PREAMBLE

CRIMINAL PATTERN JURY INSTRUCTIONS

These instructions are intended as guidelines. They may be modified or supplemented depending upon the issues of fact and law presented at trial. Although there is the opportunity to tailor the instructions to each case, care should be taken to make certain that all essential elements of the instructions are maintained.

Optional or alternative instructions appear in parentheses. Notes appearing at the end of instructions are editorial comments. Notes and cross references are not to be considered exhaustive. The instructions may not reflect the most recent court interpretations or changes in the law.

Most of these instructions, particularly those dealing with specific criminal statutes, have not been tested in adversary proceedings. Most have not received the specific approval of any court. The instructions themselves are not intended as legal authority and should not be cited as precedent.

It is the intention of the Superior Court to maintain these Criminal Pattern Jury Instructions in the most accurate and useful manner possible. All comments and suggestions should be provided to Judge Mary M. Johnston for consideration by the Court.

PATTERN CRIMINAL JURY INSTRUCTIONS
OF THE
SUPERIOR COURT
OF THE
STATE OF DELAWARE

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2.0 **IN THE SUPERIOR COURT OF THE STATE OF DELAWARE**

IN AND FOR NEW CASTLE COUNTY

STATE OF DELAWARE	)	
	)	
v.	)	ID No.
	)	
	)	
	)	
Defendant.	)	

JURY INSTRUCTIONS

Before The Honorable [ ]
And A Jury

_____, 20[ ]

_____, Deputy Attorney General, Department of Justice, [ ], Delaware, Attorney for the State of Delaware

_____, Esquire, [ ], Delaware, Attorney for the Defendant

2.1_____DUTY AND FUNCTION OF JUDGE AND JURY

Ladies & Gentlemen of the Jury:

You have now heard all of the evidence that is going to be presented in this case. You have heard the arguments of the attorneys. I shall not review the evidence because you, the jury, are the sole and exclusive judges of the facts of the case; the credibility of the witnesses; and the weight and the value of the evidence.

I will now instruct you on the law. You must listen to all of the instructions together in reaching your verdict. Copies of these instructions will be made available to you during your deliberations in order to assist you in making your decision.

It is your duty as jurors to determine the facts only from the evidence in this case. You must apply the law as I state it to you to the facts as you find them to be.

2.2 VERDICT BASED ON EVIDENCE

Your verdict must be based solely and exclusively on the evidence in the case. You cannot be affected by passion, prejudice, bias, or sympathy. You must fairly and impartially consider all of the evidence. You must not, under any circumstances, allow any sympathy you might have for anyone to influence you in any degree whatsoever in arriving at your verdict.

You must determine whether the defendant is guilty or not guilty solely from the evidence presented during the trial. If your recollection of that evidence disagrees with anything said, either by counsel [or by the Court], you should be guided entirely by your own recollection. It is your decision, and only your decision, to determine the true facts and any inferences from the proven facts.

I now turn to the specific crimes charged in this case. As to each offense, I will describe the crime charged and the essential elements that the State must prove. You will be required to reach a separate verdict for each offense. Each verdict must be independent of your decision on any other.

For each separate charge, if you find that the State has proved all of the elements beyond a reasonable doubt, you should find the defendant guilty of that crime. If you find that the State has not proved every element of an offense beyond a reasonable doubt, then you must find the defendant not guilty of that crime.

2.3 INDICTMENT

The defendant is charged with the crimes of [state charges]. The Defendant has pleaded not guilty. A copy of the indictment is attached to these instructions.

You must keep in mind, however, that the indictment is merely the process by which a charge is brought against the defendant. It is not in itself any evidence of the guilt of the defendant. You should not allow yourselves to be influenced in any way, however slight, by the fact that an indictment has been returned against the defendant.

2.4 MULTIPLE COUNTS OF THE SAME CRIME

The defendant is charged with [number] separate counts of [crime]. You must consider each count separately, and decide whether the State has proved each count beyond a reasonable doubt. If you find the defendant guilty of any count, that does not mean defendant is guilty of any other count.

2.5 STATE OF MIND

An element of the criminal offense[s] I have just defined for you deals with the state of mind of the defendant. It is, of course, difficult to know what is going on in another person's mind. Therefore, you are permitted to draw an inference, or in other words to reach a conclusion, about a defendant's state of mind from the facts and circumstances. In reaching this conclusion, you may consider whether a reasonable person acting in the defendant's circumstances would have had or would not have had the required intention, knowledge or belief. You should, however, keep in mind at all times that it is the defendant's state of mind which is at issue. In order to convict the defendant, you are required to find beyond a reasonable doubt that the defendant in fact had the intention, knowledge, or belief required for a finding of guilt.

The fact that our law permits you to draw an inference about a defendant's state of mind in no way relieves the State of its burden of proving beyond a reasonable doubt every element of an offense.

2.6 PRESUMPTION OF INNOCENCE/REASONABLE DOUBT

The law presumes that every person charged with a crime is innocent. This presumption of innocence requires a verdict of not guilty, unless you are convinced by the evidence that the defendant is guilty beyond a reasonable doubt.

The burden of proof is upon the State to prove all of the facts necessary to establish each and every element of the crime charged beyond a reasonable doubt. The State's ability to satisfy its burden of proof is not affected by the number of witnesses it calls. You must consider the quality, not the quantity of the evidence.

Reasonable doubt is a practical standard. Proof that a defendant is probably guilty is not sufficient. However, there are very few things in this world that we know with absolute certainty. The law does not require proof that overcomes every possible doubt.

Proof beyond a reasonable doubt is proof that leaves you firmly convinced of the defendant's guilt. Therefore, based upon your conscientious consideration of the evidence, if you are firmly convinced that the defendant is guilty of the crime charged, you should find the defendant guilty. If, on the other hand, you think there is a reasonable doubt that the defendant is guilty, you must give the defendant the benefit of the doubt by finding the defendant not guilty.

2.7 CREDIBILITY OF WITNESSES

You are the sole judges of the credibility of each witness. You decide the weight to be given to each witness's testimony. You should not give more weight to the testimony of police officers merely because they are police officers. You should consider each witness's means of knowledge, strength of memory and opportunity for observation, the reasonableness or unreasonableness of the testimony, the consistency or inconsistency of the testimony, the motivations of the witness, whether the testimony has been contradicted, the bias, prejudice or interest of the witness, if any, the manner or demeanor of the witness upon the witness stand, and all other facts and circumstances shown by the evidence that affect the credibility of the testimony.

2.8 DEFENDANT'S CHOICE NOT TO TESTIFY

The defendant has chosen not to testify. The defendant has a constitutional right to decide whether or not to testify. The fact that the defendant did not testify must not be construed by you as an indication that the defendant is guilty of the crime charged. Under the law, this defendant is presumed innocent until proven guilty beyond a reasonable doubt.

Further, because the burden of proof is upon the State to prove all of the elements of the crime beyond a reasonable doubt, the defendant is not required to present any evidence on his [her] own behalf. You shall not draw any inference of guilt from the defendant's choice not to testify.

2.9 CONFLICTS IN TESTIMONY

If you find the testimony to be conflicting or inconsistent, it is your duty to reconcile it. If reasonably possible, you should make one harmonious story of it all. But if you cannot do this, then it is your duty and privilege to give credit to that portion of the testimony which, in your judgment, is most worthy of credit and disregard any portion of the testimony which, in your judgment, is unworthy of credit. In so doing, you should take into consideration the demeanor of the witnesses as they testified before you, their apparent fairness in giving their testimony, their opportunities for learning and knowing the facts about which they testified, and any bias or interest that they may have concerning the outcome of this case.

2.10 OBJECTIONS MADE BY COUNSEL

Counsel have objected to some of the testimony or to other evidence. It is the duty of counsel to object to evidence which they believe may not properly be offered. You should not be prejudiced in any way against a lawyer who makes objections or the party that lawyer represents. At times, I have sustained or upheld objections. You must not consider any evidence that I have instructed you to disregard. You should not speculate on what an answer may have been had the witness been permitted to answer. At other times, I have overruled objections, and you are free to consider that evidence.

In some instances counsel approached at sidebar to discuss evidentiary issues and other matters. On other occasions you may have been taken out of the courtroom so that counsel and the Court could further discuss and resolve issues. You must not speculate about what may have been said at such conferences.

2.11 ATTORNEY'S BELIEF OR OPINION

The role of an attorney is to zealously and effectively advance the claims of the party the attorney represents within the bounds of the law. An attorney may argue all reasonable inferences from evidence in the record. However, what an attorney states in opening or closing argument is not evidence. Arguments are merely made to assist you in organizing the evidence and to suggest the logical conclusion that may be reached from the evidence presented. The only evidence which you should consider in reaching your verdict consists of testimony from witnesses testifying from the witness stand and exhibits introduced through their testimony.

2.12 CONDUCT DURING DELIBERATIONS

How the jury conducts its deliberations is solely and exclusively within the province of its members. However, I suggest that you carry on your discussions in an orderly way and give everybody an opportunity to express their views before taking a vote or committing yourself to a particular position. All issues should be fully and fairly discussed. Everyone should have a fair chance to be heard and participate before you attempt to finally decide the case.

Jurors have a duty to consult with one another with an open mind and to deliberate with a view toward reaching a verdict. Each of you should decide the case for yourself, but only after impartially considering the evidence with your fellow jurors.

You should not surrender your own opinion or defer to the opinions of your fellow jurors for the mere purpose of returning a verdict. However, you should not hesitate to re-examine your own view and change your opinion if you are persuaded by others.

All twelve jurors must unanimously agree upon any verdict.

4.1

LESSER-INCLUDED OFFENSES

If, after considering all the evidence, you find that the State has proved all of the elements of the crime beyond a reasonable doubt that, you should find the defendant guilty.

If you have a reasonable doubt about any element of the offense, you must find the defendant not guilty. In this circumstance, or if you are unable to reach a unanimous verdict on the [charge], you may then consider the lesser-included offense of [lesser-included offense].

4.2

OUT-OF-COURT STATEMENTS

The evidence in this trial has included an [oral/tape-recorded/videotaped] statement made by a witness before [his/her] testimony here in court. Under Delaware law, this type of statement is admissible regardless of whether it is consistent or inconsistent with the witness's in-court testimony.

As with any other evidence, you must decide whether an out-of-court statement is credible, or believable, and how much weight it should be given. You have already been instructed on the factors you should consider in evaluating a witness's testimony. In evaluating the credibility of a prior, out-of-court statement, in addition to these general factors, you must also consider the circumstances under which the statement was made.

[*The following paragraph may be given in lieu of the preceding paragraph in the* <u>*extremely rare*</u> *case in which a prior out-of-court statement is admitted under §§ 3507 or 3513, there is* <u>*no*</u> *quantum of corroborating evidence for the prior statement, and the statement is flatly denied. See Acosta v. State*, *417 A.2d 373 (Del. 1980); Russell v. State*, *No. 49, 1996, Berger, J. (Del. Sept. 18, 1996)*].

As with any other evidence, you must decide whether an out-of-court statement is credible, or believable, and how much weight it should be given. If you conclude that there is a conflict between a witness's in-court testimony and

[his/her] out-of-court statement, you may take that conflict into account when you decide the credibility and weight of the out-of-court statement. A conflict is particularly important if there is no evidence to corroborate, or confirm, the inconsistent, out-of-court statement. However, you may convict solely on the basis of such a statement if, after judging the statement's credibility and giving it the weight you believe it deserves, you find beyond a reasonable doubt that the defendant committed the crime charged.

[*Comment: In the ordinary case, where an out-of-court statement is admitted, no special instruction is required. This instruction should be given only in an unusual cases in which an out-of-court statement is admitted under 11 Del. C. §§ 3507 or 3513, and the circumstances of the out-of-court statement make such an instruction advisable. If used, the instruction should be given at the time the out-of-court statement is admitted into evidence as well as during the final instructions to the jury.*]

[*Comment: The advisory committee notes that the cautionary instruction used in the final paragraph of the instruction, while supported by case law, implicates DEL. CONST. art. IV, § 19 as to whether the court may be unduly commenting upon the evidence.*]

Source:

Demby v. State, 659 A.2d 1152 (Del. 1997) (discussing procedures for admitting out-of-court statements under § 3507); *Smith v. State*, 669 A.2d 1 (Del. 1995) (same); *Feleke v. State*, 620 A.2d 222 (Del. 1993) (same); *Harris v. State*, No. 425, 1991, Walsh, J. (Del. Feb. 3, 1993) (question of admissibility based on voluntariness of statement a matter for the court to decide); *Flamer v. State*, 490 A.2d 104 (Del. 1984) (evidence of voluntariness of statement may be presented to jury with regard to its reliability); *Hatcher v. State*, 337 A.2d 30 (Del. 1975) (same); *Acosta v. State*, 417 A.2d 373 (Del. 1980) (prior statements by child witness to a sexual offense); *Russell v. State*, No. 49, 1996, Berger, J. (Del. Sept. 18, 1996).

4.3

PRIOR OUT-OF-COURT STATEMENTS

The evidence in this case has included an unsworn statement claimed to have been made by a witness before [his/her] testimony here at trial. Under Delaware law, this type of statement is admissible regardless of whether it is consistent or inconsistent with the witness's in-court testimony. As with any other evidence, you must decide whether an out-of-court statement is credible, or believable, and how much weight it should be given. If you conclude that there is a conflict between a witness's in-court testimony and [his/her] out-of-court statement, you may take that conflict into account when you decide the credibility and weight of the out-of-court statement. A conflict is particularly important if there is no evidence to corroborate, or confirm, the inconsistent, out-of-court statement. However, you may convict solely on the basis of such a statement if, after judging the statement's credibility and giving it the weight you believe it deserves, you find beyond a reasonable doubt that the defendant committed the crime charged.

4.4

EVIDENCE OF OTHER ALLEGED CRIMES, WRONGS, OR ACTS

You [are about to hear/have heard] evidence of certain acts allegedly committed by the defendant. These acts are other than the alleged wrongdoing for which the defendant is now on trial.

You may not consider these other acts for the purpose of concluding that the defendant has a certain character, or character trait, and was acting in conformity with that character or character trait with respect to the crimes charged in this case. You may not use the evidence of other acts to conclude that the defendant is a bad person, or has a tendency to commit criminal acts, and is therefore probably guilty of the charged crimes.

You may use evidence relating to other acts allegedly committed by the defendant only to determine issues relevant to the charged crimes. In this case, the State contends that the evidence of other acts relates to the defendant's [motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake or accident, consciousness of guilt, proof of consent or lack of consent, presence or absence of extreme emotional distress, presence or absence of certain psychiatric or psychological conditions, mental state, etc.]. You may consider such evidence or other acts for this purpose only.

As with any other evidence presented at trial, you, the jurors, are the sole finders of fact. You must decide what, if any, weight the evidence should be given.

4.5

CHARACTER OF DEFENDANT

As a defense to the charge of [charge], the defendant has introduced evidence of [his/her] reputation or character. Under Delaware law, a defendant may introduce evidence of character traits that are relevant to the offense charged. The defendant has presented evidence of [his/her] [character trait]. If this testimony raises a reasonable doubt in your mind as to the defendant's guilt, you must give [him/her] the benefit of that doubt and find the defendant not guilty. On the other hand, if, after considering all of the evidence, you find that the State has proved the defendant's guilt beyond a reasonable doubt, you must find the defendant guilty.

4.6

EXPERT WITNESSES

You have heard the testimony of an expert witness. Expert witnesses are permitted to testify concerning their opinions, and the reasons for their opinions, because, as the result of their education, training, or experience, they have become "expert" in their respective fields.

However, you must give expert testimony only the weight that it deserves. You may disregard expert testimony entirely if you conclude that:

(A) the expert opinion is based upon insufficient education, training, or experience;

(B) the reasoning in support of the testimony is not sound; or

(C) the testimony is outweighed by other evidence.

4.7

WITNESS'S CONVICTION OF A CRIME

You may consider evidence that a witness was previously convicted of [felony or a crime involving dishonesty] for the sole purpose of judging that witness's credibility or believability. Evidence of a prior conviction does not necessarily destroy or damage the witness's credibility, and it does not mean that the witness has testified falsely. It is simply one of the circumstances that you may consider in weighing the testimony of the witness.

4.8

DEFENDANT'S CONVICTION OF A CRIME

You may consider evidence that the defendant was previously convicted of a [felony or a crime involving dishonesty] for the sole purpose of judging the defendant's credibility, or believability. Evidence of a prior conviction does not necessarily destroy or damage the defendant's credibility, and it does not mean that the defendant has testified falsely. It is simply one of the circumstances that you may consider in weighing the defendant's testimony.

You may not consider evidence of the defendant's prior conviction in deciding guilt or innocence. You may only consider such evidence in judging the defendant's credibility.

4.9

IDENTIFICATION OF DEFENDANT

An issue in this case is the identification of the defendant. To find the defendant guilty, you must be satisfied, beyond a reasonable doubt, that the defendant has been accurately identified, that the wrongful conduct charged in this case actually took place, and that the defendant was in fact the person who committed the act. If there is any reasonable doubt about the identification of the defendant, you must give the defendant the benefit of such doubt and find the defendant not guilty.

4.10

PRESENCE OF DEFENDANT AT THE SCENE OF THE CRIME

Evidence that the defendant was merely present at the scene of the alleged crime, or in the area, is insufficient to support a guilty verdict.

4.11

ACCOMPLICE TESTIMONY

An accomplice is someone who says that they participated with the defendant in the alleged crime. An alleged accomplice has testified in this trial. For obvious reasons, the testimony of an accomplice should be examined by you with suspicion and with more care and caution than the testimony of a witness who did not participate in the crime.

This rule about accomplice testimony becomes particularly important if there is nothing in the evidence - either direct or circumstantial - that corroborates the accomplice's testimony. Without any corroboration, you should not find the defendant guilty unless, after careful examination of the accomplice testimony, you are satisfied beyond a reasonable doubt that the accomplice testimony is true and you may safely rely upon it.

The fact that the alleged accomplice has entered a guilty plea to various offenses in this case, or has an agreement with State, is not evidence of guilt of any other person, including the defendant. In determining the weight to be given to the accomplice testimony, you may consider any agreement the accomplice had with the State. You also may consider the accomplice's own interest in the outcome of this case.

4.12

STIPULATION OF FACTS

The parties have stipulated to certain facts. This means that the parties have agreed that the facts set forth in the stipulations are true and require no further proof. For the purposes of this trial, you must accept these facts as true.

4.13

SEPARATE ACTS CHARGED TO DEFENDANT

The defendant is charged with [#] separate offenses, which are set forth in the indictment. These are [#] separate and distinct offenses, and you must independently evaluate each offense. The fact that you reach a conclusion with regard to one offense does not mean that the same conclusion will apply to any other offense. Each charge is separate and distinct, and you must evaluate evidence as to one offense independently from evidence as to the other.

4.14

SEPARATE SEXUAL ACTS OR ONE CONTINUOUS SEXUAL ACT

The defendant is charged with [#] separate counts of [sexual offense]. In order to find the defendant guilty on each count, you must conclude, beyond a reasonable doubt, that separate and distinct acts occurred.

In determining whether separate and distinct acts occurred, you may consider the following factors: the time period between the acts; any change in location; the nature of the acts; whether the defendant intended to commit a separate, additional sexual act; and whether the defendant's muscle contraction or ejaculation completed a separate and distinct act. Please note that, under Delaware law, the defendant may be found guilty of a sexual offense even where there is no evidence of ejaculation or emission.

While you may consider the factors I have just described, you must use your common sense and consider all the evidence to decide whether the defendant committed separate and distinct sexual acts, or one continuous sexual act. If you conclude that there was one continuous sexual act, then you must find the defendant guilty on just one count, and you must find the defendant not guilty on the other counts.

4.15

MULTIPLE DEFENDANTS

In this case, there are [#] defendants on trial. In effect, [#] separate cases are being tried together. A criminal offense may be committed by two or more persons acting together. However, if you are satisfied beyond a reasonable doubt that one defendant is guilty, that does not mean any other defendant is guilty. The fact that you reached a conclusion with regard to one defendant does not mean that conclusion will apply to any other defendant. Keep in mind at all times that the defendants are charged as individuals. You must weigh the evidence, apply the law and render separate verdicts as to each defendant.

4.16

TESTIMONY OF A CHILD WITNESS

A child is not disqualified from being a witness simply by reason of the child's youth.

As with all witnesses, you are the sole judge of the credibility, or believability, of a child. You may consider not only the child's age, but all the factors that apply to adult witnesses, such as: the witness's demeanor or behavior while testifying; the witness's capacity to understand the difference between truth and falsehood; and the witness's capacity to observe and remember facts accurately. You must give the child's testimony the weight that it deserves under all of the circumstances.

4.17

[UNCOLLECTED/UNPRESERVED/UNMAINTAINED] EVIDENCE

In this case, the Court has ruled that the State failed to [collect/preserve/maintain] evidence that is material or significant to the defense. The evidence in question is [describe the evidence]. Because the State failed to [collect/ preserve/maintain] this evidence, you must assume that, if the evidence were available at trial, it would tend to prove that the defendant is not guilty.

This assumption, which is also called an inference, does not mean that the defendant should be found "not guilty." You must weigh the assumption along with all other evidence in order to reach your conclusion about whether the defendant is guilty or not guilty.

4.18

TAPE RECORDINGS AND TRANSCRIPTS

A written transcript of the [tape-recorded /videotaped] statement of [witness/ defendant] has been provided to help you more clearly understand who the speakers are and what was said. The written statement is intended to be an accurate presentation of the actual words spoken by the [witness/defendant]. However, the [tape recording/videotape] is the best evidence of what was said. The written transcript is not evidence. If you believe that the [tape recording/video] conflicts with the transcript, you must disregard the transcript and give weight to what you [heard/saw] on the [tape recording/videotape].

[You may notice that certain portions of the [tape recording/videotape] and transcript have been deleted. Do not speculate as to what may have been deleted or the reasons for the deletions.]

[During your deliberations, a [tape recorder/VCR] will be provided if you wish to review the taped statement.]

4.19

JUROR USE OF NOTES [POST-TRIAL]

The Court has allowed the jury to take notes during trial. Notes may help you recall evidence and arguments. You are not required to agree with the notes taken by your fellow jurors. You should not allow the notes taken by one or several jurors to control your consideration of the evidence. You should consider the individual recollection of each juror, whether or not supported by a written note. Your ultimate judgment should be the product of the collective memories of all twelve jurors.

4.20

EXCLUSION OF WITNESSES FROM COURTROOM

The Court has ordered some witnesses excluded from the courtroom so that they cannot hear the testimony of other witnesses. In this case, all witnesses are excluded from the courtroom, except [witness(es)] and [chief investigating officer].

4.21

VALUE OF PROPERTY

The degree of the charge against the defendant depends upon the value of the property taken. If the value of the property taken was less than [statutory amount], the charge is a misdemeanor. If its value was [statutory amount] or more, the charge is a felony. The value of the property is a question of fact for you to determine from the evidence. The value must be proved beyond a reasonable doubt.

The value of the property is the market value at the time and place of the crime. If the market value cannot be satisfactorily determined, the value is the cost of replacing the property within a reasonable time after the crime. You must determine the value of the property based on the evidence presented during the trial.

If you are not satisfied beyond a reasonable doubt that the value of the property is [statutory amount] or more, you must find that the value is less than [statutory amount].

4.22

EFFECT OF INFERENCE OF RECENTLY STOLEN PROPERTY

If you find that the State has established, beyond a reasonable doubt, that the defendant possessed recently stolen property, you may consider this circumstance in weighing the evidence. You are not required to draw any conclusion from that circumstance, but you are permitted to infer, from the defendant's possession, if you find it to be unexplained or unsatisfactorily explained, that the defendant is guilty of the offense, provided that such an inference is warranted by the evidence as a whole.

Even if there is evidence that the defendant possessed recently stolen property, the State still has the burden to prove beyond a reasonable doubt every element of an offense. Before you may draw any inference from the defendant's possession of recently stolen property, you must find that the State has proved beyond a reasonable doubt: (a) that the offense charged took place; (b) that the property specified in the indictment was stolen in the course of the alleged crime; (c) that the defendant possessed the recently stolen property; (d) that the defendant's possession of the property has not been satisfactorily explained by the evidence; and (e) that the evidence as a whole warrants an inference of guilt.

If you find that the State has proved beyond a reasonable doubt all the elements of the offense, but has not shown that the defendant took part in the

offense except by possessing stolen property, you may, but are not required to, infer that the defendant was the person (or one of the persons) who stole the property.

You may only infer that the defendant was the thief (or one of the thieves) if the defendant's possession of the stolen property is not satisfactorily explained in view of all of the evidence. In considering whether the defendant's possession of the recently stolen property has been satisfactorily explained, you must bear in mind that the defendant is not required to take the witness stand or to furnish an explanation. Possession may be satisfactorily explained by other circumstances shown by the evidence, independent of any testimony by the defendant.

