's Law Dictionary 333 (7th Ed. 1999); "Knowingly" is defined herein in Section 25.

23.07: THEFT OF SECURITY INTEREST

The crime of THEFT consists of the following elements:

(1) The Defendant knowingly and without lawful authority;
(2) [Takes, destroys, conceals or disposes of] property in which another person has a security interest;
(3) With intent to defraud that person; and
(4) The value of the property is $1,200 or more.

"Property of another person" means real, personal or intangible property in which any person other than the Defendant has an interest which the Defendant is not privileged to infringe, including, without limitation, property in which the Defendant also has an interest, notwithstanding that the other person might be precluded from civil recovery because the property was used in an unlawful transaction or was subject to forfeiture as contraband. Property in the possession of the Defendant in which another person has only a security interest shall be deemed not to be the property of that other person, even if that person holds legal title to the property pursuant to a security agreement.

"Intangible property" means property that lacks a physical existence yet possesses value, including, without limitation, customer lists, trade secrets, copyrighted material or other confidential information.

"Value" means the fair market value of the property or services at the time of the theft. The value of a written instrument which does not have a readily ascertainable market value is the greater of the face amount of the instrument less the portion satisfied or the amount of economic loss to the owner of the instrument resulting from the deprivation of the instrument. The trier of fact shall determine the value of all other property whose value is not readily ascertainable, and may, in making that determination, consider all relevant evidence, including evidence of the value of the property to its owner.

"Defraud" means to deprive a person of property or interest, estate or right, by fraud, deceit or artifice. An intent to defraud is thus an intent to deceive another person for the purpose of inducing him or her to part with the property or to alter his or her position to his or her injury or risk, and to accomplish that purpose by some false statement, false representation of fact, wrongful concealment or suppression of truth, or by any other artifice or act calculated to deceive.

As to any charge of theft, the State is not required to prove an intent to defraud any particular person. The element of intent to defraud is satisfied if the State proves that the Defendant intended to defraud any person, association, or body politic or corporation, whatever.

[Include definitions of "knowingly" as required or indicate that "The definition of "knowingly" is provided elsewhere in these instructions"].

NRS 205.0832; NRS 205.0834; NRS 205.0833; NRS 205.0835; NRS 205.0822; NRS 205.0823; NRS 205.0824; NRS 205.0825; NRS 205.08255; NRS 205.0826; NRS 205.0827; NRS 205.0828; NRS 205.0829; NRS 205.083; NRS 205.0831; Black's Law Dictionary 333 (7th Ed. 1999); "Knowingly" is defined herein in Section 25.

23.08: THEFT BY CHECK

The crime of THEFT consists of the following elements:

(1) The Defendant knowingly and without lawful authority;
(2) Draws or passes a check, and in exchange obtains property or services;
(3) Knowing that the check will not be paid when presented; and
(4) The value of the property or services is $1,200 or more.

"Check" means any check, draft or other negotiable instrument of any kind.

"Draw" means making, drawing, uttering, preparing, writing or delivering a check.

"Obtain" means to bring about or receive the transfer of any interest in property, or to secure performance of a service.

"Property of another person" means real, personal or intangible property in which any person other than the Defendant has an interest which the Defendant is not privileged to infringe, including, without limitation, property in which the Defendant also has an interest, notwithstanding that the other person might be precluded from civil recovery because the property was used in an unlawful transaction or was subject to forfeiture as contraband. Property in the possession of the Defendant in which another person has only a security interest shall be deemed not to be the property of that other person, even if that person holds legal title to the property pursuant to a security agreement.

"Intangible property" means property that lacks a physical existence yet possesses value, including, without limitation, customer lists, trade secrets, copyrighted material or other confidential information.

"Services" includes labor, professional services, transportation, cable television or other video service, telephone, gas or electricity services, accommodations in hotels, restaurants, leased premises or elsewhere, admissions to exhibitions and the use of vehicles or other movable property.

"Value" means the fair market value of the property or services at the time of the theft. The value of a written instrument which does not have a readily ascertainable market value is the greater of the face amount of the instrument less the portion satisfied or the amount of economic loss to the owner of the instrument resulting from the deprivation of the instrument. The trier of fact shall determine the value of all other property whose value is not readily ascertainable, and may, in making that determination, consider all relevant evidence, including evidence of the value of the property to its owner.

[Include definition of "knowingly" as required or indicate that "The definition of knowingly is provided elsewhere in these instructions"].

NRS 205.0832; NRS 205.0834; NRS 205.0833; NRS 205.0835; NRS 205.0822; NRS 205.0823; NRS 205.0824; NRS 205.0825; NRS 205.08255; NRS 205.0826; NRS 205.0827; NRS 205.0828; NRS 205.0829; NRS 205.083; NRS 205.0831; Black's Law Dictionary 333 (7th Ed. 1999); "Knowingly" is defined herein in Section 25.

23.09: DETERMINATION OF AMOUNT INVOLVED IN THEFT

The amount involved in a theft shall be deemed to be the highest value, by any reasonable standard, of the property or services which are obtained. [Amounts involved in thefts committed pursuant to a scheme or continuing course of conduct, whether from one or more persons, may be aggregated in determining the grade of the offense.]

NRS 205.0834.

23.10: VALUE ENHANCEMENT INSTRUCTION FOR THEFT

If you find that the Defendant committed the crime of THEFT, then you must further determine whether the value of the property is [$5,000 or more but less than $25,000] [$25,000 or more but less than $100,000] [$100,000 or more]. The burden is on the State to prove the value of the property beyond a reasonable doubt.