Even if the defendant's possession of the recently stolen property is unexplained, or not explained to your satisfaction, you cannot infer that the defendant is guilty unless, after consideration of all the evidence, you have no reasonable doubt about the defendant's guilt.

4.23

EVIDENCE OF POLYGRAPH EXAMINATION

You will now hear evidence that the defendant was given a polygraph examination during the investigation of this case. While this Court recognizes the use of polygraph examinations for investigation purposes, the results of such tests are inadmissible at trial because the scientific reliability of testing methods has not been adequately established. You may not speculate as to the results of the polygraph examination.

The facts and circumstances surrounding the polygraph test are relevant only for the limited purpose of [purpose].

4.24

SYMPATHY

Your verdict must be based solely and exclusively on the evidence presented during trial. You may not be influenced by passion, prejudice, sympathy, or any other motive except a fair and impartial consideration of the evidence. Yyour deliberations must not be influenced by any sympathy you may feel for the people involved in this case..

I am not instructing you to feel no sympathy. It is only natural and human to sympathize with people and their families who either have been victims of crime or accused of committing a crime. However, you must not to allow that sympathy to enter into the consideration of the case or to influence your verdict.

4.25

VOLUNTARY ACT

A voluntary act is a bodily movement performed consciously or habitually, as the result of effort or determination.

4.26

KNOWLEDGE OF HIGH PROBABILITY

Knowledge of a fact is established if the defendant was aware of a high probability that the fact existed, unless it is shown that the defendant actually believed that the fact did not exist.

4.27

CAUSATION GENERALLY

An element of [charge] is that the defendant engaged in [conduct] which caused [result]. Conduct is the cause of a harm when the conduct occurred before the harm, and, when, without the conduct, the harm would not have happened.

Harm is not necessarily caused by the conduct of only one person. Two or more persons, factors or things may operate at the same time, either independently or together, to cause a harm. Each of the participating acts or omissions is regarded as causing the harm.

4.28

INTENTIONAL OR KNOWING CAUSATION [DIFFERENT RESULT THAN EXPECTED]

An element of [charge] is that the defendant [intentionally/knowingly] caused [result]. The State must prove beyond a reasonable doubt that the defendant actually intended the result.

The State has met its burden of proof when the actual result differed from the intended result: only because a different [person/property] was injured or affected; or only because the injury or harm intended would have been more serious than the actual injury or harm.

You must compare the actual result with the intended result. You must decide: whether the actual result involved the same kind of injury or harm as the intended result; whether the actual injury or harm was close in time to the intended result; and whether the actual result was accidental. If you find a sufficient relationship between the intended harm and the actual harm, you may find that the State has met its burden of proof.

4.29

RECKLESS OR NEGLIGENT CAUSATION [DIFFERENT RESULT THAN THAT DISREGARDED OR OVERLOOKED]

An element of [charge] is that the defendant [recklessly/negligently] caused [result]. The State must prove beyond a reasonable doubt that the defendant was aware, or should have been aware, of the result.

The State has met its burden of proof when the actual result differed from the probable result: only because a different [person/property] was injured or affected; or only because the probable injury or harm would have been more serious or more extensive than the actual injury or harm.

You must compare the actual result with the probable result. You must decide: whether the actual result involved the same kind of injury or harm as the probable result; whether the actual injury or harm was close in time to the probable result; and whether the actual result was accidental. If you find a sufficient relationship between the probable result and the actual result, you may find that the State has met its burden of proof.

4.30

CAUSATION IN OFFENSE OF STRICT LIABILITY

Where the law imposes strict liability for a crime, and causation of a particular result is an element of the offense, the State must prove beyond a reasonable doubt that the actual result was a probable consequence of the defendant's conduct.

4.31

LIABILITY FOR THE CONDUCT OF ANOTHER [INNOCENT OR IRRESPONSIBLE ACTOR]

The defendant is guilty of a crime committed by another person only when: the defendant acted with the state of mind that is an element of the crime; and the defendant caused an innocent or irresponsible person to engage in conduct constituting the crime.

4.32

LIABILITY FOR THE CONDUCT OF ANOTHER [ACCESSORY OR ACCOMPLICE] (The Statute)

The defendant is guilty of a crime committed by another person only when, with the intent to promote, facilitate, or assist the commission of the crime, the defendant either:

solicits, requests, commands, importunes or otherwise attempts to cause the other person to commit the crime; or

aids, counsels or agrees or attempts to aid the other person in planning or committing the crime; or

having a legal duty to prevent the commission of the crime, the defendant fails to make a proper effort to prevent the crime.

4.33

LIABILITY FOR CONDUCT OF ANOTHER [GENERAL]

In order to find the defendant guilty of a crime committed by another person, you must find that the State has proved the following three elements beyond a reasonable doubt:

First, another person committed the crime; and

Second, the defendant intended to promote or facilitate the commission of the crime; and

Third, the defendant requested, commanded, aided, counseled, or agreed or attempted to aid another person in planning or committing the crime.

If two or more persons join together with a common intent to commit an unlawful act, and it is reasonably foreseeable that a different or second crime might be committed, even if that second crime was not agreed upon in advance, then all of those persons are responsible for that second crime, as long as their conduct was done in furtherance of or in aid to the original unlawful act.

Mere presence at the scene of a crime, without proof of the elements that I have outlined for you, does not support a finding of guilt. You may find a defendant guilty of a crime committed by another person only if you are satisfied beyond a reasonable doubt that the crime was within the scope of the agreed

activity, or that the crime was reasonably to be expected as the result of that activity.

It is not a defense that the other person has not been prosecuted for or convicted of any crime based on the conduct in question.

A person indicted as a principal for committing a crime may be convicted as an accomplice to another person. A person indicted as an accomplice to a crime committed by another person may be convicted as a principal.

Your verdict must be unanimous as to the existence of a principal-accomplice relationship between the participants. However, there is no requirement that the jury be unanimous as to which person was the principal and which person was the accomplice, as long as you are all agreed on the issue of guilt.

4.34

LIABILITY FOR CONDUCT OF ANOTHER [*CHANCE* INSTRUCTION]

A person charged with a crime may be convicted as a principal for acts that the person personally committed, or as an accomplice for aiding the principal in committing the crime.

A person is guilty as an accomplice, that is, guilty of a crime committed by another person when, with the intent to promote or facilitate the commission of the crime, the person either:

solicits, requests, commands or otherwise attempts to aid the other person in planning or committing the crime; or

aids, counsels, or agrees or attempts to aid the other person in planning or committing the crime.

In this case, the offense at issue is homicide. With regard to accomplice liability, you must first decide if the homicide was the intended offense or an unintended, consequential offense. You must then decide the defendant's degree of guilt. I will instruct you on both aspects of accomplice liability.

Under Delaware law, the individuals involved in a principal-accomplice relationship are responsible for the commission of an intended offense. If you unanimously find beyond a reasonable doubt that a principal-accomplice relationship existed between the defendant and the other participant(s) with

respect to causing the victim's death, and that homicide was the intended offense, then all the participants are guilty of homicide.

You must next decide what degree of guilt is compatible with the individual defendant's culpable mental state. Homicide is divided into degrees of guilt: murder in the second degree, manslaughter, or criminally negligent homicide.

The defendant is guilty of an offense in such degree as is compatible with the defendant's own culpable mental state. The individuals who joined together to cause the victim's death may not have had the same culpable mental state and, therefore, they may not be guilty of the homicide offense in the same degree.

When persons join together with a common intent and purpose to commit an unlawful act, and it is reasonably foreseeable that a criminal offense not specifically agreed upon in advance might be committed, all participants are responsible for commission of the consequential criminal offense, as long as the consequential offense was done in furtherance of or in aid to the original agreed-upon unlawful act.

Therefore, if you unanimously find beyond a reasonable doubt that a principal-accomplice relationship existed between the defendant and the other participant(s) to commit an unlawful assault upon the victim; and you find it is reasonably foreseeable that as a consequence of the unlawful assault that another offense might be committed in furtherance of the unlawful assault, then all

participants are responsible for the consequential criminal offense, even if you do not find that the defendant specifically intended the result of the consequential criminal offense.

In this case, the original agreed-upon unlawful act would be assault and, because the victim died, the consequential criminal offense would be homicide. Because homicide is an offense which is divided into degrees, if you find that the defendant and other persons are criminally liable for the victim's death, you must decide what degree of guilt is compatible with the defendant's own culpable mental state. The possible degrees of guilt are: murder in the second degree, manslaughter, or criminally negligent homicide.

All of the persons who joined together to commit an unlawful act that results in a consequential offense may not have the same culpable mental state. Therefore, they need not be guilty of the consequential offense in the same degree.

If you unanimously find beyond a reasonable doubt that a principal-accomplice relationship existed between the defendant and the other participant(s) with respect to the unlawful assault, but you find it was not reasonably foreseeable that as a consequence of the unlawful assault the homicide offense might be committed, then you must decide the defendant's criminal liability for such degree of assault as is compatible with the defendant's own culpable mental state. The choices are: assault in the first degree or assault in the second degree.

4.35

ACCOMPLICE LIABILITY
[*CHANCE* INSTRUCTION-INTENTIONAL MURDER]

If you find that the defendant did not personally kill [victim], you should then go on to consider the following instruction on accomplice liability.

The defendant contends that another person killed [victim]. A defendant charged with a crime may be convicted either as a principal for acts the defendant personally committed or as an accomplice for aiding the principal in committing the offense.

A defendant is guilty as an accomplice, that is, guilty of a crime committed by another person when, with the intent to promote or facilitate the commission of the crime the defendant either:

solicits, requests, commands or otherwise attempts to aid the other person in planning or committing the crime; or

aids, counsels, or agrees or attempts to aid the other person in planning or committing the crime.

In other words, in order to find the defendant guilty as an accomplice of an offense committed by another person, you must conclude that both of the following elements have been proven beyond a reasonable doubt:

First, the defendant acted intentionally, that is, the defendant intended to promote or facilitate the commission of the crime charged; and

Second, the defendant either solicited, requested, commanded or otherwise attempted to aid the other person in planning or committing the crime; or aided, counseled or agreed or attempted to aid the other person in planning or committing the crime.

In other words, for defendant to be liable as an accomplice, you must be unanimously satisfied beyond a reasonable doubt that, either before the crime took place or at the scene of the crime, the defendant either participated in the planning and/or commission of the crime or actively encouraged the other person to commit the crime.

However, if, after considering the evidence, you determine that the defendant was merely present at or near the scene of the crime, and did not aid, counsel, agree or attempt to solicit or aid the other person in planning or committing the crime, then you must find the defendant not guilty as an accomplice. In addition, the defendant is not guilty as an accomplice if the defendant's participation in the offense occurred only after the crime was committed.

Your verdict need not be unanimous as to which person was the principal and which person was the accomplice. However, your verdict must be unanimous as to the defendant's guilt.

Finally, there is another principle of the law of accomplice liability that applies to this case. The defendant has been charged with intentional murder in the first degree. The act of killing another person, a homicide, is a crime that is divided into degrees based upon different mental states. The degrees of homicide are: murder first degree, murder second degree, manslaughter and criminally negligent homicide.

If you unanimously find beyond a reasonable doubt that there was a principal-accomplice relationship between the defendant and one or more other persons with respect to the killing of [victim], you must also unanimously decide what degree of homicide is compatible with the defendant's own culpable mental state, regardless of the culpable mental state of any principal or other accomplice. In other words, even though you may find that defendant was an accomplice in the criminal acts that resulted in the death of [victim], each accomplice, including defendant, is not necessarily guilty of homicide in the same degree. I will now define the mental state required for each degree of homicide.

4.36

LIABILITY FOR THE CONDUCT OF ANOTHER [EXEMPTION]

The defendant has asserted as an affirmative defense that the defendant is not liable for the conduct of [name of person committing the underlying offense] because, prior to the commission of the crime, the defendant took certain actions to terminate the defendant's participation in the crime. In order to establish this affirmative defense, the defendant must prove each of the following three elements by a preponderance of the evidence:

First, the defendant terminated [his/her] involvement in the crime prior to its commission; and

Second, the defendant voluntarily caused [his/her] prior involvement in the crime to be of no further assistance in the commission of the crime; and

Three, the defendant gave timely warning to law enforcement officials, or otherwise made a proper effort to prevent the commission of the crime.

Proof by a preponderance of the evidence means that it is more likely than not that the evidence presented establishes each of the above by a preponderance of the evidence, you must find the defendant not guilty of the offense committed by [name of person committing underlying offense].

4.37

CRIMINAL LIABILITY OF CORPORATIONS
[HIGH MANAGERIAL AGENT]

The defendant [One of the defendants] in this case is a corporation. In order to find the corporation guilty of a crime, you must find that the conduct constituting the crime was engaged in, authorized, solicited, requested, commanded, or recklessly tolerated by either: the board of directors of the corporation; or a high level managing agent of the corporation, who was acting within the scope of employment and on behalf of the corporation.

A high level managing agent of a corporation is either:

an officer of the corporation; or

any other person authorized to act on behalf of the corporation, whose position is comparable to that of an officer with respect to the formulation of corporate policy, or in a management capacity with respect to the supervision of lower level employees.

4.38

CRIMINAL LIABILITY OF CORPORATIONS [AGENT]

The defendant [One of the defendants] is a corporation. To find a corporation guilty of a crime, you must find that the conduct constituting the offense was engaged in by an agent of the corporation while the agent was acting within the scope of the agent's employment and on behalf of the corporation. An agent of the corporation is any director, officer, or employee of the corporation, or any other person who is authorized to act on behalf of the corporation.

4.39

FLIGHT

The State contends that the defendant evaded arrest and took flight after committing the crime. Evidence of flight and evasion of arrest is admissible as a circumstance tending to show consciousness of guilt. Such evidence also may be relevant to identification of the defendant as the person who committed the crime.

You may consider this evidence only for this limited purpose. You may not consider evidence of flight or evasion of arrest as proof that the defendant is a bad person and, therefore, probably committed the crime.

The evidence of flight or evasion of arrest must be considered by you in light of all other evidence.

4.40

JURY UNABLE TO AGREE -- "ALLEN" CHARGE

[The Delaware Supreme Court repeatedly has held that this charge should be given in its entirety, as written, without any excisions to its text. See Allen v. State, 164 U.S. 492 (1896).]

Members of the Jury:

I have a note from your foreman which reads as follows:

[READ NOTE]

I would like to suggest a few thoughts that you may wish to consider in your deliberations, along with the evidence and the instructions previously given to you.

Every case is important to the parties affected. The trial has been time-consuming and expensive to both the parties. If you should fail to agree upon a verdict, the case is left open and undecided. Like all cases, it must be disposed of at some time. There appears to be no reason to believe that another trial would not be equally time-consuming and expensive to all persons involved, nor does there appear to be any reason to believe that the case can be tried again better or more exhaustively than it has been in this trial. Any future jury must be selected in the same manner and from the same source as you were chosen. So there appears to be no reason to believe that the case would ever be submitted to twelve men and

women more intelligent, more impartial, or more competent to decide it or that any more or clearer evidence could be produced on behalf of either side.

Of course, these matters suggest themselves, upon brief reflection, to all of us who have sat through the trial. The only reason that I mention them now is because some of them may have escaped your attention, which must have been fully occupied up to this time in reviewing the evidence of the case. They are matters which, along with other and perhaps more obvious ones, remind us how important and desirable it is for you to unanimously agree upon a verdict but only if you can do so without violence to your individual judgment and conscience.

You should not surrender your conscientious convictions. 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 should do so only after consideration of the evidence with your fellow jurors, and in the course of your deliberations you should not hesitate to change your opinion when convinced that it is erroneous.

In order to bring twelve minds to a unanimous result, you must examine the questions submitted to you with candor and frankness and with proper deference to and regard for the opinions of each other. That is to say, in conferring together each of you should pay due attention and respect to the views of the others and listen to each other's arguments with a disposition to re-examine your own views.

If much the greater number of you are for one side, each dissenting juror ought to consider whether his or her position is a reasonable one since it makes no effective impression on the minds of so many equally honest, intelligent fellow jurors who bear the same responsibility, serve under the sanction of the same oath, and have heard the same evidence with, we may assume, the same attention and an equal desire to arrive at the truth. In a like manner, the jurors who constitute the greater number should consider the reasons of those who take a different position to see whether there may be persuasive merit in that position.

You are not partisans; you are judges -- judges of the facts. Your sole purpose is to ascertain the truth from the evidence before you. You are the sole and exclusive judges of the credibility of all the witnesses and of the weight and effect of all the evidence. In the performance of this high duty you are at liberty to disregard any comments of both the Court and counsel, including, of course, the remarks I am now making. Remember at all times no juror should yield his or her conscientious belief as to the weight and meaning of the evidence. Remember, also, that after full deliberation and consideration of all the evidence, it is your duty to agree upon a verdict if you can do so without violating your individual judgment and conscience.

You may conduct your deliberations as you choose, but I suggest that you should now retire and carefully reconsider all of the evidence bearing upon the

questions before you and see whether it is not possible to arrive at a unanimous verdict.

If, however, upon further deliberation, you believe that a unanimous verdict is simply not possible, please inform the bailiff. I do not suggest in any way that you must remain together until a verdict is reached. Nor do I suggest that you must deliberate for any particular length of time before being discharged.

4.41

REFUSAL TO PERFORM TEST (DUI)

The State contends that the defendant refused to perform standardized field tests, a portable breathalyzer test, and an Intoxilyzer test, as requested by the police officer. Evidence of refusal is a circumstance that may tend to show consciousness of guilt.

You may consider this evidence for this limited purpose only. You may not consider evidence of refusal as proof that the defendant is a bad person, and therefore probably committed the crime. The evidence of refusal, if proved, may be considered by you in light of all other facts proven. Whether or not such evidence shows consciousness of guilt, and the significance attached to such evidence, are matters solely for your determination.

Church v. State, 11 A.3d 226 (Del. 2010); *Zern v. DMV*, 1994 WL 380995 (Del. Super.); *State v. Durant*, 188 A.2d 526 (Del. Super.); 21 *Del C.* § 2749.

5.1

STATUTORY DEFENSES - GENERAL

The defendant has asserted the defense of [defense]. [Define and describe the defense].

If, after considering all the evidence tending to support [defense], you find that the evidence raises a reasonable doubt in your mind about the defendant's guilt, you must find the defendant not guilty of the crime. You must consider evidence of this defense along with all other evidence in determining whether the State has satisfied its burden of proving the defendant's guilt beyond a reasonable doubt.

Non-affirmative statutory defenses include, but are not limited to:

Involuntary Intoxication (11 *Del. C.* § 423)
Ignorance of Mistake or Fact (11 *Del. C.* § 441)
Consent of Victim (11 *Del. C.* §§ 451-452)
Justification (11 *Del. C.* §§ 462-471)
Coercion; truth or motive as defense (11 *Del. C.* § 792)
Criminal Mischief; claim of right (11 *Del. C.* § 811©))
Bigamy; certain defenses (11 *Del. C.* § 1002)
Bribery; conduct of a public servant (11 *Del. C.* § 1202)
Wiretapping (11 *Del. C.* § 1336)
Carrying a Concealed Deadly Instrument; lawful purpose (11 *Del. C.* § 1443(b))

5.2

INVOLUNTARY INTOXICATION

The defendant has asserted the defense of involuntary intoxication.

There are two elements for involuntary intoxication:

First, the defendant was involuntarily intoxicated; and

Second, as the result of the involuntary intoxication, the defendant lacked substantial capacity to appreciate the wrongfulness of [his/her] conduct, or lacked the substantial capacity to form the intention to commit the crime, or lacked sufficient willpower to choose whether [he/she] would commit or not commit the crime.

"Intoxication" means the inability to control one's mental faculties due to the introduction of substances into the body. The defendant was involuntarily intoxicated if [he/she] did not [himself/herself] knowingly introduce the intoxicating substance into [his/her] body; or if the intoxicating substance was introduced into the defendant's body without [his/her] knowledge or consent.

Addiction to an intoxicating substance does not make consumption of that substance involuntary. Use of an intoxicating substance because of an addiction is considered voluntary intoxication.

"Voluntary intoxication" means intoxication caused by substances which a person knowingly introduces into the body. The person must know, or the person

should know, that these substances tend to cause intoxication. Voluntary intoxication is no defense to any crime.

However, if a person introduces the substances pursuant to medical advice or pursuant to coercion by the use of force or threat of force against the person, which a reasonable person in [his/her] situation would have been unable to resist, the intoxication is not voluntary.

If, after considering all the evidence tending to support the defense of involuntary intoxication, you find that the evidence raises a reasonable doubt in your mind about the defendant's guilt, you must find the defendant not guilty of the crime charged. You must consider evidence of involuntary intoxication along with all other evidence in determining whether the State has satisfied its burden of proving the defendant's guilt beyond a reasonable doubt.

5.3

VOLUNTARY INTOXICATION [NO DEFENSE]

If a person committed a crime while intoxicated, or committed the crime because of such intoxication, voluntary intoxication is not a defense.

"Intoxication" means the inability to control one's mental faculties due to the introduction of substances into the body.

"Voluntary intoxication" means intoxication caused by substances which a person knowingly introduces into the body. The person must know, or the person should know, that these substances tend to cause intoxication. However, if the person introduces the substances pursuant to medical advice or pursuant to coercion by the use of force or threat of force against the person, which a reasonable person in [his/her] situation would have been unable to resist, the intoxication is not voluntary.

Addiction to an intoxicating substance does not make consumption of that substance involuntary. Use of an intoxicating substance because of an addiction is considered to be voluntary intoxication.

5.4

IGNORANCE OR MISTAKE OF FACT

The defendant has raised the defense of ignorance or mistake of fact.

The defense is available if:

the ignorance or mistake negates the state of mind required for the crime; or

the statute defining the crime, or a related statute, expressly provides that ignorance or mistake constitutes a defense; or

the ignorance or mistake supports a defense of justification.

If, after considering all the evidence tending to support this defense, you find that the evidence raises a reasonable doubt in your mind about the defendant's guilt, you must find the defendant not guilty of the crime. You must consider evidence of this defense along with all the other evidence in determining whether the State has satisfied its burden of proving the defendant's guilt beyond a reasonable doubt.

5.5

CONSENT [ACTS NOT INVOLVING PHYSICAL INJURY]

The defendant has raised the defense that [victim] consented to the conduct in question. This defense is available if the act did not involve, or threaten, physical injury; and the consent negates an element of the crime.

The consent must have been given prior to commission of the act[s] that otherwise would constitute the crime. Consent given after the act[s] is not sufficient.

If, after considering all the evidence tending to support this defense, you find that the evidence raises a reasonable doubt in your mind about the defendant's guilt, you must find the defendant not guilty of the crime. You must consider evidence of this defense along with all other evidence in determining whether the State has satisfied its burden of proving the defendant's guilt beyond a reasonable doubt.

5.6

CONSENT TO PHYSICAL INJURY

The defendant has raised the defense that [victim] consented to physical injury. This defense is available if:

the physical injury done or threatened is not serious physical injury; or

the physical injury done or threatened was a reasonably foreseeable hazard of joint participation in an activity, athletic contest or sport not prohibited by law.

Anyone who enters the presence of other people consents to the normal physical contacts that naturally result. However, a person does not consent to physical injury unless it is a reasonably foreseeable hazard of joint participation in an activity, athletic contest or sport not prohibited by law.

If, after considering all the evidence tending to support this defense, you find that the evidence raises a reasonable doubt in your mind about the defendant's guilt, you must find the defendant not guilty of the crime. You must consider evidence of this defense along with all other evidence in determining whether the State has satisfied its burden of proving the defendant's guilt beyond a reasonable doubt.

5.7

INEFFECTIVE CONSENT

Consent of the victim is no a defense under any one of the following circumstances:

the consent was given by a person who is legally incompetent to authorize the conduct in question, unless the defendant believes the victim is legally competent; or

the consent was given by a person who, because of youth, mental illness, mental defect, or intoxication, is clearly unable, or known by the defendant to be unable, to make a reasonable judgment as to the nature of the conduct in question; or

the consent is the result of force, duress or deception.

5.8

CONSENT TO ENTER AND REMAIN IN A [BUILDING/DWELLING]

The defendant has raised the defense of consent to enter or remain in a [building/dwelling].

A person enters or remains unlawfully in a place when that person does not have the permission or consent of the owner to be there. Permission or consent is not valid if it is the result of force, duress or deception.

If, after considering all the evidence tending to support this defense, you find that the evidence raises a reasonable doubt in your mind about the defendant's guilt, you must find the defendant not guilty of the crime. You must consider evidence of this defense along with all the other evidence in determining whether the State has satisfied its burden of proving the defendant's guilt beyond a reasonable doubt.

5.9

JUSTIFICATION - PRIVATE CITIZEN'S EXECUTION OF PUBLIC DUTY

The defendant has raised the defense of justification. In other words, the defendant claims that his conduct was justified.

The defense of justification is available in any one of the following three circumstances:

the defendant's conduct was required or authorized by law or by court order; or

the defendant’s conduct was in the lawful execution of legal process, even where the court did not have authority to issue the legal process, or the legal process was defective; or

the defendant believed that the conduct was required or authorized to assist a public officer in the performance of the officer's duties, even if the officer exceeded the officer’s legal authority.

With respect to assistance of a public officer, justification is a defense only if the defendant believed that the force used was required or authorized by a law or by court order. Therefore, the defense is available if the law defines a duty of a private citizen to assist public servants in the performance of certain of their functions, and the defendant believed that the conduct in question was required or authorized to assist a public officer in the performance of that officer's duties. You may find the

defendant guilty only if you are satisfied beyond a reasonable doubt that the defendant did *not* believe that the conduct used to assist a public officer was required or authorized by law.

If, after considering all the evidence tending to support this defense, you find that the evidence raises a reasonable doubt in your mind about the defendant's guilt, you must find the defendant not guilty of the crimes charged. You must consider evidence of this defense along with all the other evidence in determining whether the State has satisfied its burden of proving the defendant's guilt beyond a reasonable doubt.

5.10

JUSTIFICATION - CHOICE OF EVILS

The defendant has asserted the defense of justification by "choice of evils" against the charge of [charge]. In other words, the defendant claims that his conduct was justifiable.

This defense is available if all three of the following requirements are met:

the conduct was necessary as an emergency measure to avoid an imminent public or private injury; and

the injury about to occur was the result of a situation that developed through no fault of the defendant; and

the imminent injury was so grave that, according to ordinary standards of intelligence and morality, the desirability and urgency of avoiding the injury clearly outweighed the desirability of avoiding the conduct that constituted the crime.

If, after considering all the evidence tending to support this defense, you find that the evidence raises a reasonable doubt in your mind about the defendant's guilt, you must find the defendant not guilty of the crimes charged. You must consider evidence of defense along with all the other evidence in determining whether the State has satisfied its burden of proving the defendant's guilt beyond a reasonable doubt.

5.11

JUSTIFICATION - USE OF FORCE IN SELF-PROTECTION

The defendant has asserted the defense against the charge of [charge] that the defendant was justified in using force in self-defense. This defense is available if the defendant believed, in the circumstances as they occurred, that the force used was immediately necessary to protect the defendant against the use of unlawful force by another person.

"Unlawful force" is force:

that is not justified; and

is used against a person without that person's consent.

A person using protective force may estimate the necessity of such force, under the circumstances that the person believes to exist. The person is not required to retreat, surrender possession, or refrain from any lawful action.

The use of force is not justified in resisting arrest, if the defendant knows or should know that the arrest is being made by a peace officer, regardless of whether or not the arrest is lawful.

The use of deadly force is justifiable if the defendant believes that such force is necessary to protect the defendant against death; serious physical injury; kidnaping; or sexual intercourse compelled by the force or threat of another person.

[The use of deadly force is not justifiable in either one of the following two circumstances:

the defendant, with the purpose of causing death or serious physical injury, provoked the use of force in the same encounter; or

the defendant knew that the necessity of using deadly force could have been avoided with complete safety: by retreating; by surrendering possession of a thing to a person who claims a right to such thing; or by complying with a demand that the defendant not perform an act, which the defendant was not legally obligated to perform.]

However, the defendant is not obligated to retreat in or from the defendant's dwelling, and the defendant is not obligated to retreat in or from the defendant's place of work, unless the defendant was the initial aggressor.

A person who is justified in using force to assist a public officer in performing the officer's duties; or in making an arrest; or in preventing an escape, is not required to stop assisting the officer in the face of resistance or threatened resistance.

If, after considering all the evidence tending to support this defense, you find that the evidence raises a reasonable doubt in your mind about the defendant's guilt, you must find the defendant not guilty of the crime. You must consider evidence of this defense along with all the other evidence in determining whether the State has satisfied its burden of proving the defendant's guilt beyond a reasonable doubt.

5.12

JUSTIFICATION - USE OF FORCE TO PROTECT ANOTHER

The defendant has asserted as a defense to [charge] that the defendant was justified in using force to protect another person. This defense is available only if all three of the following conditions are met:

the defendant would have been justified in using such force to protect [himself/herself] against the unlawful force that the defendant believed to be threatened against the person the defendant sought to protect; and

the defendant believed that under the circumstances, the person the defendant sought to protect would have been justified in using such protective force; and

the defendant believed that intervention was necessary for the protection of the other person.

"Unlawful force" is force that is not justified; and force that is used against a person without that person's consent.

The defendant is not obligated to retreat, to surrender possession of a thing, or to comply with a demand before using force for the protection of another person unless the defendant knew that, by retreating, surrendering or complying, the defendant could have secured the complete safety of the other person.

If the person the defendant sought to protect would have been obligated to retreat, to surrender the possession of a thing, or to comply with a demand, and the

person knew that [he/she] could obtain complete safety by doing so, then the defendant was obligated to try to cause the person to retreat, surrender or comply, before using force in that person's protection -- if the defendant also knew that complete safety could be secured by retreating, surrendering or complying.

Neither the defendant nor the person the defendant sought to protect is obligated to retreat when in the other person's dwelling or place of work.

If, after considering all the evidence tending to support this defense, you find that the evidence raises a reasonable doubt in your mind about the defendant's guilt, you must find the defendant not guilty of the crime. You must consider evidence of this defense along with all the other evidence in determining whether the State has satisfied its burden of proving the defendant's guilt beyond a reasonable doubt.

5.13

JUSTIFICATION - USE OF FORCE TO PROTECT PROPERTY

The defendant has asserted as a defense to [charge] that the defendant was justified in using force for the protection of property. This defense is available, if the defendant believed that such force was immediately necessary, in any one of the following three circumstances:

to prevent a criminal trespass or burglary in a building or upon land belonging to the defendant or belonging to another person the defendant sought to protect; or

to prevent entry upon land belonging to the defendant or belonging to another person the defendant sought to protect; or

to prevent theft, criminal mischief or any unlawful taking of tangible, moveable property belonging to the defendant or belonging to another person the defendant sought to protect.

In any one of these circumstances, the defendant may use such force as the defendant believes necessary to protect the threatened property. However, before using force against a person, the defendant must first ask that person to stop interfering with the property. There is no obligation to make such request if the defendant believe that, under the circumstances:

the request would be useless; or

it would be dangerous to make such a request; or

substantial harm would be done to the property before such a request could be made.

[The use of *deadly* force for the protection of property is justifiable only if one of the following two circumstances existed:

tthe person against whom the force was used was attempting to remove the defendant from the defendant's dwelling; or

the person against whom the force was used was attempting to commit arson, burglary, robbery, felonious theft or property destruction *and*: either that person used or threatened deadly force against or in the presence of the defendant, or under the circumstances existing at that time, the defendant believed that the other person's use of force other than deadly force would expose the defendant, or another person in the defendant's presence, to the reasonable likelihood of serious physical injury.

If, after considering all the evidence tending to support this defense, you find that the evidence raises a reasonable doubt in your mind about the defendant's guilt, you must find the defendant not guilty of the crime. You must consider evidence of this defense along with all the other evidence in determining whether the State has satisfied its burden of proving the defendant's guilt beyond a reasonable doubt.

5.14

JUSTIFICATION - USE OF DEADLY FORCE

The defendant has asserted as a defense to [charge] that the defendant was justified in using deadly force in self-defense. The use of deadly force is justifiable if, at the time the force was used, the defendant believed that such force was necessary to protect the defendant against death, serious physical injury, kidnaping, or sexual intercourse compelled by force or threat.

The use of deadly force is not justifiable to resist an arrest, if the defendant knew or should have know was being made by a peace officer, regardless of whether the arrest was lawful.

The use of deadly force is not justifiable in either of the following circumstances:

the defendant, with the purpose of causing death or serious physical injury, provoked the use of force in the same encounter; or

the defendant knew that the necessity of using deadly force could have been avoided with complete safety by retreating, by surrendering possession of a thing to a person who claimed a right to such thing, or by complying with a demand that the defendant not perform an act, which the defendant was not legally obligated to perform.

However, the defendant is not obligated to retreat in or from the defendant's dwelling, and the defendant is not obligated to retreat in or from the defendant's place of work, unless the defendant was the initial aggressor.

A person who is justified in using force to assist a public officer: in performing the officer's duties; or in making an arrest; or in preventing an escape, is not required to stop assisting the officer in the face of resistance or threatened resistance.

If, after considering all the evidence tending to support this defense, you find that the evidence raises a reasonable doubt in your mind about the defendant's guilt, you must find the defendant not guilty of the crime. You must consider evidence of this defense along with all the other evidence in determining whether the State has satisfied its burden of proving the defendant's guilt beyond a reasonable doubt.

5.30

AFFIRMATIVE DEFENSES

The defendant has asserted the affirmative defense of [defense] to [charge]. The defendant has the burden of proving this affirmative defense by a preponderance of the evidence.

Proof by a preponderance of the evidence means proof that something is more likely than not. It means that certain evidence, when compared to the evidence opposed to it, has the more convincing force and makes you believe that something is more likely true than not. Preponderance of the evidence does not depend on the number of witnesses. If the evidence supporting the defense is evenly balanced against the State's evidence, then the defendant has not proved the defense by a preponderance of the evidence. The State has no burden to present any evidence on this defense.

If, after considering all of the evidence, you find that this affirmative defense is established by a preponderance of the evidence, then you must find the defendant not guilty. Even if the defendant has not met this burden of proof for this particular affirmative defense, you must find the defendant not guilty if you find that the State has not met its burden of proving its case beyond a reasonable doubt.

* * * * *

Affirmative defenses include, but are not limited to, the following:

4 *Del. C.* § 708(a)(1). Use of fraudulent identification by a minor in prosecution for illegal sale of alcohol to a minor.

4 *Del. C.* § 904(a)(2). Use of fraudulent identification by a minor in prosecution for illegal sale of alcohol to a minor.

11 *Del. C.* § 305. Exemption from criminal liability based upon statutory exemption.

11 *Del. C.* § 401(a). Not guilty by reason of insanity.

11 *Del. C.* § 401(b). Guilty, but mentally ill.

11 *Del. C.* § 431. Duress.

11 *Del. C.* § 432. Entrapment.

11 *Del. C.* § 475. Immunity from prosecution.

11 *Del. C.* § 477. Renunciation of criminal objective in racketeering prosecution.

11 *Del. C.* § 541(a). Voluntary and complete renunciation of attempt to commit a crime.

11 *Del. C.* § 762(d). Mistake as to age of victim in certain sex crimes.

11 *Del. C.* § 779. Mistake as to age of victim in dangerous crime against a child prosecution.

11 *Del. C.* § 784. Intent to assume custody of relative in kidnaping or unlawful imprisonment.

11 *Del. C.* § 801(b). Ownership of building by defendant in arson third degree prosecution.

11 *Del. C.* § 802(b). Arson second degree; various defenses.

11 *Del. C.* § 811(a)(3). Tampering with tangible property of a utility corporation for a lawful purpose in criminal mischief prosecution.

11 *Del. C.* § 847(a). Appropriation of property in theft or extortion cases under claim of right.

11 *Del. C.* § 847(b). Defendant's belief in truth of a criminal charge in an extortion case.

11 *Del. C.* § 849(e). Certain defenses in theft of rental property prosecution.

11 *Del. C.* § 872. Execution of orders of superior officer by defendant in falsifying business records prosecution.

11 *Del. C.* § 902. Cashing or drawing of check by employee in bad check prosecution.

11 *Del. C.* § 905. Defendant's intent to meet obligations arising from unauthorized use of a credit card.

11 *Del. C.* § 1104. Treatment of child by prayer in endangering the welfare of a child prosecution.

11 *Del. C.* § 1113©). Compliance with support orders in criminal non-support prosecution.

11 *Del. C.* § 1122. Use of fraudulent identification by a minor in prosecution for illegal sale of tobacco to a minor.

11 *Del. C.* § 1231. Retraction of false statement in perjury prosecution.

11 *Del. C.* § 1247. Compounding a crime; certain defenses.

11 *Del. C.* § 1312©). Labor picketing in aggravated harassment prosecution.

11 *Del. C.* § 1312A. Labor picketing in stalking prosecution.

11 *Del. C.* § 1362. Obscenity; certain defenses.

11 *Del. C.* §1456. Unlawfully permitting a minor access to a firearm; certain defenses.

11 *Del. C.* §1457(f). Legitimate purpose for possessing a weapon in a safe school and recreation zone.

16 *Del. C.* § 4754A©). Possession or consumption of non-controlled prescription drug with residence shared by defendant and prescription holder.

16 *Del. C.* § 4767(d). Distribution, delivery, or possession of a controlled substance within a residence located within 1000 feet of a school.

21 *Del. C.* § 4177(b)(2). Consumption of alcohol after driving in driving under the influence prosecution.

23 *Del. C.* § 2302(d). Consumption of alcohol after operation of watercraft in boating under the influence prosecution.

24 *Del. C.* § 1629©). Use of fraudulent identification by a minor in prosecution for permitting a minor to remain upon the premises of an adult entertainment establishment.

5.31

MENTAL ILLNESS OR MENTAL DEFECT

The defendant has asserted the affirmative defense of mental illness or mental defect to [charge].

In order to establish this affirmative defense, the defendant must prove, by a preponderance of the evidence, the following two elements:

at the time of the conduct charged, the defendant suffered from a mental illness or mental defect; *and*

as the result of such mental illness or mental defect, the defendant lacked substantial capacity to appreciate the wrongfulness of the alleged conduct.

"Mental illness" means any condition of the brain or nervous system recognized as a mental disease by a substantial part of the medical profession. "Mental defect" means any condition of the brain or nervous system recognized as defective, as compared with an average or normal condition, by a substantial part of the medical profession.

Proof by a preponderance of the evidence means proof that something is more likely than not. It means that certain evidence, when compared to the evidence opposed to it, has the more convincing force and makes you believe that something is more likely true than not. Preponderance of the evidence does not depend on the number of witnesses. If the evidence supporting the defense is evenly balanced

against the State's evidence, then the defendant has not proved the defense by a preponderance of the evidence. The State has no burden to present any evidence on this defense.

If, after considering all of the evidence, you find that this affirmative defense is established by a preponderance of the evidence, then you must find the defendant not guilty. Even if the defendant has not met this burden of proof for this particular affirmative defense, you must find the defendant not guilty if you find that the State has not met its burden of proving its case beyond a reasonable doubt.

5.32

GUILTY, BUT MENTALLY ILL

Another possible verdict that you may consider is "guilty, but mentally ill." This verdict is appropriate if you determine that, at the time of the conduct charged, the defendant suffered from a psychiatric disorder, and that disorder either substantially disturbed the defendant's thinking, feeling or behavior or left the defendant with insufficient willpower to choose whether to do the act or not, even if the defendant was physically capable of refraining from doing the act.

The term "psychiatric disorder" means any mental or psychotic disorder recognized by the field of psychiatry as affecting a person's behavior, thinking, feeling or willpower.

The distinction between "not guilty by reason of insanity" and "guilty, but mentally ill" lies in the degree of mental illness. A person who is "not guilty by reason of insanity" is so severely mentally impaired that the person lacks substantial capacity to appreciate the wrongfulness of the criminal conduct. A person who is "guilty, but mentally ill" is able to appreciate the wrongfulness of the conduct but nevertheless, due to a psychiatric disorder, exhibits thinking, feeling or behavior that is substantially disturbed; or the person, due to a psychiatric disorder, lacks sufficient willpower to choose whether to do or not do a particular act, although the person is physically capable of refraining from doing it.

To summarize, there are three bases for returning a verdict of "guilty, but mentally ill" for a defendant who suffers from a psychiatric disorder. The first is where a defendant's psychiatric disorder substantially disturbed the defendant's thinking, feeling or behavior. The second is where defendant's disorder substantially disturbed the defendant's thinking, feeling or behavior and left the defendant with insufficient willpower to choose whether to do the act or refrain from doing the act. The third is where defendant's disorder left the defendant with insufficient willpower to choose whether to do the act or refrain from doing the act.

Neither the State nor the defense has the burden of proving that the defendant is guilty but mentally ill. You, the jury, have the option of returning a verdict of "guilty, but mentally ill" if you determine that such a verdict is warranted by the evidence. However, you may render a verdict of "guilty, but mentally ill" only if you first determine that the State has established, beyond a reasonable doubt, the elements of the crime.

You may return such a verdict only if you have also determined that the defendant has not met the burden of establishing the defense of "not guilty by reason of insanity" by a preponderance of the evidence.

With respect to the charge of first degree murder, you may return a verdict of "guilty, but mentally ill" only if you also determine that the defendant has not

established the mitigating circumstance of "extreme emotional distress" by a preponderance of the evidence.

5.33

MENTAL ILLNESS OR MENTAL DEFECT [LIMITATIONS]

I have previously instructed you on the affirmative defense of "not guilty by reason of insanity" [and/or the verdict of "guilty, but mentally ill"].

This defense is not available if the alleged mental illness or mental defect was proximately caused by the voluntary ingestion, inhalation, or injection of intoxicating liquor, any drug or other mentally debilitating substance, or any combination of substances, unless such substance was prescribed for the defendant by a licensed health care practitioner and was used in accordance with the directions for the prescription. The terms "mental illness" or “mental defect” do not include any condition that manifests itself only by repeated criminal or other anti-social conduct.

5.34

MANSLAUGHTER / EXTREME EMOTIONAL DISTRESS

If you conclude beyond a reasonable doubt that the defendant intentionally caused the death of [name], you should next consider whether the defendant did so while under the influence of extreme emotional distress. The fact that the defendant intentionally caused the death of another person, while under the influence of extreme emotional distress, is a mitigating circumstance that reduces the crime of murder in the first degree to the crime of manslaughter. The defendant has the burden of proving, by a preponderance of the evidence, that the defendant acted under the influence of extreme emotional distress. The defendant also must prove, by a preponderance of the evidence, that there is a reasonable explanation or excuse for the existence of the extreme emotional distress. You must determine the reasonableness of the explanation or excuse from the viewpoint of a reasonable person in the defendant's situation under the circumstances as the defendant believed them to be.

The purpose of the law of the mitigating circumstance of extreme emotional distress is to permit the defendant to show that the intentional killing was caused by a sort of frenzy of mind and, therefore, the defendant is less culpable for the killing. This mitigating circumstance applies to persons who kill, in part, because of unique

factors that cause an emotional explosion or an extreme reaction to overwhelming stress.

You should give the words "extreme emotional distress" their common, everyday meaning. A person under the influence of extreme emotional distress is someone whose feelings were thrown into extraordinary, unusual or unexpected disorder. Extreme emotional distress is a type of mental or physical feeling of such exceptional stress, excitement or disturbance that produces a frenzy of mind which makes the person deaf to the voice of reason. It is a condition or state of mind that can occur spontaneously or it can develop over a period of time.

In addition to proving that the defendant acted under the influence of extreme emotional distress, the defendant also must prove, by a preponderance of the evidence, that there is a reasonable explanation or excuse for the existence of the extreme emotional distress. You must consider whether a reasonable person, in the defendant's position or situation, under the circumstances as the defendant believed then to be, would have suffered from extreme emotional distress.

In order to be a reasonable explanation, the event that triggered the emotional disturbance must have been something external from the defendant and cannot be something for which the defendant was responsible, such as involvement in a crime.

If the defendant intentionally, knowingly, recklessly or negligently brought about the mental disturbance, extreme emotional distress is not applicable. If the

defendant's mental state was caused by voluntary alcohol or drug use, extreme emotional distress is not applicable.

[Extreme emotional distress is different from the affirmative defense of mental illness or mental defect. Extreme emotional distress is not a defense. Rather, it is a mitigating factor which, when proved, reduces what ordinarily would be an intentional murder to the lesser charge of manslaughter. If you are convinced that the defendant has proved by a preponderance of the evidence that the defendant is "not guilty by reason of mental illness or mental defect," then that verdict must prevail over a finding of extreme emotional distress. You may consider extreme emotional distress only after you conclude that the defendant has not proven that [he/she] is "not guilty by reason of mental illness or mental defect."

The defendant has the burden of proving the mitigating circumstance of extreme emotional distress to your satisfaction by a preponderance of the evidence. The State has no burden to present any evidence on this matter. After considering all the evidence tending to support the existence of the mitigating circumstance, you should determine whether that evidence makes it more likely than not that the defendant was under the influence of extreme emotional distress. If you find that this mitigating circumstance is established by a preponderance of the evidence, you must find the defendant not guilty of murder in the first degree, but guilty of manslaughter.

Even if the defendant has not met the burden of proving the mitigating circumstance of extreme emotional distress, you must acquit the defendant if you find that the State has not met its burden of proving its case beyond a reasonable doubt.

5.35

DURESS

The defendant has asserted the affirmative defense of duress to [charge]. In order to establish this affirmative defense, the defendant must prove two elements by a preponderance of the evidence:

the defendant was coerced to engage in the conduct charged by the use of force, or the threat of force, against the defendant or another person, and a reasonable person in the defendant's situation would have been unable to resist; and

the defendant did not intentionally or recklessly place [himself/herself] in a situation in which it was probable that the defendant would be subjected to duress.

The defendant has the burden of proving the affirmative defense of duress by a preponderance of the evidence. The State has no burden to present any evidence on this affirmative defense. If you find that this affirmative defense is established by a preponderance of the evidence, you must return a verdict of not guilty.

Proof by a preponderance of the evidence means proof that something is more likely than not. It means that certain evidence, when compared to the evidence opposed to it, has the more convincing force and makes you believe that something is more likely true than not. Preponderance of the evidence does not depend on the number of witnesses. If the evidence supporting the defense is evenly balanced

against the State's evidence, then the defendant has not proved the defense by a preponderance of the evidence. The State has no burden to present any evidence on this defense.

Even if the defendant has not met the burden of proving the affirmative defense of duress, you must acquit the defendant if you find that the State has not met its burden of proving its case beyond a reasonable doubt.

5.36

ENTRAPMENT

The defendant has asserted the affirmative defense of entrapment to [charge]. In order to establish this affirmative defense, the defendant has the burden of proving, by a preponderance of the evidence, the following two elements:

the defendant engaged in the conduct constituting [charge] because the defendant was induced to do so by [law enforcement official/agent acting in knowing cooperation with such law enforcement official]; and

the defendant was not otherwise disposed to engage in the conduct constituting the offense.

In order to assert the defense of entrapment, the defendant has admitted that [he/she] committed the act[s] charged. However, this admission does not relieve the State of its burden of proving each element of each offense beyond a reasonable doubt. Although the defendant has admitted committing the act[s] charged, the defendant claims that [he/she] should not be punished because [law enforcement official/agency] originated the idea of the crime and then induced the defendant to engage in conduct constituting that crime when the defendant was not otherwise disposed to do so.

The defense of entrapment is not available where the law enforcement officers or their agents merely afforded the defendant the opportunity to engage in conduct constituting a crime.

The defendant has the burden of proving the affirmative defense of entrapment to your satisfaction by a preponderance of the evidence. Proof by a preponderance of the evidence means proof that something is more likely than not. It means that certain evidence, when compared to the evidence opposed to it, has the more convincing force and makes you believe that something is more likely true than not. Preponderance of the evidence does not depend on the number of witnesses. If the evidence supporting the defense is evenly balanced against the State's evidence, then the defendant has not proved the defense by a preponderance of the evidence. The State has no burden to present any evidence on this defense.

The State has no burden to present any evidence on this matter. If you find that the defendant established this affirmative defense by a preponderance of the evidence, you must return a verdict of not guilty.

Even if the defendant has not met the burden of proving the affirmative defense of entrapment, you must find the defendant not guilty if you find that the State has not met its burden of proving its case beyond a reasonable doubt.

5.60

NON-STATUTORY DEFENSES

The defendant has raised the defense of [defense]. If the evidence of this defense raises a reasonable doubt as to the defendant's guilt, you must give the defendant the benefit of that doubt and find the defendant not guilty.

* * * * *

Non-statutory defenses include, but are not limited to, the following:

Alibi
Accident (unavoidable)
Identification of the defendant
Mistake of law

5.61

ALIBI

The defendant has raised the defense of alibi to [charge]. The defendant contends that, when the crime was allegedly committed, the defendant was somewhere other than the place where the crime was allegedly committed. If the evidence on this defense raises a reasonable doubt about to the defendant's guilt, you must give the defendant the benefit of that doubt and find the defendant not guilty.

5.62

ACCIDENT

The defendant has raised the defense of accident to [charge]. The State must prove that the defendant had the state of mind required by the statute defining the offense. If the defendant's conduct [describe] was an accident, then the defendant did not have the required mental state to commit the crime.