NRS 205.0835.

24.01: ESCAPE

The crime of ESCAPE consists of the following elements:

(1) The Defendant is [a prisoner confined in prison][in the lawful custody of an officer or other person];
(2) Being held on a felony, gross misdemeanor, misdemeanor charge, conviction, or sentence; and
(3) Escapes or attempts to escape from [prison or custody].

["Prison" means any place designated by law for the keeping of persons held in custody under process of law, or under lawful arrest.]

["Prisoner" includes any person held in custody under process of law, or under lawful arrest.]

["Officer" includes all officers, members and employees of:
(1) The State of Nevada;
(2) Any political subdivision of this State;
(3) Any other special district, public corporation or quasi-public corporation of this State; and
(4) Any agency, board or commission established by this State or any of its political subdivisions,
and all persons exercising or assuming to exercise any of the powers or functions of a public officer.]

"Custody" is not limited to confinement in a jail or prison cell. In addition to physical imprisonment, "custody" means a keeping, guardianship, the state of being held in keeping or under guard, or a restraint of liberty. "Custody" results from the exercise of lawful authority to make an arrest, as well as physical detention, confinement, and restriction of movement by virtue of the lawful authority of an officer [or other person].

NRS 212.090; NRS 193.021; NRS 193.022; NRS 193.019; *Johnson v. Sheriff*, 90 Nev. 19, 20–23, 518 P.2d 161, 162–64 (1974); *Browning v. State*, 120 Nev. 347, 91 P.3d 39 (2004); *Jorgensen v. State*, 100 Nev. 541, 543–45, 688 P.2d 308, 309–10 (1984).

24.02: ESCAPE ENHANCEMENT INSTRUCTION – FELONY

If you find that the Defendant committed the offense of ESCAPE, then you must further determine whether the Defendant was being held on a charge, conviction, or sentence of a felony, and if so, whether one (or more) of the following aggravating factors was proven:

(a) A dangerous weapon was used to facilitate the escape or attempted escape;

(b) One or more hostages were taken to facilitate the escape or attempted escape; or

(c) Substantial bodily harm resulted to anyone as a direct result of the escape or attempt.

The burden is on the State to prove beyond a reasonable doubt that the Defendant was being held on a charge, conviction, or sentence of a felony and, if so whether any of the above aggravating factors exist.

NRS 212.090.

24.03: ESCAPE ENHANCEMENT INSTRUCTION – GROSS MISDEMEANOR/ MISDEMEANOR

If you find that the Defendant committed the offense of ESCAPE, then you must further determine whether the Defendant was being held on a charge, conviction, or sentence of a gross misdemeanor or misdemeanor, and if so, whether a dangerous weapon was used to facilitate the escape or attempted escape.

The burden is on the State to prove beyond a reasonable doubt that the Defendant was being held on a charge, conviction, or sentence of a gross misdemeanor or misdemeanor and that a dangerous weapon was used to facilitate the escape or attempted escape.

NRS 212.090.

24.04: ESCAPE FROM PRISON

The crime of ESCAPE FROM PRISON consists of the following elements:

(1) The Defendant was convicted of a crime under the laws of this State and sentenced to imprisonment in the state prison;

(2) Was under the sentence of imprisonment but not released on parole;

(3) Was [on temporary furlough, participating in a work or educational release program or otherwise in a classification assignment under the provisions of chapter 209 of NRS]; and

(4) Was absent from the place of assignment of the [temporary furlough, work or educational release program or other classification assignment under the provisions of chapter 209 of NRS], without authorization.

NRS 212.090; NRS 212.095; NRS 209.081.

25.01: WILLFULLY DEFINED

An act [or omission] is "willful" or done "willfully" when it is done intentionally, deliberately, or designedly, as distinguished from an act [or omission] done accidentally or inadvertently. The words "willful" and "willfully" do not require any intent to violate the law or injure another. "Willful" and "willfully," in other words, do not mean intent to violate the law, but the intentional doing of an act that is a violation of the law.

Fullerton v. State, 116 Nev. 435, 439, 997 P.2d 807, 810 (2000); *Rice v. State*, 113 Nev. 1300, 1306, 949 P.2d 262, 266 (1997); *Childers v. State,* 100 Nev. 280, 283, 680 P.2d 598, 599 (1984) *Byars v. State,* 130 Nev. 848, 862, 336 P.3d 939, 949 (2014); *Jenkins v. State,* 110 Nev. 865, 868–71, 877 P.2d 1063, 1065–67 (1994); *Robey v. State,* 96 Nev. 459, 460–62, 611 P.2d 209, 210–11 (1980); *Bolden v. State*, 121 Nev. 908, 923, 124 P.3d 191, 201 (2005); *State v. Second Jud. Dist. Ct. in & for Cty. of Washoe*, 136 Nev. 191, 196, 462 P.3d 671, 675 (2020).

25.02: KNOWINGLY DEFINED

A person acts "knowingly" when he or she has knowledge that the facts exist which constitute each element of a crime, even if he or she does not know that they are unlawful. Such knowledge may be actual or constructive, meaning the person knew or had reason to believe that such facts existed.

Constructive knowledge of any particular fact may be inferred from the knowledge of such other facts as should put an ordinarily prudent person upon inquiry.

NRS 193.017; *Garcia v. District Court*, 117 Nev. 697, 701-702, 30 P.3d 1110, 1112-1113 (2001); *State v. Rhodig*, 101 Nev. 608, 611-12, 707 P.2d 549, 551 (1985).



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