An accident is a sudden and unexpected event that occurs without the defendant's intent. That is, an accident is an event that the defendant did not foresee or plan. An accident is an event that occurs as the result of carelessness, lack of awareness, or ignorance, and the event produces an unfortunate result.

If the evidence of an accident raises a reasonable doubt about the defendant's guilt, you must give the defendant the benefit of that doubt and find the defendant not guilty.

5.63

CHARACTER OF DEFENDANT

The defendant has raised the defense that evidence of [his/her] [character trait] is inconsistent with [charge]. If the evidence of the defendant's character trait raises a reasonable doubt about the defendant's guilt, you must give the defendant the benefit of that doubt and find the defendant not guilty.

VERDICT FORMS

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

STATE OF DELAWARE	)	
	)	
v.	)	ID No.
	)	
	)	

<u>VERDICT FORM</u>

Members of the Jury:

There are __ counts charged in the indictment in this case and, therefore, __ verdicts will be required.

1. COUNT I: _____

_____ Guilty
_____ Not Guilty

Your verdicts must be unanimous.

_____
Foreperson

Date: _____

IN AND FOR NEW CASTLE COUNTY

STATE OF DELAWARE	)	
	)	
v.	)	ID No.
	)	
[DEFENDANT],	)	
	)	
Defendant.	)	

<u>VERDICT FORM</u>

Members of the Jury:

1. COUNT I: DRUG DEALING ([drug])

_____ Guilty
_____ Not Guilty

If your answer to Question 1 is Guilty, proceed to Question 2. If your answer to Question 1 is Not Guilty, [call the Bailiff/proceed to Question 3].

2. At the time of the offense in COUNT I,

[was Defendant within 300 feet of a school?]

[was Defendant within 300 feet of a park?]

[was Defendant was within 300 feet of a place of worship?]

[was Defendant an adult (age 18 or older) and the offense involved a juvenile (under the age of 18); and was the juvenile a co-conspirator or accomplice, or was the juvenile the intended or actual recipient of the substance; and was Defendant more than 4 years older than the juvenile?]

[did the offense occur in a vehicle?]

[did Defendant intentionally prevent or attempt to prevent arrest by a law enforcement officer by using force or violence towards the officer?]

[did Defendant flee in a vehicle from a law enforcement office while the officer was trying to arrest or detain Defendant, and did Defendant create a substantial risk of physical injury to others?]

_____ Yes
_____ No

3. COUNT II:

_____ Guilty
_____ Not Guilty

Your verdicts must be unanimous.

_____
Foreperson

Date: _____

OFFENSES BY DELAWARE CODE SECTION (TITLE 11)

CRIMINAL SOLICITATION IN THE THIRD DEGREE

In order to find Defendant guilty of Criminal Solicitation in the Third Degree, you must find the State has proved the following two (2) elements beyond a reasonable doubt:

(1) Defendant solicited**,** requested**,** commanded or otherwise attempted to cause another person to engage in conduct that would constitute a misdemeanor or an attempt to commit a misdemeanor; and

(2) Defendant acted intentionally.

"Intentionally" means it was Defendant's conscious objective or purpose to engage in the solicitation.

Comment: Immediately following this instruction, an instruction should be given stating the elements of the crime.

Applicable Code Sections and Case Law:

11 *Del. C.* § 231(b). *Sheeran v. State*, 526 A.2d 886, 891 (Del. 1987) (offense of solicitation is complete when request to do act constituting crime is made; the other party need not agree nor take any action pursuant to the solicitation).

CRIMINAL SOLICITATION IN THE SECOND DEGREE

In order to find Defendant guilty of criminal solicitation in the Second Degree, you must find the State has proved the following two (2) elements beyond a reasonable doubt:

(1) Defendant solicited**,** requested**,** commanded or otherwise attempted to cause another person to engage in conduct that would constitute a felony or an attempt to commit a felony; and

(2) Defendant acted intentionally.

"Intentionally" means it was Defendant's conscious objective or purpose to engage in the solicitation.

Comment: Immediately following this instruction, an instruction should be given stating the elements of the crime.

Applicable Code Sections and Case Law:

11 *Del. C.* §231(b). *Sheeran v. State*, 526 A.2d 886, 891 (Del. 1987) (offense of solicitation is complete when request to do act constituting felony is made; the other party need not agree nor take any action pursuant to the solicitation).

CRIMINAL SOLICITATION IN THE FIRST DEGREE

In order to find Defendant guilty of criminal solicitation in the First Degree, you must find the State has proved the following two (2) elements beyond a reasonable doubt:

(1) Defendant solicited**,** requested**,** commanded or otherwise attempted to cause another person to engage in conduct that would constitute a felony or an attempt to commit a felony; and

(2) Defendant acted intentionally.

"Intentionally" means it was Defendant's conscious objective or purpose to engage in the solicitation.

Comment: Immediately following this instruction, an instruction should be given stating the elements of the crime.

Applicable Code Sections and Case Law:

11 *Del. C.* § 231(b). *Sheeran v. State*, 526 A.2d 886, 891 (Del. 1987) (offense of solicitation is complete when request to do act constituting felony is made; the other party need not agree nor take any action pursuant to the solicitation).

Conspiracy in the Third Degree . . . . . 11.511(1)

CONSPIRACY IN THE THIRD DEGREE

In order to find Defendant guilty of Conspiracy in the Third Degree, you must find the State has proved each of the following two (2) elements beyond a reasonable doubt:

(1) Defendant agreed with another person that one or more of them would engage in conduct constituting a misdemeanor or an attempt to commit a misdemeanor; and

(2) Defendant acted intentionally.

"Intentionally" means it was Defendant's conscious objective or purpose to engage in the conspiracy.

Comment: Immediately following this instruction, an instruction should be given stating the elements of the crime.

Applicable Code Sections and Case Law:

11 *Del. C.* § 231(b); *State v. Biter*, 119 A.2d 894, 897 (Del. Super. 1955) (conspiracy implies concert of design, not necessarily participation in every detail needed to carry out its purpose or design). *Accord State v. Wallace*, 214 A.2d 886, 890 (Del. Super. 1963).

Conspiracy in the Third Degree . . . . . 11.511(2)

CONSPIRACY IN THE THIRD DEGREE

In order to find Defendant guilty of conspiracy in the third degree, you must find the State has proved each of the following three (3) elements beyond a reasonable doubt:

(1) Defendant agreed to aid another person in the planning or commission of a misdemeanor, or an attempt to commit a misdemeanor;

(2) Either Defendant or the other person committed an overt act in pursuit of this conspiracy; and

(3) Defendant acted intentionally.

"Intentionally" means it was Defendant's conscious objective or purpose to engage in the conspiracy.

An "overt act" is any act to pursue or advance the purpose of the conspiracy.

Comment: Immediately following this instruction, an instruction should be given stating the elements of the crime.

Applicable Code Sections and Case Law:

11 *Del. C.* § 231(b); *State v. Biter*, 119 A.2d 894, 897 (Del. Super. 1955) (conspiracy implies concert of design, not necessarily participation in every detail needed to carry out its purpose or design). *Accord State v. Wallace*, 214 A.2d 886, 890 (Del. Super. 1963).

Conspiracy in the Second Degree . . . . . 11.512(1)

CONSPIRACY IN THE SECOND DEGREE

In order to find Defendant guilty of Conspiracy in the Second Degree, you must find the State has proved the following two (2) elements has been established beyond a reasonable doubt:

(1) Defendant agreed with another person that one or more of them would engage in conduct constituting a felony or an attempt to commit a felony; and

(2) Defendant acted intentionally.

"Intentionally" means it was Defendant's conscious objective or purpose to engage in the conspiracy.

Comment: Immediately following this instruction, an instruction should be given stating the elements of the crime.

Applicable Code Sections and Case Law:

11 *Del. C.* § 231(b); *State v. Biter*, 119 A.2d 894, 897 (Del. Super. 1955) (conspiracy implies concert of design, not necessarily participation in every detail needed to carry out its purpose or design). *Accord State v. Wallace*, 214 A.2d 886, 890 (Del. Super. 1963).

Conspiracy in the Second Degree . . . . . 11.512(2)

CONSPIRACY IN THE SECOND DEGREE

In order to find Defendant guilty of Conspiracy in the Second Degree, you must find the State has proved the following three (3) elements has been established beyond a reasonable doubt:

(1) Defendant agreed to aid another person in the planning or commission of a felony or an attempt to commit a felony;

(2) Either Defendant or the other person committed an overt act in pursuit of the conspiracy; and

(3) Defendant acted intentionally.

"Intentionally" means it was Defendant's conscious objective or purpose to engage in the conspiracy.

An "overt act" is any act to pursue or advance the purpose of the conspiracy.

Comment: Immediately following this instruction, an instruction should be given stating the elements of the crime.

Applicable Code Sections and Case Law:

11 *Del. C.* § 231(b); *State v. Biter*, 119 A.2d 894, 897 (Del. Super. 1955) (conspiracy implies concert of design, not necessarily participation in every detail needed to carry out its purpose or design). *Accord State v. Wallace*, 214 A.2d 886, 890 (Del. Super. 1963).

Conspiracy in the First Degree . . . . . 11.513(1)

CONSPIRACY IN THE FIRST DEGREE

In order to find Defendant guilty of Conspiracy in the First Degree, you must find the State has proved each of the following two (2) elements has been established beyond a reasonable doubt:

(1) Defendant agreed with another person that one or more of them would engage in conduct constituting a felony or an attempt to commit a felony; and

(2) Defendant acted intentionally.

"Intentionally" means it was Defendant's conscious objective or purpose to engage in the conspiracy.

Comment: Immediately following this instruction, an instruction should be given stating the elements of the crime.

Applicable Code Sections and Case Law:

11 *Del. C.* § 231(b); *State v. Biter*, 119 A.2d 894, 897 (Del. Super. 1955) (conspiracy implies concert of design, not necessarily participation in every detail needed to carry out its purpose or design). *Accord State v. Wallace*, 214 A.2d 886, 890 (Del. Super. 1963).

Conspiracy in the First Degree . . . . . 11.513(2)

CONSPIRACY IN THE FIRST DEGREE

In order to find Defendant guilty of Conspiracy in the First Degree, you must find the State has proved each of the following three (3) elements has been established beyond a reasonable doubt:

(1) Defendant agreed to aid another person in the planning or commission of a felony or an attempt to commit a felony; and

(2) Either Defendant or the other person committed an overt act in pursuit of this conspiracy; and

(3) Defendant acted intentionally.

"Intentionally" means it was Defendant's conscious objective or purpose to engage in the conspiracy.

An "overt act" is any act to pursue or advance the purpose of the conspiracy.

Applicable Code Sections and Case Law::

11 *Del. C.* § 231(b); *State v. Biter*, 119 A.2d 894, 897 (Del. Super. 1955) (conspiracy implies concert of design, not necessarily participation in every detail needed to carry out its purpose or design). *Accord State v. Wallace*, 214 A.2d 886, 890 (Del. Super. 1963).

Conspiracy [More than One Crime] . . . . . 11.521(a)

CONSPIRACY [MORE THAN ONE CRIME]

Defendant is charged with Conspiracy to commit [charge]. If you find Defendant conspired to commit a number of crimes through the same agreement or a continuous conspiratorial relationship, Defendant is guilty of only one conspiracy. Defendant may be convicted of the degree of conspiracy to commit the most serious offense.

Conspiracy [Special Provision] . . . . . 11.521(b)

CONSPIRACY: CO-CONSPIRATOR IDENTITY UNKNOWN

In this case, Defendant is charged with Conspiracy to commit a crime. If you find: that Defendant knew that Defendant's co-conspirator also conspired with a third person to commit the same crime; then Defendant is guilty of conspiring to commit the crime with the third person. It does not matter whether Defendant knew or did not know the third person's identity. In other words, Defendant may be charged with the overt act committed by the third person, if you find that the third person did in fact commit an overt act.

An "overt act" is any act to pursue or advance the purpose of the conspiracy.

Conspiracy . . . . . 11.521(c)

CONSPIRACY:
AGREEMENT AS AN ELEMENT/NECESSARY INVOLVEMENT

Defendant may not be convicted of conspiracy to commit a crime: when an element of that crime is agreement with another person (with whom Defendant is alleged to have conspired); or when Defendant is alleged to have conspired with another person necessarily involved in the commission of the offense.

Applicable Code Sections and Case Law:

Johnson v, State, 587 A.2d 444, 453 (Del. 1991) (defense not applicable to an offense involving possession with intent to deliver).

Attempt to Commit a Crime . . . . . 11.531(1)

ATTEMPT TO COMMIT A CRIME

In order to find Defendant guilty of an attempt to commit a crime you must find the State has proved the following two (2) elements beyond a reasonable doubt:

(1) Defendant engaged in conduct which, under the circumstances as Defendant believed them to be, would constitute a crime; and

(2) Defendant acted intentionally.

"Intentionally" means it was Defendant's conscious objective or purpose to engage in the conduct.

Comment: You will need to use the instruction on the underlying crime in conjunction with the attempt instruction.

Applicable Code Sections and Case Law:

11 *Del. C.* § 231(b); *Saienni v. State*, 346 A.2d 152, 154 (Del. 1975) (mere preparation and impossibility of success will not defeat a charge of attempted murder and kidnaping where Defendant intended the crimes charged and where Defendant did all he planned to do right up to the moment of execution of his plan).

Attempt to Commit a Crime . . . . . 11.531(2)

ATTEMPT TO COMMIT A CRIME

In order to find Defendant guilty of an attempt to commit a crime, you must find the State has proved the following two (2) elements beyond a reasonable doubt:

(1) Defendant did (or omitted to do) anything which, under the circumstances as Defendant believed them to be, was a substantial step in a course of conduct planned to culminate in Defendant's commission of a crime; and

(2) Defendant acted intentionally.

"Intentionally" means it was Defendant's conscious objective or purpose to engage in the conduct.

"Substantial step" is an act or omission that leaves no reasonable doubt as to Defendant's intention to commit the crime Defendant is charged with attempting to commit.

Comment: You will need to use the instruction on the underlying crime in conjunction with the attempt instruction.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 231(b) and 532; *Saienni v. State*, 346 A.2d 152, 154 (Del. 1975) (mere preparation and impossibility of success will not defeat a charge of attempted murder and kidnaping where Defendant intended the crimes charged and where Defendant did all he planned to do right up to the moment of execution of his plan).

CONDUCT INTENDED TO AID ANOTHER IN COMMITTING A CRIME

In order to find Defendant guilty of an attempt to commit a crime, you must find the State has proved the following three (2) elements beyond a reasonable doubt:

(1) Defendant engaged in conduct to aid another person in committing a crime; and

(2) Defendant acted intentionally.

The State does not need to prove that the other person committed or attempted to commit the crime.

"Intentionally" means it was Defendant's conscious objective or purpose to engage in the conduct.

[Comment: Conduct must establish Defendant's complicity under 11 Del.C. § 271Liability for Conduct of Another.]

Applicable Code Sections and Case Law:

11 *Del.C.* § 271.

SOLICITATION/CONSPIRACY [RENUNCIATION]

In this case, the evidence indicates the crime [solicited/contemplated by the conspiracy] was not actually committed. Defendant has asserted as an affirmative defense that, through conduct showing a voluntary and complete renunciation of criminal purpose, Defendant prevented the commission of the crime.

Defendant has the burden of proving this affirmative defense to your satisfaction by a preponderance of the evidence. The State has no burden to present any evidence on this matter. After considering all the evidence tending to support the existence of the defense, you should determine whether that evidence makes it more likely than not that each element of the affirmative defense existed. If you find this affirmative defense is established by a preponderance of the evidence, you must return a verdict of not guilty of [charge].

Even if Defendant has not met the burden of proving this particular affirmative defense, you must acquit Defendant if you find that the State has not met its burden of proving its case beyond a reasonable doubt.

"Renunciation" is not "voluntary and complete" if motivated by a belief there is an increased likelihood Defendant or another participant will be discovered or caught. A decision to postpone the criminal conduct until another time, another victim, or another but similar objective is not a renunciation of

criminal purpose.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 304(a) and 541(c); *Halko v. State*, 175 A.2d 42, 49 (Del. 1961) (by asserting affirmative defense, Defendant admits doing the charged acts); *United States ex rel. Crosby v. Delaware*, 346 F.Supp 213, 217 (D. Del. 1972) (burden on Defendant to prove affirmative defense).

Renunciation [Affirmative Defense] . . . . . 11.541(b)

ATTEMPT TO COMMIT A CRIME [RENUNCIATION/ABANDONMENT]

In this case, Defendant has asserted as an affirmative defense that, through conduct showing a voluntary and complete renunciation of criminal purpose and effort, Defendant prevented the commission of the attempted crime. If Defendant's abandonment of criminal purpose alone was insufficient to stop the crime, this defense is available if Defendant took additional, affirmative steps that prevented the commission of the crime.

Defendant has the burden of proving this affirmative defense to your satisfaction by a preponderance of the evidence. The State has no burden to present any evidence on this matter. After considering all the evidence tending to support the existence of the defense, you should determine whether that evidence makes it more likely than not that each element of the affirmative defense existed. If you find this affirmative defense is established by a preponderance of the evidence, you must return a verdict of not guilty of [charge].

Even if Defendant has not met the burden of proving this particular affirmative defense, you must acquit Defendant if you find that the State has not met its burden of proving its case beyond a reasonable doubt.

"Renunciation" or "abandonment" is not "voluntary and complete" if

motivated by a belief there is an increased likelihood Defendant or another participant will be discovered or caught. A decision to postpone the criminal conduct until another time, another victim, or another but similar objective is not a renunciation of criminal purpose.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 304(a) and 541(c); *Halko v. State*, 175 A.2d 42, 49 (Del. 1961) (by asserting affirmative defense, Defendant admits doing the charged acts); *United States ex rel. Crosby v. Delaware*, 346 F.Supp 213, 217 (D. Del. 1972) (burden on Defendant to prove affirmative defense).

Renunciation [Limitations] . . . . . 11.541(c)(1)

RENUNCIATION [LIMITATIONS]

Defendant claims Defendant's voluntary and complete renunciation, or abandonment, of Defendant's criminal purpose provides Defendant with an affirmative defense to [charge]. However, a renunciation is not "voluntary and complete" if it is motivated in any way by Defendant's belief that circumstances exist which increase the probability of Defendant's detection or apprehension.

Applicable Code Sections and Case Law:

Renunciation [Limitations] . . . . . 11.541(c)(2)

RENUNCIATION [LIMITATIONS]

Defendant claims Defendant's voluntary and complete renunciation, or abandonment, of Defendant's criminal purpose provides Defendant with an affirmative defense to [charge]. However, a renunciation is not "voluntary and complete" if it is motivated in any way by a decision to transfer the criminal effort to a another [victim**/,** but similar, objective].

Applicable Code Sections and Case Law:

Offensive Touching . . . . . .11.601(a)(1)

OFFENSIVE TOUCHING

In order to find Defendant guilty of Offensive Touching, you must find the State has proved the following three (3) elements beyond a reasonable doubt:

(1) Defendant touched **[**victim**]** with **[**member of **(**Defendant's**)** body/instrument**]**;

(2) Defendant knew Defendant's actions were likely to cause offense or alarm to **[**victim**]**; and

(3) Defendant acted intentionally.

"Intentionally" means it was Defendant's conscious objective or purpose to cause offense or alarm to **[**victim**]**.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 231(b) and 251(b).

Offensive Touching . . . . . .11.601(a)(2)

OFFENSIVE TOUCHING

In order to find Defendant guilty of Offensive Touching, you must find the State has proved the following three (3) elements beyond a reasonable doubt:

(1) Defendant touched **[**victim**]** with **[**saliva/urine/feces/any other bodily fluid**]**;

(2) Defendant knew Defendant's actions were likely to cause offense or alarm to **[**victim**]**; and

(3) Defendant acted intentionally.

"Intentionally" means it was Defendant's conscious objective or purpose to cause offense or alarm to **[**victim**]**.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 231(b) and 251(b).

Menacing . . . . . .11.602(a)

MENACING

In order to find Defendant guilty of Menacing, you must find the State has proved the following three (3) elements beyond a reasonable doubt:

(1) Defendant made some movement of **[**the body/an instrument**]**;

(2) Defendant's movement placed **[**victim**]** in fear of imminent physical injury; and

(3) Defendant acted intentionally.

"Physical injury" means any impairment of physical condition or substantial pain.

"Intentionally" means it was Defendant's conscious objective or purpose to cause **[**victim**]** to fear imminent physical injury.

Applicable Code Sections and Case Law:

11 *Del. C.*§§ 222(24), 231(b) and 251(b).

AGGRAVATED MENACING

In order to find Defendant guilty of Aggravated Menacing, you must find the State has proved the following three (3) elements beyond a reasonable doubt:

(1) Defendant displayed what appeared to be a deadly weapon to **[**victim**]**;

(2) Defendant placed **[**victim**]** in fear of imminent physical injury; and

(3) Defendant acted intentionally.

The State is not required to prove Defendant actually had or used a deadly weapon. However, the State must prove Defendant intentionally intimidated **[**victim**]**, by threat, gesture, or deed, with what appeared to the victim to be a deadly weapon.

"Deadly weapon" includes firearm, bomb, knife of any sort (other than an ordinary pocket knife carried in a closed position), switchblade knife, billy, blackjack, bludgeon, metal knuckles, slingshot, razor, bicycle chain, ice pick or any dangerous instrument which a person used, or tried to use, to cause death or serious physical injury. For the purpose of this definition, an ordinary pocket knife is a folding knife with a blade no longer than 3 inches.

"Physical injury" means any impairment of physical condition or substantial pain.

"Intentionally" means it was Defendant's conscious objective or purpose to

cause **[**victim**]** to fear imminent physical injury.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 222(5, 24) and 231(b).

Reckless Endangering in the Second Degree . . . . . .11.603(a)(1)

RECKLESS ENDANGERING IN THE SECOND DEGREE

In order to find Defendant guilty of Reckless Endangering in the Second Degree, you must find the State has proved the following two (2) elements beyond a reasonable doubt:

(1) Defendant engaged in conduct that created a substantial risk of physical injury; and

(2) Defendant acted recklessly.

{*If applicable*}: **[**In this case, Defendant is charged with an intentional act. The statute requires only recklessness. By law, proof Defendant acted intentionally, that is, with a conscious objective or purpose, also proves Defendant acted recklessly. If you find beyond a reasonable doubt Defendant acted intentionally, then the recklessness element has been satisfied.**]**

"Physical injury" means any impairment of physical condition or substantial pain.

"Recklessly" means Defendant was aware of and consciously disregarded a substantial and unjustifiable risk that a person would be physically injured as a result of Defendant's conduct. The State must demonstrate the risk was of such a nature and degree that Defendant's disregard of the risk was a gross deviation

from the standard of conduct a reasonable person would observe under the same circumstances.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 222(24), 231(e) and 253. *See Oney v. State*, 397 A.2d 1374, 1376 (Del. 1979) (only difference between Reckless Endangerment in the First and Second degree is the magnitude of the risk of harm).

Reckless Endangering in the Second Degree . . . . . .11.603(a)(2)

RECKLESS ENDANGERING IN THE SECOND DEGREE

In order to find Defendant guilty of Reckless Endangering in the Second Degree, you must find the State has proved the following three (3) elements beyond a reasonable doubt:

(1) Defendant [engaged in conduct that contributed to/failed to act to prevent] the unlawful **[**possession and/or purchase**]** of a firearm by a juvenile;

(2) Defendant was a **[**parent/guardian/other person**]** legally charged with the care and custody of a child less than 18 years of age; and

(3) Defendant acted **[**with criminal negligence/intentionally/knowingly**]**.

{*If applicable*}: **[**It shall be an absolute defense if Defendant had a lock on the trigger and did not tell or show juvenile where the key to the trigger lock was kept.**]**

{*If applicable*}: **[**It shall be an absolute defense if Defendant locked the firearm in a key or combination locked container and did not tell or show juvenile where the key to the trigger lock was kept or what the combination was.**]**

"Physical injury" means any impairment of physical condition or substantial pain.

"Criminal negligence" means Defendant failed to perceive a risk that would result from the failure to prevent a juvenile's possession of a firearm. The risk must be of such a nature and degree that failure to perceive it constitutes a gross deviation from the standard of care a reasonable person would observe in the situation.

"Intentionally" means it was Defendant's conscious objective or purpose to engage in conduct permitting juvenile to have possession of a firearm.

"Knowingly" means Defendant was aware Defendant's conduct would contribute to or fail to prevent the unlawful possession or purchase of a firearm by a juvenile.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 222(24), 231(a, b, c), 253, and 304(a). *See Oney v. State*, 397 A.2d 1374, 1376 (Del. 1979) (only difference between Reckless Endangerment in the First and Second degree is the magnitude of the risk of harm).

Reckless Endangering in the First Degree 11.604

RECKLESS ENDANGERING IN THE FIRST DEGREE

In order to find Defendant guilty of Reckless Endangering in the First Degree, you must find the State has proved the following two (2) elements beyond a reasonable doubt:

(1) Defendant engaged in conduct that created a substantial risk of death to **[**victim**]**; and

(2) Defendant acted recklessly.

{*If applicable*}: **[**In this case, Defendant is charged with an intentional act. The statute requires only recklessness. By law, proof Defendant acted intentionally, that is, with a conscious objective or purpose, also proves Defendant acted recklessly. If you find beyond a reasonable doubt Defendant acted intentionally, then the recklessness element has been satisfied.**]**

"Recklessly" means Defendant was aware of and consciously disregarded a substantial and unjustifiable risk that death would result from Defendant's conduct. The State must demonstrate the risk was of such a nature and degree that Defendant's disregard of the risk was a gross deviation from the standard of conduct a reasonable person would observe under the same circumstances.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 231(e) and 253. *See Oney v. State*, 397 A.2d 1374, 1376 (Del. 1979) (only difference between Reckless Endangerment in the First and Second degree is the magnitude of the risk of harm).

Abuse of a Pregnant Female in the Second Degree . . . . . .11.605(a)

ABUSE OF A PREGNANT FEMALE IN THE SECOND DEGREE

In order to find Defendant guilty of Abuse of a Pregnant Female in the Second Degree, you must find the State has proved the following three (3) elements beyond a reasonable doubt:

(1) Defendant caused the unlawful termination of **[**victim's**]** pregnancy;

(2) Defendant was in **[**the course/furtherance**]** of the **[**commission/attempted commission**]** of **[**assault in the third degree/any violent felony] against or upon a pregnant female**,** or in the immediate flight from the crime; and

(3) Defendant acted recklessly and without **[**victim's**]** consent.

It is no defense to the charge of Assault in the Second Degree that Defendant did not know **[**victim**]** was pregnant at the time of the assault, or that Defendant reasonably believed **[**victim**]** was not pregnant at the time of the assault.

"Recklessly" means Defendant was aware of and consciously disregarded a substantial and unjustifiable risk that [victim] would suffer serious physical injury as a result of Defendant's conduct. The State must demonstrate the risk was of such a nature and degree that Defendant's disregard of the risk was a gross deviation from the standard of conduct a reasonable person would observe under the same circumstances.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 231(e) and 605(b).

Abuse of a Pregnant Female in the First Degree . . . . . .11.606(a)

ABUSE OF A PREGNANT FEMALE IN THE FIRST DEGREE

In order to find Defendant guilty of Abuse of a Pregnant Female in the First Degree, you must find the State has proved the following three (3) elements beyond a reasonable doubt:

(1) Defendant caused the unlawful termination of **[**victim's**]** pregnancy;

(2) Defendant was in **[**the course/furtherance**]** of the **[**commission/attempted commission**]** of **[**assault in the third degree/any violent felony**]** against or upon a pregnant female**,** or in the immediate flight from the crime; and

(3) Defendant acted intentionally and without **[**victim's**]** consent.

It is no defense to the charge of Assault in the Second Degree that Defendant did not know **[**victim**]** was pregnant at the time of the assault, or that Defendant reasonably believed **[**victim**]** was not pregnant at the time of the assault.

"Intentionally" means Defendant's conscious objective was to engage in conduct or cause the unlawful termination of the pregnancy. The State must demonstrate the risk was of such a nature and degree that Defendant's disregard of it was a gross deviation from the standard of conduct a reasonable person would observe under the same circumstances.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 231(b) and 606(b).

Strangulation . . . . . .11.607(a)(1)

STRANGULATION

In order to find Defendant guilty of Strangulation, you must find the State has proved the following two (2) elements beyond a reasonable doubt:

(1) Defendant impeded the breathing or circulation of blood of **[**victim**]** by applying pressure on the throat or neck; and

(2) Defendant acted intentionally or knowingly.

[*if applicable*:**]** **[**It is an affirmative defense that the act of strangulation was the result of a legitimate medical procedure.**]**

"Intentionally" means it was Defendant's conscious objective or purpose to strangle [victim].

"Knowingly" means Defendant was aware of the nature of the conduct and that it was practically certain the conduct would result in strangulation.

Applicable Code Sections and Case Law:

11 *Del.C.* §§ 231(b, c), 304(a) and 607(b).

Assault in the Third Degree . . . . . .11.611(1)

ASSAULT IN THE THIRD DEGREE

In order to find Defendant guilty of Assault in the Third Degree, you must find the State has proved the following two (2) elements beyond a reasonable doubt:

(1) Defendant caused physical injury; and

(2) Defendant acted intentionally or recklessly.

"Physical injury" means any impairment of physical condition or substantial pain.

“Intentionally” means it was Defendant’s conscious objective or purpose to cause physical injury.

“Recklessly” means Defendant was aware of and consciously disregarded a substantial and unjustifiable risk that a person would be physically injured as a result of Defendant’s conduct. The State must demonstrate the risk was of such a nature and degree that Defendant’s disregard of the risk was a gross deviation from the standard of conduct a reasonable person would observe under the same circumstances.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 222(24) and 231(b, e).

Assault in the Third Degree [Criminal Negligence] . . . . . .11.611(2)

ASSAULT IN THE THIRD DEGREE [CRIMINAL NEGLIGENCE]

In order to find Defendant guilty of Assault in the Third Degree, you must find the State has proved the following two (2) elements beyond a reasonable doubt:

(1) Defendant caused physical injury by means of a **[**deadly weapon/dangerous instrument**]**; and

(2) Defendant acted with criminal negligence.

"Dangerous instrument" means any instrument, article, or substance which, under the circumstances in which it is used, attempted to be used, or threatened to be used, is readily capable of causing death or serious physical injury.

"Deadly weapon" includes firearm, bomb, knife of any sort (other than an ordinary pocket knife carried in a closed position), switchblade knife, billy, blackjack, bludgeon, metal knuckles, slingshot, razor, bicycle chain, ice pick or any dangerous instrument which a person used, or tried to use, to cause death or serious physical injury. For the purpose of this definition, an ordinary pocket knife is a folding knife with a blade no longer than 3 inches.

"Physical injury" means any impairment of physical condition or substantial pain.

"Criminal negligence" means Defendant failed to perceive the risk physical injury would be caused to a person as the result of Defendant's conduct. The State must demonstrate the risk was of such a nature and degree that Defendant's disregard of the risk was a gross deviation from the standard of conduct a reasonable person would observe under the same circumstances.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 222(4, 5, 24) and 231(a).

ASSAULT IN THE SECOND DEGREE [RECKLESS OR INTENTIONAL CAUSATION OF SERIOUS PHYSICAL INJURY]

In order to find Defendant guilty of Assault in the Second Degree, you must find the State has proved the following two (2) elements beyond a reasonable doubt:

(1) Defendant caused serious physical injury; and

(2) Defendant acted intentionally or recklessly.

"Serious physical injury" means any physical injury which creates a substantial risk of death, or which causes serious and prolonged disfigurement, prolonged impairment of health, or prolonged loss or impairment of the function of any bodily organ.

“Intentionally” means it was the Defendant’s conscious objective or purpose to cause serious physical injury.

“Recklessly” means Defendant was aware of and consciously disregarded a substantial and unjustifiable risk serious physical injury would be caused to a person as a result of Defendant’s conduct. The State must demonstrate the risk was of such a nature and degree that Defendant’s disregard of the risk was a gross deviation from the standard of conduct a reasonable person would observe under

the same circumstances.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 222(25) and 231(b, e). *See Cronin v. State*, 454 A.2d 735, 736-737 (Del. 1982) (loss of use of teeth and prolonged impairment of health fall within definition of "serious physical injury").

ASSAULT IN THE SECOND DEGREE
[PHYSICAL INJURY BY MEANS OF A DEADLY WEAPON/DANGEROUS INSTRUMENT]

In order to find Defendant guilty of Assault in the Second Degree, you must find the State has proved the following two (2) elements beyond a reasonable doubt:

(1) Defendant caused physical injury by means of a **[**deadly weapon/dangerous instrument**]**; and

(2) Defendant acted intentionally or recklessly.

"Dangerous instrument" means any instrument, article, or substance which, under the circumstances in which it is used, attempted to be used, or threatened to be used, is readily capable of causing death or serious physical injury.

"Deadly weapon" includes firearm, bomb, knife of any sort (other than an ordinary pocket knife carried in a closed position), switchblade knife, billy, blackjack, bludgeon, metal knuckles, slingshot, razor, bicycle chain, ice pick or any dangerous instrument which a person used, or tried to use, to cause death or serious physical injury. For the purpose of this definition, an ordinary pocket knife is a folding knife with a blade no longer than 3 inches.

"Physical injury" means any impairment of physical condition or substantial

pain.

"Intentionally" means it was Defendant's conscious objective or purpose to cause serious physical injury.

"Recklessly" means Defendant was aware of and consciously disregarded a substantial and unjustifiable risk serious physical injury would be caused to a person as a result of Defendant's conduct. The State must demonstrate the risk was of such a nature and degree that Defendant's disregard of the risk was a gross deviation from the standard of conduct a reasonable person would observe under the same circumstances.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 222(4, 5, 24) and 231(b, e). *See Harley v. State*, 534 A.2d 255, 257 (Del. 1987) (stating that the exact description of instrument used during altercation not an essential element).

ASSAULT IN THE SECOND DEGREE
[PHYSICAL INJURY TO (LAW-ENFORCEMENT OFFICER/FIREFIGHTER)]

In order to find Defendant guilty of Assault in the Second Degree, you must find the State has proved the following two (2) elements beyond a reasonable doubt:

(1) Defendant caused physical injury to a **[**law-enforcement officer/ **(**volunteer/full-time**)** firefighter/correctional officer/sheriff/deputy sheriff**]**, acting in the lawful performance of duties at the time of the assault; and

(2) Defendant acted intentionally.

If a law-enforcement officer is off-duty but the nature of the assault is related to that law-enforcement officer's official position, then any physical injury caused by the assault comes within the meaning of element (1) of this subsection.

"Physical injury" means any impairment of physical condition or substantial pain.

"Law enforcement officer" includes police officers, the Attorney General, the Attorney General's deputies, sheriffs, sheriffs' deputies, prison guards and constables.

"Intentionally" means it was Defendant's conscious objective or purpose to

cause physical injury.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 222(14, 24) and 231(b).

Assault in the Second Degree [Physical Injury to Emergency Medical Personnel] . . . . . .11.612(a)(4)

ASSAULT IN THE SECOND DEGREE [EMERGENCY MEDICAL PERSONNEL]

In order to find Defendant guilty of Assault in the Second Degree, you must find the State has proved the following two (2) elements beyond a reasonable doubt:

(1) Defendant caused physical injury to a**[**n**] [**operator of an ambulance/rescue squad member/licensed practical nurse/registered nurse/paramedic/licensed medical doctor/any person**]** rendering emergency medical care at the time of the assault; and

(2) Defendant acted intentionally.

"Physical injury" means any impairment of physical condition or substantial pain.

"Intentionally" means it was Defendant's conscious objective or purpose to cause physical injury.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 222(24) and 231(b).

ASSAULT IN THE SECOND DEGREE
[CAUSATION OF PHYSICAL INJURY TO PERSON 62 YEARS OR OLDER]

In order to find Defendant guilty of Assault in the Second Degree, you must find the State has proved the following two (2) elements beyond a reasonable doubt:

(1) Defendant caused physical injury to a person, who was 62 years or older at the time of the assault; and

(2) Defendant acted intentionally or recklessly.

It is no defense to the charge of Assault in the Second Degree that Defendant did not know the person's age at the time of the assault, or that Defendant reasonably believed that the person was younger than sixty-two (62) at the time of the assault.

"Physical injury" means any impairment of physical condition or substantial pain.

"Intentionally" means it was Defendant's conscious objective or purpose to cause physical injury.

"Recklessly" means Defendant was aware of and consciously disregarded a substantial and unjustifiable risk physical injury would be caused to a person as a

result of Defendant's conduct. The State must demonstrate the risk was of such a nature and degree that Defendant's disregard of the risk was a gross deviation from the standard of conduct a reasonable person would observe under the same circumstances.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 222(24), 231(b, e) and 612(b).

ASSAULT IN THE SECOND DEGREE
[ASSAULT OF LAW ENFORCEMENT OFFICER WITH INCAPACITATING SPRAY]

In order to find Defendant guilty of Assault in the Second Degree, you must find the State has proved the following three (3) elements beyond a reasonable doubt:

(1) Defendant **[**used any disabling chemical spray/sprayed a (liquid/gas)**]** to assault a person;

(2) the person was a law enforcement officer acting in the lawful performance of duties at the time of the assault; and

(3) Defendant acted intentionally.

"Law enforcement officer" includes police officers, the Attorney General, the Attorney General's deputies, sheriffs, sheriffs' deputies, prison guards and constables.

"Intentionally" means it was Defendant's conscious objective or purpose to use the aerosol or spray to incapacitate and to prevent the person from performing law enforcement duties.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 222(15) and 231(b).

Assault in the Second Degree . . . . . .11.612(a)(7)

ASSAULT IN THE SECOND DEGREE
[ASSAULT WITH INCAPACITATING SPRAY DURING COMMISSION OF A CRIME]

In order to find Defendant guilty of Assault in the Second Degree, you must find the State has proved the following two (2) elements beyond a reasonable doubt:

(1) Defendant [used any disabling chemical spray/an aerosol spray/sprayed a **(**liquid/gas**)]** against a person with the objective of incapacitating Defendant while engaged in the commission of a crime; and

(2) Defendant acted intentionally.

"Intentionally" means it was Defendant's conscious objective or purpose to use the aerosol or spray in order to incapacitate a person.

Applicable Code Sections and Case Law:

11 *Del. C.* § 231(b).

Assault in the Second Degree [Physical Injury to State Employee or Officer] . . . . . .11.612(a)(8)

ASSAULT IN THE SECOND DEGREE [PHYSICAL INJURY TO STATE EMPLOYEE OR OFFICER]

In order to find Defendant guilty of Assault in the Second Degree, you must find the State has proved the following three (3) elements beyond a reasonable doubt:

(1) Defendant caused physical injury;

(2) The injured person was a **[**state employee/officer**]** **[**discharging/attempting to discharge**]** a duty of **[**employment/office**]** at the time of the assault; and

(3) Defendant acted intentionally.

"Physical injury" means any impairment of physical condition or substantial pain.

"Intentionally" means it was Defendant's conscious objective or purpose to cause physical injury.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 222(24) and 231(b).

ASSAULT IN THE SECOND DEGREE
[PHYSICAL INJURY TO PREGNANT FEMALE]

In order to find Defendant guilty of Assault in the Second Degree, you must find the State has proved the following three (3) elements beyond a reasonable doubt:

(1) Defendant caused physical injury;

(2) **[**victim**]** was pregnant at the time of the assault; and

(2) Defendant acted intentionally or recklessly.

It is no defense to the charge of Assault in the Second Degree that Defendant did not know **[**victim**]** was pregnant at the time of the assault, or that Defendant reasonably believed **[**victim**]** was not pregnant at the time of the assault.

"Physical injury" means any impairment of physical condition or substantial pain.

"Intentionally" means it was Defendant's conscious objective or purpose to cause physical injury to **[**victim**]**.

"Recklessly" means Defendant was aware of and consciously disregarded a substantial and unjustifiable risk serious physical injury would be caused to **[**victim**]** as a result of Defendant's conduct. The State must demonstrate the risk

was of such a nature and degree that Defendant's disregard of the risk was a gross deviation from the standard of conduct a reasonable person would observe under the same circumstances.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 222(24) and 231(b, e).

ASSAULT SECOND DEGREE
[PHYSICAL INJURY TO VICTIM UNDER SIX]

In order to find Defendant guilty of Assault in the Second Degree, you must find the State has proved the following four (4) elements beyond a reasonable doubt:

(1) Defendant caused physical injury;

(2) The injured person was not yet six years old at the time of the assault;

(3) Defendant was 18 years of age or older at the time of the assault; and

(4) Defendant acted intentionally or recklessly.

It is no defense to the charge of Assault in the Second Degree that Defendant did not know the child's age at the time of the assault, or that Defendant reasonably believed the child was six years old or older at the time of the assault.

If applicable: **[**In any prosecution of a parent, custodian, teacher or school administrator, the State also must prove beyond a reasonable doubt the absence of any justification under 11 *Del. C.* § 468(1) or (2).**]**

"Physical injury" means any impairment of physical condition or substantial pain.

"Intentionally" means it was Defendant's conscious objective or purpose to cause physical injury.

"Recklessly" means Defendant was aware of and consciously disregarded a substantial and unjustifiable risk serious physical injury would be caused to a person as a result of Defendant's conduct. The State must demonstrate the risk was of such a nature and degree that Defendant's disregard of the risk was a gross deviation from the standard of conduct a reasonable person would observe under the same circumstances.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 222(24), 231(b, e) and 612(c).

Assault in the Second Degree . . . . . 11.612(a)(11)
[Physical Injury by an Electronic Control Device]

ASSAULT SECOND DEGREE
[ASSAULT WITH AN ELECTRONIC CONTROL DEVICE]

In order to find Defendant guilty of Assault in the Second Degree, you must find the State has proved the following three (3) elements beyond a reasonable doubt:

(1) Defendant used any electronic control device against a person;

(2) The person was a**[**n**] [**law-enforcement officer/security officer/fire police officer/fire fighter/paramedic/emergency medical technician**]** in the lawful performance of duties; and

(3) Defendant acted intentionally or recklessly.

"Law enforcement officer" includes police officers, the Attorney General, the Attorney General's deputies, sheriffs, sheriffs' deputies, prison guards and constables.

"Physical injury" means any impairment of physical condition or substantial pain.

"Intentionally" means it was Defendant's conscious objective or purpose to use the electronic control device in order to incapacitate the person.

"Recklessly" means Defendant was aware of and consciously disregarded a substantial and unjustifiable risk serious physical injury would be caused to a person as a result of Defendant's conduct. The State must demonstrate the risk was of such a nature and degree that Defendant's disregard of the risk was a gross deviation from the standard of conduct a reasonable person would observe under the same circumstances.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 222(15, 24) and 231(b, e).

Assault in the First Degree . . . . . 11.613(a)(1)
[Serious Physical Injury by Means of a Deadly Weapon]

ASSAULT IN THE FIRST DEGREE
[SERIOUS PHYSICAL INJURY BY MEANS OF DEADLY WEAPON]

In order to find Defendant guilty of Assault in the First Degree, you must find the State has has proved the following three (3) elements beyond a reasonable doubt:

(1) Defendant caused serious physical injury;

(2) Defendant used a **[**deadly weapon/ dangerous instrument**]**; and

(3) Defendant acted intentionally.

"Dangerous instrument" means any instrument, article, or substance which, under the circumstances in which it is used, attempted to be used, or threatened to be used, is readily capable of causing death or serious physical injury.

"Deadly weapon" includes firearm, bomb, knife of any sort (other than an ordinary pocket knife carried in a closed position), switchblade knife, billy, blackjack, bludgeon, metal knuckles, slingshot, razor, bicycle chain, ice pick or any dangerous instrument which a person used, or tried to use, to cause death or serious physical injury. For the purpose of this definition, an ordinary pocket knife is a folding knife with a blade no longer than 3 inches.

"Serious physical injury" means any physical injury which creates a substantial risk of death, or which causes serious and prolonged disfigurement, prolonged impairment of health, or prolonged loss or impairment of the function of any bodily organ.

“Intentionally” means it was Defendant’s conscious objective or purpose to cause serious physical injury.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 222(4, 5, 25) and 231(b).

Assault in the First Degree . . . . . 11.613(a)(2)
[Intentional Disfigurement]

ASSAULT IN THE FIRST DEGREE
[INTENTIONAL DISFIGUREMENT]

In order to find Defendant guilty of Assault in the First Degree, you must find the State has proved the following two (2) elements beyond a reasonable doubt:

(1) Defendant **[**disfigured **(**victim) seriously and permanently/**(**destroys/amputates/disables) permanently a **(**member/organ) of **(**victim's) body**]**; and

(2) Defendant acted intentionally.

"Intentionally" means it was Defendant's conscious objective or purpose to **[**cause serious and permanent disfigurement to **(**victim**)**/destroy, amputate or disable permanently the **(**victim's) **(**body part**)]**.

Applicable Code Sections and Case Law:

11 *Del. C.* § 231(b).

Assault in the First Degree . . . . . 11.613(a)(3)
[Reckless Conduct/Risk of Death/Serious Physical Injury]

ASSAULT IN THE FIRST DEGREE
[RECKLESS CONDUCT/RISK OF DEATH/SERIOUS PHYSICAL INJURY]

In order to find Defendant guilty of Assault in the First Degree, you must find the State has proved the following three (3) elements beyond a reasonable doubt:

(1) Defendant engaged in conduct creating a substantial risk of death;

(2) Defendant caused serious physical injury; and

(3) Defendant acted recklessly.

"Serious physical injury" means any physical injury which creates a substantial risk of death, or which causes serious and prolonged disfigurement, prolonged impairment of health, or prolonged loss or impairment of the function of any bodily organ.

“Recklessly” means Defendant was aware of and consciously disregarded a substantial and unjustifiable risk that death would result from Defendant’s conduct. The State must demonstrate the risk was of such a nature and degree that Defendant’s disregard of the risk was a gross deviation from the standard of conduct a reasonable person would observe under the same circumstances.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 222(25) and 231(e).

Assault in the First Degree . . . . . 11.613(a)(4)
[Felony Assault]

ASSAULT IN THE FIRST DEGREE
[FELONY ASSAULT]

In order to find Defendant guilty of Assault in the First Degree, you must find the State has proved the following three (3) elements beyond a reasonable doubt:

(1) Defendant was engaged in **[**commission of/attempt to commit/flight after committing/ flight after attempting to commit**]** a felony;

(2) Defendant caused serious physical injury; and

(3) Defendant acted intentionally or recklessly.

"Serious physical injury" means any physical injury which creates a substantial risk of death, or which causes serious and prolonged disfigurement, prolonged impairment of health, or prolonged loss or impairment of the function of any bodily organ.

“Intentionally” means it was Defendant’s conscious objective or purpose to cause serious physical injury.

“Recklessly” means Defendant was aware of and consciously disregarded a substantial and unjustifiable risk serious physical injury would be caused to a person as a result of Defendant’s conduct. The State must demonstrate the risk was

of such a nature and degree that Defendant's disregard of the risk was a gross deviation from the standard of conduct a reasonable person would observe under the same circumstances.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 222(25) and 231(b, e).

Assault in the First Degree . . . . . 11.613(a)(5)
[Serious Physical Injury to Law Enforcement Office or Firefighter]

ASSAULT IN THE FIRST DEGREE [SERIOUS PHYSICAL INJURY TO LAW-ENFORCEMENT OFFICER OR FIREFIGHTER]

In order to find Defendant guilty of Assault in the First Degree, you must find the State has proved the following three (3) elements beyond a reasonable doubt:

(1) Defendant caused serious physical injury;

(2) The injured person was a **[**law-enforcement officer/volunteer firefighter/full-time firefighter/ emergency medical technician/paramedic/fire police officer/fire marshal/code enforcement constable/code enforcement officer**]** acting in the lawful performance of duty; and

(3) Defendant acted intentionally.

"Law enforcement officer" includes police officers, the Attorney General, the Attorney General's deputies, sheriffs, sheriffs' deputies, prison guards and constables.

"Serious physical injury" means any physical injury which creates a substantial risk of death, or which causes serious and prolonged disfigurement,

prolonged impairment of health, or prolonged loss or impairment of the function of any bodily organ.

"Intentionally" means it was Defendant's conscious objective or purpose to cause serious physical injury.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 222(15, 25) and 231(b).

Assault in the First Degree . . . . . 11.613(a)(6)
[Serious Physical Injury to Emergency Personnel]

ASSAULT IN THE FIRST DEGREE
[SERIOUS PHYSICAL INJURY TO EMERGENCY PERSONNEL]

In order to find Defendant guilty of Assault in the First Degree, you must find the State has proved the following two (2) elements beyond a reasonable doubt:

(1) Defendant caused serious physical injury;

(2) The injured person was a**[**n**] [**operator of an ambulance/rescue squad member/licensed practical nurse/registered nurse/paramedic/licensed medical doctor/any other person**]** rendering emergency care at the time of the assault; and

(2) Defendant acted intentionally.

"Serious physical injury" means any physical injury which creates a substantial risk of death, or which causes serious and prolonged disfigurement, prolonged impairment of health, or prolonged loss or impairment of the function of any bodily organ.

"Intentionally" means it was Defendant's conscious objective or purpose to cause serious physical injury.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 222(25) and 231(b).

Assault in the First Degree . . . . . 11.613(a)(7)
[Serious Physical Injury to Person 62 years or Older]

ASSAULT IN THE FIRST DEGREE
[SERIOUS PHYSICAL INJURY TO PERSON 62 YEARS OR OLDER]

In order to find Defendant guilty of Assault in the First Degree, you must find the State has proved the following two (2) elements beyond a reasonable doubt:

(1) Defendant caused serious physical injury;

(2**)** The injured person was 62 years of age or older at the time of the assault; and

(3) Defendant acted intentionally.

It is no defense to the charge of Assault in the Second Degree that Defendant did not know the person's age at the time of the assault, or reasonably believed the person was younger than sixty-two (62) at the time of the assault.

"Serious physical injury" means any physical injury which creates a substantial risk of death, or which causes serious and prolonged disfigurement, prolonged impairment of health, or prolonged loss or impairment of the function of any bodily organ.

"Intentionally" means it was Defendant's conscious objective or purpose to cause serious physical injury.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 222(25) and 231(b).

Abuse of a Sports Official . . . . . .11.614(a)(1)
[Reckless Endangering]

ABUSE OF A SPORTS OFFICIAL
[RECKLESS ENDANGERING]

In order to find Defendant guilty of Assault on a Sports Official, you must find the State has proved the following three (3) elements beyond a reasonable doubt:

(1) Defendant engaged in conduct creating a substantial risk of physical injury;

(2) The injured person was a sports official acting in the lawful performance of duties at the time of the assault; and

(3) Defendant acted intentionally or recklessly.

"Physical injury" means any impairment of physical condition or substantial pain.

“Intentionally” means it was Defendant’s conscious objective or purpose to cause physical injury.

“Recklessly” means Defendant’s conduct created a substantial risk of physical injury.

"Sports official" means any person who serves as a registered, paid or volunteer referee, umpire, line judge or acts in any similar capacity during a sporting event.

“Lawful performance of duties” means the time immediately prior to, during and/or immediately after the sporting event.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 222(24), 231(b, e), 603(a)(1) and 614(b).

Abuse of a Sports Official . . . . . .11.614(a)(2)
[Assault in the Third Degree]

ABUSE OF A SPORTS OFFICIAL
[ASSAULT IN THE THIRD DEGREE]

In order to find Defendant guilty of Assault on a Sports Official, you must find the State has proved the following three (3) elements beyond a reasonable doubt:

(1) Defendant **[(**intentionally/recklessly**)/**with criminal negligence by means of a **(**deadly weapon/dangerous instrument**)]** caused physical injury;

(2**)** The injured person was a sports official acting in the lawful performance of duties at the time of the assault ; and

(2) Defendant acted **[**with criminal negligence/intentionally/recklessly**]**.

"Dangerous instrument" means any instrument, article, or substance which, under the circumstances in which it is used, attempted to be used, or threatened to be used, is readily capable of causing death or serious physical injury.

"Deadly weapon" includes firearm, bomb, knife of any sort (other than an ordinary pocket knife carried in a closed position), switchblade knife, billy, blackjack, bludgeon, metal knuckles, slingshot, razor, bicycle chain, ice pick or any dangerous instrument which a person used, or tried to use, to cause death or

serious physical injury. For the purpose of this definition, an ordinary pocket knife is a folding knife with a blade no longer than 3 inches.

"Physical injury" means any impairment of physical condition or substantial pain.

“Intentionally” means it was Defendant’s conscious objective or purpose to cause physical injury.

“Recklessly” means Defendant’s conduct created a substantial risk of physical injury.

"Sports official" means any person who serves as a registered, paid or volunteer referee, umpire, line judge or acts in any similar capacity during a sporting event.

“Lawful performance of duties” means the time immediately prior to, during and/or immediately after the sporting event.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 222(4, 5, 24), 231(a, b, e), 611(a) and 614(b).

Abuse of a Sports Official . . . . . .11.614(a)(3)
[Terroristic Threatening]

ABUSE OF A SPORTS OFFICIAL
[TERRORISTIC THREATENING]

In order to find Defendant guilty of Assault on a Sports Official, you must find the State has proved the following three (3) elements beyond a reasonable doubt:

(1) Defendant's conduct was terroristic threatening against the sports official;

(2) The sports official was acting in the lawful performance of duties at the time of the assault; and

(3) Defendant acted intentionally or recklessly.

"Physical injury" means any impairment of physical condition or substantial pain.

"Intentionally" means it was Defendant's conscious objective or purpose to cause physical injury.

"Recklessly" means Defendant's conduct created a substantial risk of physical injury.

"Sports official" means any person who serves as a registered, paid or volunteer referee, umpire, line judge or acts in any similar capacity during a sporting event.

“Lawful performance of duties” means the time immediately prior to, during and/or immediately after the sporting event.

“Terroristic threatening” means Defendant threatened to commit any crime likely to result in death or serious injury to the sports official or made a false statement knowing the statement was: (1) likely to cause an evacuation of the location; (2) likely to cause serious inconvenience; or (3) in reckless disregard of the risk of causing terror or serious inconvenience. Terroristic threatening also means that Defendant commited an act with the intent of causing the sports official to believe Defendant had been exposed to a substance that would cause the sport official’s death or serious injury.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 222(24), 231(b, e), 614(b) and 621(a).

Abuse of a Sports Official . . . . . .11.614(a)(4)
[Criminal Mischief]

ABUSE OF A SPORTS OFFICIAL
[CRIMINAL MISCHIEF]

In order to find Defendant guilty of Assault on a Sports Official, you must find the State has proved the following three (3) elements beyond a reasonable doubt:

(1) Defendant committed an act of criminal mischief against a sports official;

(2) The sports official was acting in the lawful performance of duties at the time of the criminal mischief; and

(3) Defendant acted intentionally or recklessly.

"Physical injury" means any impairment of physical condition or substantial pain.

“Intentionally” means it was Defendant’s conscious objective or purpose to cause physical injury.

“Recklessly” means Defendant’s conduct created a substantial risk of physical injury.

"Sports official" means any person who serves as a registered, paid or volunteer referee, umpire, line judge or acts in any similar capacity during a sporting event.

“Lawful performance of duties” means the time immediately prior to, during and/or immediately after the sporting event.

“Criminal mischief” means Defendant damaged the sports official’s personal property or tampered with the official’s personal property so as to endanger the offi**c**ial or the official’s property.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 222(24), 231(b, e), 614(b) and 811(a).

Assault by Abuse or Neglect . . . . . 11.615(a)(1)

ASSAULT BY ABUSE OR NEGLECT

In order to find Defendant guilty of Assault by Abuse or Neglect, you must find the State has proved the following three (3) elements beyond a reasonable doubt:

(1) Defendant caused serious physical injury through an act of abuse **or** neglect;

(2) the injured person was a child at the time of the charged offense; and

(3) Defendant acted recklessly.

"Serious physical injury" means any physical injury which creates a substantial risk of death, or which causes serious and prolonged disfigurement, prolonged impairment of health, or prolonged loss or impairment of the function of any bodily organ.

“Recklessly” means Defendant was aware of and consciously disregarded a substantial and unjustifiable risk serious physical injury would be caused to the child as a result of Defendant’s conduct. The State must demonstrate the risk of serious physical injury was of such a nature and degree that Defendant’s disregard of the risk was a gross deviation from the standard of conduct a reasonable person would observe under the same circumstances.

"Child" means a person who has not yet reached their 14th birthday.

"Abuse" means any physical injury to the child through unjustified force, torture, negligent treatment, sexual abuse, exploitation, maltreatment, mistreatment or any means other than accident.

"Neglect" means the threatened or impaired physical, mental or emotional health and well-being of the child through inadequate care or protection, non-treatment or abandonment by the child's custodian, or other person in whose temporary custodial care the child is left, when such custodian or other person has the ability and financial means to provide adequate care or protection, but does not or will not do so.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 222(25), 231(e), 615(b)(1) and 1103(a, d).

Assault by Abuse or Neglect . . . . . 11.615(a)(2)

ASSAULT BY ABUSE OR NEGLECT

In order to find Defendant guilty of Assault by Abuse or Neglect, you must find the State has proved the following three (3) elements beyond a reasonable doubt:

(1) Defendant caused serious physical injury by a pattern of abuse or neglect;

(2) The injured person was a child at the time of the charged offense; and

(3) Defendant acted recklessly.

"Serious physical injury" means any physical injury which creates a substantial risk of death, or which causes serious and prolonged disfigurement, prolonged impairment of health, or prolonged loss or impairment of the function of any bodily organ.

“Recklessly” means Defendant was aware of and consciously disregarded a substantial and unjustifiable risk serious physical injury would be caused to the child as a result from Defendant’s conduct. The State must demonstrate the risk of serious physical injury was of such a nature and degree that Defendant’s disregard of it was a gross deviation from the standard of conduct a reasonable person would observe under the same circumstances.

"Child" means a person who has not yet reached their 14th birthday.

"Abuse" means any physical injury to the child through unjustified force, torture, negligent treatment, sexual abuse, exploitation, maltreatment, mistreatment or any means other than accident.

"Neglect" means the threatened or impaired physical, mental or emotional health and well-being of the child through inadequate care or protection, non-treatment or abandonment by the child's custodian, or other person in whose temporary custodial care the child is left, when such custodian or other person has the ability and financial means to provide adequate care or protection, but does not or will not do so.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 222(25), 231(e), 615(b)(1) and 1103(a, d).

GANG PARTICIPATION

In order to find Defendant guilty of Gang Participation, you must find the State has proved the following four (4) elements beyond a reasonable doubt:

(1) Defendant actively participated in any criminal gang activity;

(2) Defendant promoted**,** furthered**,** or assisted in criminal conduct constituting a felony by gang members;

(3) Defendant was aware gang members engage in a pattern of criminal gang activity; and

(4) Defendant acted knowingly.

"Knowingly" means Defendant was aware the conduct was a gang activity.

"Criminal gang" means any ongoing organization, association, or group of 3 or more persons, whether formal or informal, having as one of its primary activities the commission of one or more criminal acts, having a common name or identifying sign or symbol, and whose members individually or collectively have engaged in a pattern of criminal gang activity.

"Pattern of criminal gang activity" means the commission of or attempted commission of or conspiracy to commit 2 or more criminal offenses, provided at least 1 of these offenses occurred after July 1, 2003, and the last of those offenses

occurred within 3 years after a prior offense, and the offenses were committed on separate occasions, or by 2 or more persons.

Applicable Code Sections and Case Law:

11 *Del.C.* § 231(c), 616(a)(1, 2).

CRIMINAL YOUTH GANGS
[RECRUITMENT]

In order to find Defendant guilty of Criminal Youth Gang Recruitment, you must find the State has proved the following two (2) elements beyond a reasonable doubt:

(1) Defendant solicited**,** invited**,** recruited**,** encouraged**,** or otherwise caused or attempted to cause a juvenile or student to participate in or to become a member of a criminal gang; and

(2) Defendant acted intentionally or recklessly.

"Intentionally" means it was Defendant's conscious objective or purpose to cause a juvenile or student to participate in or to become a member of**]** a criminal gang.

"Recklessly" means Defendant was aware of and consciously disregarded a substantial and unjustifiable risk that an element of the offense existed or would result from Defendant's conduct. The risk must be of such a nature and degree that disregard thereof constituted a gross deviation from the standard of conduct a reasonable person would observe in the situation.

"Criminal gang" means any ongoing organization, association, or group of 3 or more persons, whether formal or informal, having as one of its primary activities the commission of one or more criminal acts, having a common name or identifying sign or symbol, and whose members individually or collectively have engaged in a pattern of criminal gang activity.

“Pattern of criminal gang activity” means the commission of or attempted commission of or conspiracy to commit 2 or more criminal offenses, provided at least 1 of these offenses occurred after July 1, 2003, and the last of those offenses occurred within 3 years after a prior offense, and the offenses were committed on separate occasions, or by 2 or more persons.

"Criminal gang" shall mean a group of 3 or more persons with a gang name or other identifier which either promotes, sponsors, assists in, participates in or requires as a condition of membership submission to group initiation that results in any felony or any class A misdemeanor as set forth in this title or Title 16.

“Student” means any person enrolled in a school grades preschool through 12.

Applicable Code Sections and Case Law:

11 *Del.C.* §§ 231(b, e), 616(a)(1, 2) and 617(a)(1, 3).

Criminal Youth Gangs [Recruitment] . . . . . 11.617(b)(2)a1

CRIMINAL YOUTH GANGS [RECRUITMENT]

In order to find Defendant guilty of Criminal Youth Gang Recruitment, you must find the State has proved the following two (2) elements beyond a reasonable doubt:

(1) Defendant encouraged a juvenile or student to become a member of a criminal gang;

(2) Defendant acted intentionally or recklessly.

"Intentionally" means it was Defendant's conscious objective or purpose to cause a juvenile or student to become a member of a criminal gang.

"Recklessly" means Defendant was aware of and consciously disregarded a substantial and unjustifiable risk that an element of the offense existed or would result from Defendant's conduct. The risk must be of such a nature and degree that disregard thereof constituted a gross deviation from the standard of conduct a reasonable person would observe in the situation.

"Criminal gang" shall mean a group of 3 or more persons with a gang name or other identifier which either promotes, sponsors, assists in, participates in or

requires as a condition of membership submission to group initiation that results in any felony or any class A misdemeanor as set forth in this title or Title 16.

"Student" means any person enrolled in a school grades preschool through 12.

Applicable Code Sections and Case Law:

11 *Del.C.* §§ 231(b, e), 251(b), 616(a)(1) and 617(a)(1, 3).

Criminal Youth Gangs [Recruitment] . . . . . 11.617(b)(2)a2

CRIMINAL YOUTH GANGS
[RECRUITMENT]

In order to find Defendant guilty of Recruitment, you must find the State has proved the following two (2) elements beyond a reasonable doubt:

(1) Defendant encouraged a juvenile or student to remain a participant or member**]** of a criminal gang;

(2) Defendant acted intentionally or recklessly.

"Intentionally" means it was Defendant's conscious objective or purpose to cause a juvenile or student to participate in or to become a member of a criminal gang.

"Recklessly" means Defendant was aware of and consciously disregarded a substantial and unjustifiable risk that an element of the offense existed or would result from Defendant's conduct. The risk must be of such a nature and degree that disregard thereof constituted a gross deviation from the standard of conduct a reasonable person would observe in the situation.

"Criminal youth gang" shall mean a group of 3 or more persons with a gang name or other identifier which either promotes, sponsors, assists in, participates in

or requires as a condition of membership submission to group initiation that results in any felony or any class A misdemeanor set forth in this title or Title 16.

"Student" means any person enrolled in a school grades preschool through 12.

Applicable Code Sections and Case Law:

11 *Del.C.* §§ 231(b, e), 251(b), 616(a)(1) and 617(a)(1, 3).

Criminal Youth Gangs [Recruitment] . . . . . 11.617(b)(2)a3

CRIMINAL YOUTH GANGS [RECRUITMENT]

In order to find Defendant guilty of Recruitment, you must find the State has proved the following two (2) elements beyond a reasonable doubt:

(1) Defendant encouraged a juvenile or student to submit to a demand by a criminal gang to commit a crime; and

(2) Defendant acted intentionally or recklessly.

"Intentionally" means it was Defendant's conscious objective or purpose to cause a juvenile or student to participate in or to become a member of a criminal gang.

"Recklessly" means Defendant was aware of and consciously disregarded a substantial and unjustifiable risk that an element of the offense existed or would result from Defendant's conduct. The risk must be of such a nature and degree that disregard thereof constituted a gross deviation from the standard of conduct a reasonable person would observe in the situation.

"Criminal youth gang" shall mean a group of 3 or more persons with a gang name or other identifier which either promotes, sponsors, assists in, participates in

or requires as a condition of membership submission to group initiation that results in any felony or any class A misdemeanor set forth in this title or Title 16.

"Student" means any person enrolled in a school grades preschool through 12.

Applicable Code Sections and Case Law:

11 *Del.C.* §§ 231(b, e), 251(b), 616(a)(1) and 617(a)(1, 3).

CRIMINAL YOUTH GANGS
[RETENTION]

In order to find Defendant guilty of Retention, you must find the State has proved the following three (3) elements beyond a reasonable doubt:

(1) Defendant prevented a juvenile or student from withdrawing or attempting to withdraw from a criminal gang; and

(2) Defendant **[**threatened to commit a crime likely to result in **(**death/physical injury**)** to **(**juvenile/member of juvenile's **{**family/household**}**/juvenile's property/property of juvenile's **{**family/household**})**/committed a crime which resulted in **(**death/physical injury) to **(**juvenile/ juvenile's **{**family/household**})]**; and

(3) Defendant acted intentionally or recklessly.

"Intentionally" means it was Defendant's conscious objective or purpose to prevent a juvenile or student from withdrawing or attempting to withdraw as a criminal gang.

"Recklessly" means Defendant was aware of and consciously disregarded a substantial and unjustifiable risk that an element of the offense existed or would result from Defendant's conduct. The risk must be of such a nature and degree that

disregard thereof constituted a gross deviation from the standard of conduct a reasonable person would observe in the situation.

"Criminal youth gang" shall mean a group of 3 or more persons with a gang name or other identifier which either promotes, sponsors, assists in, participates in or requires as a condition of membership submission to group initiation that results in any felony or any class A misdemeanor set forth in this title or Title 16.

“Student” means any person enrolled in a school grades preschool through 12.

Applicable Code Sections and Case Law:

11 *Del.C.* §§ 231(b, e), 251(b), 616(a)(1) and 617(a)(1, 3).

Terroristic Threatening [To Another Person] . . . . . .11.621(a)(1)

TERRORISTIC THREATENING [TO ANOTHER PERSON]

In order to find Defendant guilty of Terroristic Threatening, you must find the State has proved the following two (2) elements beyond a reasonable doubt:

(1) Defendant threatened to commit a crime likely to result in death or serious injury or serious damage to property; and

(2) Defendant acted intentionally or knowingly.

"Intentionally" means it was Defendant's conscious objective or purpose to threaten to commit a crime likely to result in death or serious injury or serious damage to property.

"Knowingly" means Defendant was aware Defendant was threatening to commit a crime likely to result in death or serious injury or serious damage to property.

The Terroristic Threatening statute imposes criminal liability for the use of words. The crime is complete when a person threatens to commit a crime that would reasonably result in death or serious injury or serious damage to property. Therefore, the State is not required to prove Defendant intended to carry out Defendant's threat, or that the threatened act was completed.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 231(b, c) and 251(b). *Bilinski v. State*, 462 A.2d 409, 412 (Del. 1983) (act or mental state need not be qualified as either conditional or unconditional); *Allen v. State*, 453 A.2d 1166, 1169 (Del. 1982) (actor need not intend to actually carry out threat and whether act is finally carried out is immaterial).

Terroristic Threatening ***[****False Statements****]*** . . . . . .11.621(a)(2)a

TERRORISTIC THREATENING [FALSE STATEMENTS]

In order to find Defendant guilty of Terroristic Threatening, you must find the State has proved the following three (3) elements beyond a reasonable doubt:

(1) Defendant made a false statement;

(2) Defendant was aware statement would likely cause evacuation of a building**,** place of assembly**,** or public transport vehicle;

(3) Defendant acted knowingly.

"Knowingly" means Defendant was aware statement was likely to cause and evacuation of a building, place of assembly, or public transport vehicle.

The Terroristic Threatening statute imposes criminal liability for the use of words. The crime is complete when a person makes the false statement. Therefore, the State is not required to prove Defendant's false statement actually caused an evacuation, serious inconvenience or terror.

Applicable Code Sections and Case Law:

11 *Del. C.* § 231(e); *Bilinski v. State*, 462 A.2d 409, 412 (Del. 1983) (act or mental state need not be qualified as either conditional or unconditional); *Allen v. State*, 453 A.2d 1166, 1169 (Del. 1982) (actor need not intend to actually carry out threat and whether act is finally carried out is immaterial).

Terroristic Threatening [False Statements] . . . . . .11.621(a)(2)b

TERRORISTIC THREATENING [FALSE STATEMENTS]

In order to find Defendant guilty of Terroristic Threatening, you must find the State has proved the following two (2) elements beyond a reasonable doubt:

(1) Defendant made a false statement;

(2) Defendant was aware false statement was likely to cause serious inconvenience; and

(3) Defendant acted knowingly.

"Knowingly" means Defendant was aware statement would likely cause serious inconvenience to others.

The Terroristic Threatening statute imposes criminal liability for the use of words. The crime is complete when a person makes the false statement. Therefore, the State is not required to prove Defendant's false statement actually caused serious inconvenience.

Applicable Code Sections and Case Law:

11 *Del. C.* § 231(e). *Bilinski v. State*, 462 A.2d 409, 412 (Del. 1983) (act or mental state need not be qualified as either conditional or unconditional); *Allen v. State*, 453 A.2d 1166, 1169 (Del. 1982) (actor need not intend to actually carry out threat and whether act is finally carried out is immaterial).

Terroristic Threatening [False Statements] . . . . . .11.621(a)(2)c

TERRORISTIC THREATENING [FALSE STATEMENTS]

In order to find Defendant guilty of Terroristic Threatening, you must find the State has proved the following three (3) elements beyond a reasonable doubt:

(1) Defendant made a false statement; and

(2) Defendant made the statement in reckless disregard of the risk of causing terror or serious inconvenience; and

(3) Defendant acted recklessly.

"Recklessly" means Defendant was aware of and consciously disregarded a substantial and unjustifiable risk of causing terror or serious inconvenience as a result of Defendant's conduct. The State must demonstrate the risk was of such a nature and degree that Defendant's disregard of the risk was a gross deviation from the standard of conduct a reasonable person would observe under the same circumstances.

The Terroristic Threatening statute imposes criminal liability for the use of words. The crime is complete when a person makes the false statement. Therefore, the State is not required to prove Defendant's false statement actually caused an evacuation, serious inconvenience or terror.

Applicable Code Sections and Case Law:

11 *Del. C.* § 231(e). *Bilinski v. State*, 462 A.2d 409, 412 (Del. 1983) (act or mental state need not be qualified as either conditional or unconditional); *Allen v. State*, 453 A.2d 1166, 1169 (Del. 1982) (actor need not intend to actually carry out threat and whether act is finally carried out is immaterial).

Terroristic Threatening ***[****To Another Person****]*** . . . . . .11.621(a)(3)

TERRORISTIC THREATENING [TO ANOTHER PERSON]

In order to find Defendant guilty of Terroristic Threatening, you must find the State has proved the following two (2) elements beyond a reasonable doubt:

(1) Defendant caused a person to believe the person was exposed to a substance that would cause death or serious injury; and

(2) Defendant acted intentionally.

"Intentionally" means it was Defendant's conscious objective or purpose to threaten the person.

The Terroristic Threatening statute imposes criminal liability for the use of words. The crime is complete when Defendant threatens the person. Therefore, the State is not required to prove Defendant intended to carry out Defendant's threat, or that the threatened act was completed.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 231(b, c). *Bilinski v. State*, 462 A.2d 409 (Del. 1983) (act or mental state need not be qualified as either conditional or unconditional); *Allen v. State*, 453 A.2d 1166 (Del. 1982) (actor need not intend to actually carry out threat and whether act is finally carried out is immaterial).

Hoax device . . . . . .11.622(a)

HOAX DEVICE

In order to find Defendant guilty of Possession of a Hoax Device, you must find the State has proved the following three (3) elements beyond a reasonable doubt:

(1) Defendant possessed, transported, used, placed or caused another person to knowingly to possess, transport, use or place a hoax device;

(2) Hoax device caused anxiety, unrest, fear or personal discomfort to a person or group of persons; and

(2) Defendant acted intentionally.

"Intentionally" means that Defendant acted with a conscious objective or purpose.

"Knowingly" means Defendant was aware the hoax device would cause anxiety, unrest, fear or personal discomfort to another.

"Hoax device" means any object or item that would cause a person to reasonably believe that such object or item is or contains a destructive device, Molotov cocktail, incendiary device, or over-pressure device which could cause injury or death.

Applicable Code Sections and Case Law:

11 *Del.C.* §§ 231(b, c) and 622(b).

Unlawfully Administering Drugs 11.625

UNLAWFULLY ADMINISTERING DRUGS

In order to find Defendant guilty of Unlawfully Administering Drugs, you must find the State has proved the following three (3) elements beyond a reasonable doubt:

(1) Defendant administered a drug to a person without that person's consent, causing stupor, unconsciousness or other alteration of the person's physical or mental condition;

(2) The drug was not administered as a lawful medical or therapeutic treatment; and

(3) Defendant acted intentionally.

"Drug" means any substance or preparation capable of producing any alteration of the physical, mental or emotional condition of a person.

"Intentionally" means it was Defendant's conscious objective or purpose to cause stupor, unconsciousness or other alteration of a person's physical, mental or emotional condition.

"Consent" means the voluntary agreement by a person who has sufficient mental capacity to make an intelligent choice to do something. It means a person deliberately or voluntarily approved or agreed with the act of another.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 222(8) and 231(b); BLACK'S LAW DICTIONARY 305 (6th ed. 1990); WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 482 (3d ed. 1993).

Unlawfully Administering Controlled or Counterfeit Substances or Narcotic Drugs 11.626

UNLAWFULLY ADMINISTERING CONTROLLED OR COUNTERFEIT SUBSTANCES OR NARCOTIC DRUGS

In order to find Defendant guilty of Unlawfully Administering a Controlled or Counterfeit Substance or Narcotic Drugs, you must find the State has proved the following three (3) elements beyond a reasonable doubt:

(1) Defendant administered a drug or substance to a person without that person's consent;

(2) The drug or substance was not administered as a lawful medical or therapeutic treatment; and

(3) Defendant acted intentionally.

"Drug" is any substance or preparation capable of producing any alteration of the physical, mental or emotional condition of a person.

"Intentionally" means it was Defendant's conscious objective or purpose to cause stupor, unconsciousness or other alteration of a person's physical, mental or emotional condition.

"Consent" means the voluntary agreement by a person who has sufficient mental capacity to make an intelligent choice to do something. It means a person deliberately or voluntarily approved or agreed with the act of another.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 222(8) and 231(b); BLACK'S LAW DICTIONARY 305 (6th ed. 1990); WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 482 (3d ed. 1993).

PROHIBITED ACTS AS TO SUBSTANCES RELEASING VAPORS OR FUMES

In order to find Defendant guilty of Intentionally Smelling or Inhaling Vapors or Fumes, you must find the State has proved the following three (3) elements beyond a reasonable doubt:

(1) Defendant smelled or inhaled vapors or fumes from;

(2) The substance had the property of releasing vapors or fumes for the purpose of producing intoxication or otherwise altering the brain or nervous system; and

(3) Defendant acted intentionally.

"Intentionally" means it was Defendant's conscious objective or purpose to smell or inhale the substance which had the property of releasing vapors or fumes for the purpose of producing intoxication or otherwise altering the brain or nervous system.

Applicable Code Sections and Case Law:

11 *Del.C.* § 231(b).

PROHIBITED ACTS AS TO SUBSTANCES RELEASING VAPORS OR FUMES

In order to find Defendant guilty of Intentionally Smelling or Inhaling Vapors or Fumes, you must find the State has proved the following three (3) elements beyond a reasonable doubt:

(1) Defendant sold or offered to sell a substance;

(2) The Substance had the property of releasing vapors or fumes for the purpose of producing intoxication or otherwise altering the brain or nervous system; and

(3) Defendant acted knowingly.

"Knowingly" means Defendant was aware the substance could cause intoxication or otherwise alter the brain or nervous system.

Applicable Code Sections and Case Law:

11 *Del.C.* § 231(c).

PROHIBITED ACTS AS TO SUBSTANCES RELEASING VAPORS OR FUMES

In order to find Defendant guilty of Intentionally Smelling or Inhaling Vapors or Fumes, you must find the State has proved the following three (3) elements beyond a reasonable doubt:

(1) Defendant purchased or offered to purchase any substance; or administered a substance without a person's consent;

(2) The substance had the property of releasing vapors or fumes for the purpose of producing intoxication or otherwise altering the brain or nervous system; and

(3) Defendant acted intentionally or knowingly.

"Intentionally" means it was Defendant's conscious objective or purpose to purchase or offer to purchase any substance; or to administer a substance without a person's consent; knowing that the substance had the property of releasing vapors or fumes for the purpose of producing intoxication or otherwise altering the brain or nervous system.

"Knowingly" means Defendant was aware that the substance had the property of releasing vapors or fumes for the purpose of producing intoxication or otherwise altering the brain or nervous system.

Applicable Code Sections and Case Law:

11 *Del.C.* § 231(b, c) and 251(b).

VEHICULAR ASSAULT IN THE SECOND DEGREE [NO ALCOHOL OR DRUGS]

In order to find Defendant guilty of Vehicular Assault in the Second Degree, you must find the State has proved the following three (3) elements beyond a reasonable doubt:

(1) Defendant drove a motor vehicle;

(2) Defendant's driving of the vehicle caused serious physical injury to a person; and

(3) Defendant acted criminally negligent.

"Serious physical injury" means any physical injury that creates a substantial risk of death, or that causes serious and prolonged disfigurement, prolonged impairment of health, or prolonged loss or impairment of the function of any bodily organ.

"Criminally negligent" means Defendant failed to perceive there was a risk that serious physical injury would result from the manner in which Defendant was driving the vehicle. Further, the risk of serious physical injury was of such a nature and degree that Defendant's failure to recognize the risk constituted a gross

deviation from the standard of conduct a reasonable person would observe in the same situation.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 222(25) and 231(a); *Luskin v. Stampone,* 386 A.2d 1137, 1138 (Del.Supr. 1978).

Vehicular Assault in the Second Degree . . . . . .11.628(2)
Driving under the Influence of Alcohol or Drugs

VEHICULAR ASSAULT IN THE SECOND DEGREE [DRIVING UNDER THE INFLUENCE OF ALCOHOL OR DRUGS]

In order to find Defendant guilty of Vehicular Assault in the Second Degree, you must find the State has proved the following four (4) elements beyond a reasonable doubt:

(1) Defendant drove or operated a motor vehicle;

(2) Defendant's driving of the vehicle caused physical injury to a person;

(3) Defendant drove the vehicle under the influence of alcohol or drugs**,** or drove with a prohibited alcohol blood content; and

(4) Defendant acted negligently.

If a person violates a statute enacted to ensure the safety of persons using the roadways, that person is considered negligent as a matter of law.

In this case, the State offered the following evidence in support of its position Defendant was driving under the influence of alcohol or drugs: {*Select applicable evidence*}:

[At the time of the charged offense, Defendant had a blood alcohol concentration of ____%. Under Delaware law, a person is driving a motor vehicle

under the influence of alcohol if that person's blood alcohol concentration is .08 or more of a gram of alcohol per hundred milliliters of blood.**]**

[At the time of the charged offense, Defendant was driving a motor vehicle under the influence of **(**drug**)]**.

[At the time of the charged offense, Defendant was driving a motor vehicle under the influence of a combination of alcohol and **(**drug) that caused Defendant to be less than ordinarily able, either mentally or physically, to exercise clear judgment, sufficient physical control, or due care in the driving of the vehicle.**]**

"Drug" is any substance or preparation capable of producing any alteration of the physical, mental or emotional condition of a person.

"Physical injury" means any impairment of physical condition or substantial pain.

“Negligent” means Defendant failed to exercise the standard of care a reasonable person would observe in the same situation.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 231(d) and 222(8, 24); 21 *Del. C.* § 4177; *Luskin v. Stampone,* 386 A.2d 1137, 1138 (Del.Supr. 1978).

Vehicular Assault in the First Degree 11.629

VEHICULAR ASSAULT IN THE FIRST DEGREE

In order to find Defendant guilty of Vehicular Assault in the First Degree, you must find the State has proved the following four (4) elements beyond a reasonable doubt:

(1) Defendant drove a motor vehicle;

(2) Defendant's driving of the vehicle caused serious physical injury to a person;

(3) Defendant was driving the vehicle under the influence of alcohol or drugs**,** or with a prohibited alcohol blood content; and

(4) Defendant acted negligently.

If a person violates a statute, which was enacted to ensure the safety of persons using the roadways, that person is considered negligent as a matter of law.

In this case, the State has offered the following evidence in support of its position Defendant was driving under the influence of alcohol or drugs: {*Select applicable evidence*}:

[Defendant had a blood alcohol concentration of ____% at the time of the charged offense. Under Delaware law, a person is driving a motor vehicle under

the influence of alcohol if that person's blood alcohol concentration is .08 or more of a gram of alcohol per hundred milliliters of blood.**]**

[Defendant was driving a motor vehicle under the influence of **(**drug**)]** at the time of the charged offense.

[At the time of the charged offense, Defendant was driving a motor vehicle under the influence of a combination of alcohol and **(**drug) that caused Defendant to be less than ordinarily able, either mentally or physically, to exercise clear judgment, sufficient physical control, or due care in the driving of the vehicle. **(**State evidence of alcohol or drug use under code Definitions.**)]**

"Drug" is any substance or preparation capable of producing any alteration of the physical, mental or emotional condition of a person.

"Serious physical injury" means any physical injury that creates a substantial risk of death, or that causes serious and prolonged disfigurement, prolonged impairment of health, or prolonged loss or impairment of the function of any bodily organ.

“Negligent” means Defendant failed to exercise the standard of care a reasonable person would observe in the same situation.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 222(8, 25) and 231(d); 21 *Del. C.* § 4177; *Luskin v. Stampone*, 386 A.2d 1137, 1138 (Del.Supr. 1978).

VEHICULAR HOMICIDE IN THE SECOND DEGREE [NO ALCOHOL OR DRUGS]

In order to find Defendant guilty of Vehicular Homicide in the Second Degree, you must find the State has proved the following three (3) elements beyond a reasonable doubt:

(1) Defendant drove a motor vehicle;

(2) Defendant's driving of the vehicle caused a person's death; and

(3) Defendant was criminally negligent.

"Criminally negligent" means Defendant failed to recognize there was a risk that death would result from the manner in which Defendant was driving. Further, the risk of death was of such a nature and degree, that Defendant's failure to recognize the risk constituted a gross deviation from the standard of conduct a reasonable person would observe in the same situation.

Applicable Code Sections and Case Law:

11 *Del. C.* § 231(a); *Luskin v. Stampone*, 386 A.2d 1137, 1138 (Del.Supr. 1978).

Vehicular Homicide in the Second Degree

[*Under Influence of Alcohol or Drugs****]*** . . . . . .11.630(a)(2)

VEHICULAR HOMICIDE IN THE SECOND DEGREE [DUI]

In order to find Defendant guilty of Vehicular Homicide in the Second Degree, you must find the State has proved the following four (4) elements beyond a reasonable doubt:

(1) Defendant drove a motor vehicle;

(2) Defendant's driving of the vehicle caused a person't death; and

(3) Defendant drove the vehicle under the influence of alcohol or drugs, or with a prohibited alcohol blood content; and

(4) Defendant acted negligently.

If a person violates a statute, which was enacted to ensure the safety of persons using the roadways, that person is considered negligent as a matter of law.

In this case, the State has offered the following evidence in support of its position Defendant was driving under the influence of alcohol or drugs: {*Select applicable evidence*}:

[Defendant had a blood alcohol concentration of ____% at the time of the charged offense. Under Delaware law, a person is driving a motor vehicle under the influence of alcohol if that person's blood alcohol concentration is .08 or more of a gram of alcohol per hundred milliliters of blood.**]**

[Defendant was driving a motor vehicle under the influence of **(**drug**)]** at the time of the charged offense.

[At the time of the charged offense, Defendant was driving a motor vehicle under the influence of a combination of alcohol and **(**drug) that caused Defendant to be less than ordinarily able, either mentally or physically, to exercise clear judgment, sufficient physical control, or due care in the driving of the vehicle.

"Drug" is any substance or preparation capable of producing any alteration of the physical, mental or emotional condition of a person.

"Negligent" means Defendant failed to exercise the standard of care a reasonable person would observe in the same situation.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 222(8) and 231(d); 21 *Del. C.* § 4177 ; *Luskin v. Stampone,* 386 A.2d 1137, 1138 (Del.Supr. 1978).

VEHICULAR HOMICIDE IN THE FIRST DEGREE

In order to find Defendant guilty of Vehicular Homicide in the First Degree, you must find the State has proved the following four (4) elements beyond a reasonable doubt:

(1) Defendant drove a motor vehicle;

(2) Defendant's driving of the vehicle caused a person's death;

(3) Defendant was driving the vehicle under the influence of alcohol or drugs or with a prohibited alcohol blood content; and

(4) Defendant acted criminally negligent.

In this case, the State has offered the following evidence in support of its position Defendant was driving under the influence of alcohol or drugs: {*Select applicable evidence*}:

[Defendant had a blood alcohol concentration of ____% at the time of the charged offense. Under Delaware law, a person is driving a motor vehicle under the influence of alcohol if that person's blood alcohol concentration is .08 or more of a gram of alcohol per hundred milliliters of blood.**]**

[Defendant was driving a motor vehicle under the influence of **(**drug**)]** at the time of the charged offense.]

[At the time of the charged offense, Defendant was driving a motor vehicle under the influence of a combination of alcohol and **(**drug) that caused Defendant to be less than ordinarily able, either mentally or physically, to exercise clear judgment, sufficient physical control, or due care in the driving of the vehicle.

"Drug" is any substance or preparation capable of producing any alteration of the physical, mental or emotional condition of a person.

"Criminally negligent" means Defendant failed to recognize there was a risk that serious physical injury would result from the manner in which Defendant was driving the vehicle. Further, the risk of serious physical injury was of such a nature and degree that Defendant's failure to recognize the risk constituted a gross deviation from the standard of conduct a reasonable person would observe in the same situation.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 222(8), 231(a) and 21 *Del. C.* § 4177.

Criminally Negligent Homicide 11.631

CRIMINALLY NEGLIGENT HOMICIDE

In order to find Defendant guilty of Criminally Negligent Homicide, you must find the State has proved the following two (2) elements beyond a reasonable doubt:

(1) Defendant caused a person's death; and

(2) Defendant acted in a criminally negligent manner in causing death.

In order to prove Defendant "caused" death, the State must establish that the person would not have died but for Defendant's conduct.

"Criminally negligent" means Defendant failed to recognize there was a risk that death would result from Defendant's conduct. Further, the risk of death was of such a nature and degree, Defendant's failure to recognize the risk constituted a gross deviation from the standard of conduct a reasonable person would observe in the same situation.

Applicable Code Sections and Case Law:

11 *Del. C.* § 231(a). *See also Kile v. State*, 382 A.2d 243, 245 (Del. 1978) (it is error to charge jury that it must find "reckless or wanton" conduct in order to find criminally negligent homicide).

Manslaughter [Reckless Causation of Death] . . . . . .11.632(1)

MANSLAUGHTER [RECKLESS CAUSATION OF DEATH]

In order to find Defendant guilty of Manslaughter, you must find the State has proved the following two (2) elements beyond a reasonable doubt:

(1) Defendant caused a person's death; and

(2) Defendant acted recklessly in causing death.

In order to prove Defendant "caused" death, the State must establish the person would not have died but for Defendant's conduct.

"Recklessly" means Defendant was aware of and consciously disregarded a substantial and unjustifiable risk that death would result from Defendant's conduct. The State must demonstrate the risk was of such a nature and degree that Defendant's disregard of the risk was a gross deviation from the standard of conduct a reasonable person would observe under the same circumstances.

Applicable Code Sections and Case Law:

11 *Del. C.* § 231(e).

MANSLAUGHTER [DEFENDANT INTENDS SERIOUS PHYSICAL INJURY]

In order to find Defendant guilty of Manslaughter, you must find the State has proved the following four (4) elements beyond a reasonable doubt:

(1) Defendant meant to cause serious physical injury to a person;

(2) Defendant caused death;

(3) Defendant used such means a reasonable person in Defendant's situation, knowing the facts known to Defendant, would think likely to cause death; and

(4) Defendant acted intentionally.

In order to prove Defendant "caused" a person's death, the State must establish the person would not have died but for Defendant's conduct.

"Serious physical injury" means any physical injury that creates a substantial risk of death, or that causes serious and prolonged disfigurement, prolonged impairment of health, or prolonged loss or impairment of the function of any bodily organ.

"Intentionally" means Defendant's conscious objective or purpose was to cause serious physical injury to a person.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 222(25) and 231(b).

[*Defendant Under Influence of Extreme Emotional Distress****]*** . . . . . .11.632(3)

MANSLAUGHTER
[DEFENDANT UNDER THE INFLUENCE OF EXTREME EMOTIONAL DISTRESS]

In order to find Defendant guilty of Manslaughter, you must find the State has proved the following three (3) elements beyond a reasonable doubt:

(1) Defendant caused a person's death;

(2) Defendant acted under the influence of extreme emotional disturbance; and

(3) Defendant acted intentionally.

In order to prove Defendant "caused" a person's death, the State must establish the person would not have died but for Defendant's conduct.

In this case, if you conclude beyond a reasonable doubt Defendant intentionally caused a person's death, you must next consider whether Defendant did so while under the influence of extreme emotional distress. The fact Defendant intentionally caused the death of another person while under the influence of extreme emotional distress is a mitigating circumstance which reduces the crime of Murder in the First Degree to the crime of Manslaughter.

Defendant has the burden of proving, by a preponderance of the evidence, that Defendant acted under the influence of extreme emotional distress. Defendant must also prove, by a preponderance of the evidence, that there is a reasonable explanation or excuse for the existence of the extreme emotional distress. The reasonableness of the explanation or excuse must be determined from the viewpoint of a reasonable person in Defendant's situation under the circumstances as Defendant believed them to be. You must consider whether a reasonable person in Defendant's position or situation, under the circumstances as Defendant believed then to be, would have suffered from extreme emotional distress.

The law of the mitigating circumstance of extreme emotional distress permits the defendant to show the intentional killing was caused by a sort of frenzy of mind and Defendant is, therefore, less culpable for the killing. This mitigating circumstance applies to persons who kill, in part, because of unique factors that cause an emotional explosion, or as an extreme reaction to overwhelming stress.

You should give the words "extreme emotional distress" their common, everyday meaning. A person under the influence of extreme emotional distress is someone whose feelings were thrown into extraordinary, unusual or unexpected disorder. Extreme emotional distress is a type of mental or physical feeling of such exceptional stress, excitement or disturbance as to produce a frenzy of mind which

makes one deaf to the voice of reason. It is a condition or state of mind that can occur spontaneously or it can develop over a period of time.

In order to be a reasonable explanation, the event that triggered the emotional disturbance must be something external from Defendant and cannot be something for which Defendant was responsible, such as involvement in a crime.

If Defendant intentionally, knowingly, recklessly or negligently brought about [his/her] own mental disturbance, extreme emotional distress is not applicable. Further, if Defendant's mental state was caused by voluntary alcohol or drug use, extreme emotional distress is not applicable.

[*If applicable*:**]**

[Extreme emotional distress is different from the affirmative defense of mental illness or mental defect. Extreme emotional distress is not a defense. Rather, it is a mitigating factor which, when proved, reduces what would ordinarily be an intentional murder to the lesser charge of manslaughter. If you are convinced Defendant proved by a preponderance of the evidence Defendant is "not guilty by reason of mental illness or mental defect," then that verdict must prevail over a finding of extreme emotional distress. You may consider extreme emotional distress only after you conclude Defendant has not proven he is "not guilty by reason of mental illness or mental defect."**]**

Defendant has the burden of proving the mitigating circumstance of extreme emotional distress to your satisfaction by a preponderance of the evidence. The State has no burden to present any evidence on this matter. After considering all the evidence tending to support the existence of the mitigating circumstance, you should determine whether that evidence makes it more likely than not each element existed. If you find this mitigating circumstance is established by a preponderance of the evidence, you must find Defendant not guilty of Murder in the First Degree, but guilty of Manslaughter.

Even if Defendant has not met the burden of proving the mitigating circumstance of extreme emotional distress, if, after considering all the evidence, you find the State has *not* proved every element of its case beyond a reasonable doubt, then you must find Defendant not guilty.

Proof by a preponderance of the evidence means proof something is more likely than not. It means certain evidence, when compared to the evidence opposed to it, has the more convincing force and makes you believe something is more likely true than not. Preponderance of the evidence does not depend on the number of witnesses.

{*Comment*: *Extreme emotional distress is a mitigating factor to a charge of first degree murder, not a complete defense and serves only to reduce the charge.*

Elements 3 and 4 must be shown by a preponderance of the evidence presented no matter which side has presented the evidence.}

"Intentionally" means it was Defendant's conscious objective or purpose to cause a person's death.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 231(b), 304(a) and 641. *Ross v. State*, 482 A.2d 727 (Del. 1984) (reviewing criteria for instruction on extreme emotional distress), *cert. denied*, 469 U.S. 1194 (1985); *Moore v. State*, 456 A.2d 1223, 1226 (Del. 1983) (event that triggers the emotional disturbance must be something external from the accused and not the result of the accused's own mental disturbance); *Boyd v. State*, 389 A.2d 1282, 1287-88 (Del. 1978) (noting extreme mental distress has a broader meaning than the common-law defense of provocation).

MANSLAUGHTER
[DEFENDANT COMMITS ABORTION WHICH CAUSES DEATH]

In order to find Defendant guilty of Manslaughter, you must find the State has proved the following three (3) elements beyond a reasonable doubt:

(1) Defendant committed an abortion upon **[**victim];

(2) The abortion caused **[**victim's**]** death; and

(3) Defendant acted **[**knowingly/recklessly**]**.

In order to prove Defendant "caused" **[**victim's**]** death, the State must establish **[**victim**]** would not have died but for Defendant's conduct.

It is a defense that the abortion was a therapeutic abortion and not the result of Defendant's reckless conduct.

"Knowingly" means Defendant was aware Defendant was committing an abortion.

"Recklessly" means Defendant was aware of and consciously disregarded a substantial and unjustifiable risk that **[**victim's**]** death would result from Defendant's conduct. The State must demonstrate the risk was of such a nature and degree that Defendant's disregard of the risk was a gross deviation from the

standard of conduct a reasonable person would observe under the same circumstances.

"Therapeutic abortion" means an abortion performed pursuant to 24 *Del.C.* § 1790 *et seq.*).

{Comment: Because of the United States Supreme Court's rulings in this area of the law, the constitutional validity of the definition of "Therapeutic Abortion," as provided at 24 Del. C. § 1790 et seq.*, is in doubt. See Roe v. Wade, 410 U.S. 113 (1973) and its progeny.}*

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 231(c, e), 251(b), 304(a) and 654; 24 *Del.C.* § 1790 *et seq*.

Manslaughter [Defendant Intentionally Causes Suicide] . . . . . .11.632(5)

MANSLAUGHTER [DEFENDANT INTENTIONALLY CAUSES SUICIDE]

In order to find Defendant guilty of Manslaughter, you must find the State has proved the following two (2) elements beyond a reasonable doubt:

(1) Defendant caused a person to commit suicide; and

(2) Defendant acted intentionally.

In order to prove Defendant "caused" a person to commit suicide, the State must establish that the person would not have committed suicide but for Defendant's conduct.

"Intentionally" means it was Defendant's conscious objective or purpose to cause a person to commit suicide.

Applicable Code Sections and Case Law:

11 *Del. C.* § 231(b).

Murder by Neglect or Abuse in the Second Degree . . . . . .11.633(a)(1)

MURDER BY NEGLECT OR ABUSE IN THE SECOND DEGREE

In order to find Defendant guilty of Murder by Abuse or Neglect in the Second Degree, you must find the State has proved the following four (4) elements beyond a reasonable doubt:

(1) Defendant caused the death of a person;

(2) The person was a child at the time of death;

(3) The child's death was caused by an act of abuse and/or neglect; and

(4) Defendant acted with criminal negligence in causing the child's death.

In order to prove Defendant "caused" the death, the State must establish that the child would not have died but for Defendant's conduct.

"Neglect" means the threatened or impaired physical, mental or emotional health and well-being of the child, caused by inadequate care or protection, non-treatment or abandonment by the child's custodian, or other person in whose temporary custodial care the child is left. The custodian or other person must have had the ability and financial means to provide adequate care or protection, but did not or would not do so.

"Criminal negligence" means Defendant failed to recognize there was a risk that a person's death would result from Defendant's conduct. Further, the risk of

death was of such a nature and degree, Defendant's failure to recognize the risk constituted a gross deviation from the standard of conduct a reasonable person would observe in the same situation.

"Child" means a person who has not yet reached their 14th birthday.

"Abuse" means any physical injury to the child through unjustified force, torture, negligent treatment, sexual abuse, exploitation, maltreatment, mistreatment or any means other than accident.

Applicable Code Sections and Case Law:

10 *Del.C.* § 901(18) and 11 *Del. C.* §§ 231(a), 251(b), 633(b)(2) and 1103(c).

Murder by Neglect or Abuse in the Second Degree . . . . . .11.633(a)(2)

MURDER BY NEGLECT OR ABUSE IN THE SECOND DEGREE

In order to find Defendant guilty of Murder by Abuse or Neglect in the Second Degree, you must find the State has proved the following four (4) elements beyond a reasonable doubt:

(1) Defendant caused the death of a person;

(2) The person was a child at the time of death;

(3) Defendant engaged in a previous pattern of abuse and/or neglect of the child; and

(4) Defendant acted with criminal negligence in causing the child's death.

In order to prove Defendant "caused" the death, the State must establish that the child would not have died but for Defendant's conduct.

"Neglect" means the threatened or impaired physical, mental or emotional health and well-being of the child, caused by inadequate care or protection, non-treatment or abandonment by the child's custodian, or other person in whose temporary custodial care the child is left. The custodian or other person must have had the ability and financial means to provide adequate care or protection, but did not or would not do so.

“Criminal negligence” means Defendant failed to recognize there was a risk that the person’s death would result from Defendant’s conduct. Further, the risk of death was of such a nature and degree, Defendant's failure to recognize the risk constituted a gross deviation from the standard of conduct a reasonable person would observe in the same situation.

“Child” means a person who has not yet reached their 14th birthday.

“Abuse” means any physical injury to the child through unjustified force, torture, negligent treatment, sexual abuse, exploitation, maltreatment, mistreatment or any means other than accident.

“Previous pattern” of abuse and/or neglect means two or more separate acts of abuse and/or neglect, that are not so closely related to each other or connected in time and place as to constitute a single event. Defendant may be found guilty of Murder by Abuse or Neglect even where Defendant’s “previous pattern” of abuse and/or neglect did not result in arrest and conviction.

Applicable Code Sections and Case Law:

10 *Del.C.* § 901(18) and 11 *Del. C.* §§ 231(a), 251(b), 633(b)(2, 3) and 1103(a).

Murder by Neglect or Abuse in the First Degree . . . . . .11.634(a)(1)

MURDER BY NEGLECT OR ABUSE IN THE FIRST DEGREE

In order to find Defendant guilty of Murder by Abuse or Neglect in the First Degree, you must find the State has proved the following four (4) elements beyond a reasonable doubt:

(1) Defendant caused the death of a person;

(2) The person was a child at the time of death;

(3) The child's death was caused by an act of abuse and/or neglect; and

(4) Defendant acted recklessly in causing the child's death.

In order to prove Defendant "caused" the death, the State must establish that the child would not have died but for Defendant's conduct.

"Neglect" means the threatened or impaired physical, mental or emotional health and well-being of the child through inadequate care or protection, non-treatment or abandonment by the child's custodian, or other person in whose temporary custodial care the child is left. The custodian or other person must have had the ability and financial means to provide adequate care or protection, but did not or would not do so.

"Recklessly" means Defendant was aware of and consciously disregarded a substantial and unjustifiable risk that a person's death would result from

Defendant's conduct. The State must demonstrate the risk was of such a nature and degree that Defendant's disregard of the risk was a gross deviation from the standard of conduct a reasonable person would observe under the same circumstances.

"Child" means a person who has not yet reached their 14th birthday.

"Abuse" means any physical injury to the child through unjustified force, torture, negligent treatment, sexual abuse, exploitation, maltreatment, mistreatment or any means other than accident.

Applicable Code Sections and Case Law:

10 *Del.C.* § 901(18) and 11 *Del. C.* §§ 231(e), 624(b)(2) and 1103(a).

Murder by Neglect or Abuse in the First Degree . . . . . .11.634(a)(2)

MURDER BY NEGLECT OR ABUSE IN THE FIRST DEGREE

In order to find Defendant guilty of Murder by Abuse or Neglect in the First Degree, you must find the State has proved the following four (4) elements beyond a reasonable doubt:

(1) Defendant caused the death of a person**;**

(2) The person was a child at the time of death;

(3) The child's death was caused by a previous pattern of abuse and/or neglect; and

(4) Defendant acted recklessly in causing the child's death.

In order to prove Defendant "caused" the death, the State must establish that the child would not have died but for Defendant's conduct.

"Neglect" means the threatened or impaired physical, mental or emotional health and well-being of the child through inadequate care or protection, non-treatment or abandonment by the child's custodian, or other person in whose temporary custodial care the child is left. The custodian or other person must have had the ability and financial means to provide adequate care or protection, but did not or would not do so.

"Recklessly" means Defendant was aware of and consciously disregarded a substantial and unjustifiable risk that a person's death would result from Defendant's conduct. The State must demonstrate the risk was of such a nature and degree that Defendant's disregard of the risk was a gross deviation from the standard of conduct a reasonable person would observe under the same circumstances.

"Child" means a person who has not yet reached their 14th birthday.

"Abuse" means any physical injury to the child through unjustified force, torture, negligent treatment, sexual abuse, exploitation, maltreatment, mistreatment or any means other than accident.

"Previous pattern" of abuse and/or neglect means two or more separate acts of abuse and/or neglect are not so closely related to each other or connected in time and place as to constitute a single event. Defendant may be found guilty of Murder by Abuse or Neglect even where Defendant's "previous pattern" of abuse and/or neglect did not result in arrest and conviction.

Applicable Code Sections and Case Law:

10 *Del.C.* § 901(18) and 11 *Del. C.* §§ 231(e), 634(b)(2) and 1103(a, e).

Murder in the Second Degree [Reckless Indifference] . . . . . .11.635(1)

MURDER IN THE SECOND DEGREE [RECKLESS INDIFFERENCE]

In order to find Defendant guilty of Murder in the Second Degree, you must find the State has proved the following three (3) elements beyond a reasonable doubt:

(1) Defendant caused a person's death;

(2) Defendant manifested a cruel, wicked and depraved indifference to human life; and

(3) Defendant acted recklessly.

In order to prove Defendant "caused" a person's death, the State must establish the person would not have died but for Defendant's conduct.

"Recklessly" means Defendant was aware of and consciously disregarded a substantial and unjustifiable risk that a person's death would result from Defendant's conduct. The State must demonstrate the risk was of such a nature and degree that Defendant's disregard of it was a gross deviation from the standard of conduct a reasonable person would observe under the same circumstances.

"Cruel" describes the malicious infliction of physical suffering upon human being.

"Depraved" describes an indifference for human life.

"Wicked" describes a lack of conscience or morality.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 231(e); *Moorhead v. State*, 638 A.2d 52 (Del. 1994). *See also Waters v. State*, 443 A.2d 500, 504 (Del. 1982) (the words "cruel, wicked and depraved, and indifference to human life"are intended to define a particular state of mind which must be found to have existed in the defendant at the time the crime was committed and are to be given their commonly accepted meanings); *Eaton v. State*, 394 A.2d 217, 220 (Del. 1978) (to convict on charge of second degree murder, State must show a reckless killing under circumstances manifesting a cruel, wicked, and depraved indifference to human life, plus the absence of extreme emotional distress). *See also Black's Law Dictionary* at 396-97 (5th ed. 1978) (definition "depraved").

Murder in the Second Degree [Felony Murder] . . . . . .11.635(2)

MURDER IN THE SECOND DEGREE [FELONY MURDER]

In order to find Defendant guilty of Murder in the Second Degree, you must find the State has proved the following three (3) elements beyond a reasonable doubt:

(1) Defendant caused a person's death;

(2) The death occurred in the course of and in furtherance of Defendant's commission of a felony**,** attempt to commit a felony, or Defendant's immediate flight after committing a felony; and

(3) Defendant acted with criminal negligence.

In order to prove Defendant "caused" a person's death, the State must establish that the person would not have died but for Defendant's conduct.

"Criminal negligence" means Defendant failed to recognize there was a risk that a person's death would result from Defendant's conduct. Further, the risk of death was of such a nature and degree, Defendant's failure to recognize the risk constituted a gross deviation from the standard of conduct a reasonable person would observe in the same situation.

The State does not have to prove Defendant **[**or Defendant's accomplice**]** caused the person's death for the purpose of committing a felony**,** attempting to commit a felony, or Defendant's fleeing after committing a felony**.**

Applicable Code Sections and Case Law:

11 *Del. C.* § 231(a); *Chao v. State*, 604 A.2d 1351, 1363 (Del. 1992). *See also Weick v. State*, 420 A.2d 159, 162-3 (Del. 1980) (certain killings not in furtherance of commission of felony, such as killing of co-felon by police or by victim of felony or accidental killing of innocent bystander by police or victim of felony).

Murder in the First Degree ***[****Intentional Killing****]*** . . . . . .11.636(a)(1)

MURDER IN THE FIRST DEGREE [INTENTIONAL KILLING]

In order to find Defendant guilty of Murder in the First Degree, you must find the State has proved the following two (2) elements beyond a reasonable doubt:

(1) Defendant caused a person's death; and

(2) Defendant acted intentionally.

In order to prove Defendant "caused" the death, the State must establish that the person would not have died but for Defendant's conduct.

"Intentionally" means it was Defendant's conscious objective or purpose to cause the person's death.

Applicable Code Sections and Case Law:

11 *Del. C.* § 231(b); *State v. Moyer*, 387 A.2d 194, 196-7 (Del. 1978) (discussing elements of first degree murder); *Duonnolo v. State*, 397 A.2d 126, 129-30 (Del. 1978) (defendant's state of mind is vital to prosecution; it must be proven that it was defendant's "conscious object" to kill the victim). *See also Eaton v. State*, 394 A.2d 217, 220 (Del. 1978) (to convict on charge of first degree murder, State must show absence of extreme emotional distress) .

Murder in the First Degree ***[****Felony Murder****]*** . . . . . .11.636(a)(2)

MURDER IN THE FIRST DEGREE [FELONY MURDER]

In order to find Defendant guilty of Murder in the First Degree, you must find the State proved the following three (3) elements beyond a reasonable doubt:

(1) Defendant caused a person's death;

(2) The person's death occurred in the course of and in furtherance of Defendant's commission of a felony**,** attempt to commit a felony, or Defendant's immediate flight after committing a felony; and

(3) Defendant acted recklessly.

In order to prove Defendant "caused" the death, the State must establish that the person would not have died but for Defendant's conduct.

"Recklessly" means Defendant was aware of and consciously disregarded a substantial and unjustifiable risk that death would result from Defendant's conduct. The State must demonstrate the risk was of such a nature and degree that Defendant's disregard of the risk was a gross deviation from the standard of conduct a reasonable person would observe under the same circumstances.

The State does not have to prove Defendant **[**or Defendant's accomplice**]** caused the person's death for the purpose of committing of a felony**,** attempting to commit a felony, or Defendant's fleeing after committing a felony.

{Comment: See Chao v. State, 604 A.2d 1351 (Del. 1992) ("In furtherance of" language in 11 Del. C. § 635(2) and in § 636(6) both deal with mental state of criminal negligence. In such cases, "in furtherance of" means only that killing must have been done by Defendant or an accomplice). This expansive definition has not been applied to a reckless killing. Until the Delaware Supreme Court does so, a more conservative approach is deemed advisable.}

Applicable Code Sections and Case Law:

11 *Del. C.* § 231(e); *Chao v. State*, 604 A.2d 1351, 1363 (Del. 1992); *Deputy v. State*, 500 A.2d 581, 594 (Del. 1985) (felony need not precede the murder, it is enough that the murder facilitate the felony). *See also Moore v. State*, 456 A.2d 1223, 1225 (Del. 1983) (extreme emotional distress not applicable to persons charged with felony murder); *Martin v. State*, 433 A.2d 1025, 1029 (Del. 1981), *cert. denied*, 454 U.S. 1151 (1982) (an individual may intend to promote or facilitate crime when the state of mind required is recklessness); *McDonald v. State*, 307 A.2d 796, 799 (Del. 1973) (no error in court's instruction to jury that defendant not to be found guilty under felony-murder rule if murder was "detached" from rape of victim).

MURDER IN THE FIRST DEGREE
[INTENTIONALLY CAUSING SUICIDE OF ANOTHER]

In order to find Defendant guilty of Murder in the First Degree, you must find the State has proved the following three (3) elements beyond a reasonable doubt:

(1) Defendant caused a person to commit suicide;

(2) Defendant used force or duress in causing the person's suicide; and

(3) Defendant acted intentionally.

In order to prove Defendant "caused" a person to commit suicide, the State must establish the person would not have committed suicide but for Defendant's conduct.

"Intentionally" means it was Defendant's conscious objective or purpose to cause the person to commit suicide.

"Force or duress" means Defendant coerced the person into committing suicide by the use of force or the threat of force.

Applicable Code Sections and Case Law:

11 *Del. C.* § 231(b).

Murder in the First Degree . . . . . .11.636(a)(4)
Reckless Killing of ***[****Law Enforcement or Corrections Officer or Fireman****]***

MURDER IN THE FIRST DEGREE
[RECKLESS KILLING OF LAW-ENFORCEMENT OFFICER/ CORRECTIONS OFFICER/FIREFIGHTER]

In order to find Defendant guilty of Murder in the First Degree, you must find the State has proved the following three (3) elements beyond a reasonable doubt:

(1) Defendant caused the death of a person;

(2) The person was a **[**law-enforcement officer/corrections officer/ **(**volunteer/full-time) firefighter**]**, acting in the lawful performance of duty at the time of death; and

(3) Defendant acted recklessly.

In order to prove Defendant "caused" the person's death, the State must establish that the person would not have died but for Defendant's conduct.

"Recklessly" means Defendant was aware of and consciously disregarded a substantial and unjustifiable risk that death would result from Defendant's conduct. The State must demonstrate the risk was of such a nature and degree that Defendant's disregard of the risk was a gross deviation from the standard of conduct a reasonable person would observe under the same circumstances.

Applicable Code Sections and Case Law:

11 *Del. C.* §, 231(e).

Murder in the First Degree ***[****Causing Death by Bombing****]*** . . . . . .11.636(a)(5)

MURDER IN THE FIRST DEGREE [DEATH BY BOMBING]

In order to find Defendant guilty of Murder in the First Degree, you must find the State has proved the following two (2) elements beyond a reasonable doubt:

(1) Defendant caused a person's death by the use of or detonation of a bomb or similar destructive device; and

(2) Defendant acted intentionally, knowingly, or recklessly.

In order to prove Defendant "caused" death, the State must establish that the person would not have died but for Defendant's conduct.

"Intentionally" means it was Defendant's conscious objective or purpose to cause a person's death.

"Knowingly" means Defendant was aware Defendant's conduct was likely to result in a person's death.

"Recklessly" means Defendant was aware of and consciously disregarded a substantial and unjustifiable risk that death would result from Defendant's conduct. The State must demonstrate the risk was of such a nature and degree that Defendant's disregard of the risk was a gross deviation from the standard of conduct a reasonable person would observe under the same circumstances.

Applicable Code Sections and Case Law:

11 *Del.C.* § 251(b).

Murder in the First Degree
[*Causing Death to Avoid Arrest/to Aid Escape****]*** . . . . . .11.636(a)(6)

MURDER IN THE FIRST DEGREE
CAUSING DEATH TO AVOID ARREST OR TO AID ESCAPE

In order to find Defendant guilty of Murder in the First Degree, you must find the State has proved the following two (2) elements beyond a reasonable doubt:

(1) Defendant caused a person's death [in order to avoid or prevent the lawful arrest of any person/in the course or furtherance of escape or attempted escape **(**in the second degree/after conviction**)]** ; and

(2) Defendant acted intentionally**,** knowingly, or recklessly.

In order to prove Defendant "caused" a person's death, the State must establish that the person would not have died but for Defendant's conduct.

The State is not required to prove that death was caused for the purpose of assisting Defendant's **[**escape in the second degree/attempt to escape in the second degree/escape after conviction**]**. Rather, the State is only required to show that the person's death occurred during Defendant's **[**escape in the second degree/attempt to escape in the second degree/escape after conviction**]**.

"Intentionally" means it was Defendant's conscious objective or purpose to cause a person's death.

"Knowingly" means Defendant was aware Defendant's conduct was likely to result in a person's death.

"Recklessly" means Defendant was aware of and consciously disregarded a substantial and unjustifiable risk that death would result from Defendant's conduct. The State must demonstrate the risk was of such a nature and degree that Defendant's disregard of the risk was a gross deviation from the standard of conduct a reasonable person would observe under the same circumstances.

"In the course of" means the person's death occurred while Defendant was **[**escaping in the second degree/attempting to escape in the second degree/escaping after conviction**]**.

"In the furtherance of" means only that the person's death was caused by Defendant who was **[**escaping in the second degree/attempting to escape in the second degree/escaping after conviction**]**.

Applicable Code Sections and Case Law:

11 *Del. C.* § 231(b, c, e); *Chao v. State*, 604 A.2d 1351, 1363 (Del. 1992).

Promoting Suicide 11.645

PROMOTING SUICIDE

In order to find Defendant guilty of Promoting Suicide, you must find the State has proved the following two (2) elements beyond a reasonable doubt:

(1) Defendant caused or aided a person to commit or attempt to commit suicide; and

(2) Defendant acted intentionally.

"Intentionally" means it was Defendant's conscious objective or purpose to cause or aid a person in committing or attempting suicide.

"Causing or aiding" a person to commit or attempt to commit suicide means Defendant brought about or assisted the suicide, which would not have occurred but for Defendant's conduct.

Applicable Code Sections and Case Law:

11 *Del. C.* § 231(b).

ABORTION

In order to find Defendant guilty of the crime of Abortion, you must find the State has proved the following four (4) elements beyond a reasonable doubt:

(1) Defendant committed an abortion upon **[**victim**]**;

(2) The abortion was not a therapeutic abortion;

(3) The abortion caused a miscarriage; and

(4) Defendant acted intentionally.

"Intentionally" means it was Defendant's conscious objective or purpose to commit an abortion upon **[**victim**]**.

"Abortion" is any act which is committed with the intent to cause miscarriage. The act may be committed directly upon a female's body, by the administering or prescribing of drugs, or in any other manner.

"Therapeutic abortion" means **[**quote relevant section of 24 *Del. C.* § 1790 *et seq*.**]**

{*Comment: Because of the United States Supreme Court's rulings in this area of the law, the constitutional validity of the definition of Therapeutic Abortion, as provided at 24* Del. C. *§ 1790* et seq.*, is in doubt. See Roe v. Wade, 410 U.S. 113 (1973) and its progeny.*}

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 231(b), 251(b) and 654.

SELF-ABORTION

In order to find Defendant guilty of Self-Abortion, you must find the State has proved the following four (4) elements beyond a reasonable doubt:

(1) Defendant committed an abortion upon herself **[**or submitted to an abortion committed by another**]**;

(2) The abortion was not a therapeutic abortion;

(3) The abortion caused a miscarriage; and

(4) Defendant acted intentionally.

"Intentionally" means it was Defendant's conscious objective or purpose to commit an abortion upon herself **[**or to submit to an abortion committed by another**]**.

"Abortion" is any act which is committed with the intent to cause miscarriage. The act may be committed directly upon a female's body, by the administering or prescribing of drugs, or in any other manner.

"Therapeutic abortion" means **[**quote relevant section of 24 *Del. C.* § 1790 *et seq*.**]**

{*Comment*: *Because of the United States Supreme Court's rulings in this area of the law, the constitutional validity of the definition of Therapeutic Abortion, as*

provided at 24 Del. C. *§ 1790* et seq., *is in doubt. See* Roe v. Wade, *410 U.S. 113 (1973) and its progeny.*}

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 231(b), 251(b) and 654.

Issuing Abortion Articles 11.653

ISSUING ABORTION ARTICLES

In order to find Defendant guilty of Issuing Abortion Articles, you must find the State proved the following two (2) elements beyond a reasonable doubt:

(1) Defendant **[**manufactured/sold/delivered**]** **[**instrument/article/medicine/drug/ substance**]** that could be used to commit an abortion; and

(2) Defendant acted intentionally.

"Intentionally" means Defendant **[**manufactured/sold/delivered**]** **[**instrument/article/ medicine/drug/substance**]** with the conscious objective or purpose that **[**instrument/article/medicine/ drug/substance**]** be used to commit a non-therapeutic abortion.

"Abortion" is any act which is committed with the intent to cause miscarriage. The act may be committed directly upon a female's body, by the administering or prescribing of drugs, or in any other manner.

"Therapeutic abortion" means **[**quote relevant section of 24 *Del. C.* § 1790 *et seq*.**]**

{Comment: Because of the United States Supreme Court's rulings in this area of the law, the constitutional validity of the definition of Therapeutic Abortion, as

provided at 24 Del. C. § 1790 et seq., is in doubt. See Roe v. Wade, 410 U.S. 113 (1973) and its progeny.}

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 231(b), 251(b) and 654.

POSITION OF TRUST, AUTHORITY OR SUPERVISION OVER A CHILD (DEFINED)

"Position of trust, authority or supervision over a child" includes, but is not limited to:

(1) Familial, guardianship or custodial authority or supervision;

(2) A teacher, coach, counselor, advisor, mentor or any other person providing instruction or educational services to a child or children, whether such person is compensated or acting as a volunteer;

(3) A babysitter, child care provider, or child care aide, whether such person is compensated or acting as a volunteer;

(4) A health professional, meaning any person who is licensed or who holds himself or herself out to be licensed or who otherwise provides professional physical or mental health services, diagnosis, treatment or counseling; a health professional shall include, but not be limited to, doctors of medicine and osteopathy, dentists, nurses, physical therapists, chiropractors, psychologists, social workers, medical technicians, mental health counselors, substance abuse counselors, marriage and family counselors or therapists and hypnotherapists, whether such person is compensated or acting as a volunteer;

(5) Clergy, including but not limited to any minister, pastor, rabbi, lay religious leader, pastoral counselor or any other person having regular direct contact with children through affiliation with a church or religious institution, whether such person is compensated or acting as a volunteer;

(6) Any law-enforcement officer, including any person acting as an officer or counselor at a correctional or counseling institution, facility or organization, whether such person is compensated or acting as a volunteer; or

(7) Any other person who because of that person's familial relationship, profession, employment, vocation, avocation or volunteer service has regular direct contact with a child or children and in the course thereof assumes responsibility, whether temporarily or permanently, for the care or supervision of a child or children.

WITHOUT VICTIM'S CONSENT [DEFINED]

In the context of a sexual offense, "without consent" means:

(1) Defendant compelled a person to submit by an act of coercion, force or gesture, by threat of death, physical injury, pain or kidnapping against a person or a third party; or by any other means which would compel a reasonable person under the circumstances to submit. There is no requirement that the person resist such force or threat to the utmost, or to resist if resistance would be futile. The person is required to resist only to the extent reasonably necessary to make the person's resistance known to Defendant; or

(2) Defendant knows the person is unconscious, asleep or otherwise unaware a sexual act is being performed; or

(3) Defendant knows the person suffers from a mental illness or mental defect which renders the person incapable of appraising the nature of the sexual conduct; or

(4) Defendant is a **[**health care professional/minister/priest/rabbi/member of a religious organization engaged in pastoral counseling**]** and commits **[**sexual contact/sexual penetration/sexual intercourse**]** under the guise of providing a person with professional **[**diagnosis/counseling/treatment**]** and the person reasonably believes the **[**sexual contact/sexual penetration/sexual intercourse**]** is

for professional **[**diagnosis/counseling/treatment**]** so the person could not reasonably have resisted; "Health care professional" means an individual who **[**is licensed to provide/holds **(**himself/herself**)** out to be licensed to provide/provides**]** professional physical or mental health services, diagnosis, treatment or counseling. The term includes, but is not limited to, a doctor of medicine or osteopathy, dentist, nurse, physical therapist, chiropractor, psychologist, social worker, medical technician, mental health counselor, substance abuse counselor, marriage or family counselor, therapist and hypnotherapist; or

(5) Defendant substantially impairs a person's power to appraise or control the person's own conduct by giving the person, without the person's consent, drugs, intoxicants or other means for the purpose of preventing resistance.

Applicable Code Sections and Case Law:

Child Unable to Consent . . . . . 11.761(k)

CHILD UNABLE TO CONSENT

By law, a child who, at the time of the charged offense, has not yet reached their sixteenth birthday, is unable to consent to a sexual act with a person who is more than 4 years older than the child. A child who has not yet reached their twelfth birthday is unable to consent to a sexual act under any circumstances.

Applicable Code Sections and Case Law:

Teenage Defendant . . . . . 11.762(d)

TEENAGE DEFENDANT [FOUR YEAR RULE]

Defendant has asserted the affirmative defense of consent. In order to find Defendant not guilty of an offense because of consent, you must find Defendant has established each of the following three (3) elements by a preponderance of the evidence:

(1) Defendant was no more than four (4) years older than the person at the time of the charged offense;

(2) The person was twelve through fifteen years of age at the time of the charged offense; and

(3) The person knowingly consented to the charged offense.

"Knowingly" means the person was aware Defendant's conduct was of a certain nature.

"Consent" means the person willingly agreed to engage in or submit to Defendant's conduct.

Proof by a preponderance of the evidence means proof something is more likely than not. It means that certain evidence, when compared to the evidence opposed to it, has the more convincing force and makes you believe something is more likely true than not. Preponderance of the evidence does not depend on the

number of witnesses. If the evidence supporting the defense is evenly balanced, then Defendant has not proved the defense by a preponderance of the evidence, and you must find against Defendant on that point. The state has no burden to present any evidence on this matter.

{*Comment: This affirmative defense applies only to sexual crimes in which an element of the offense requires that the victim be less than sixteen years of age.*}

Applicable Code Sections and Case Law:

11 *Del. C.* § 231(c) and 304(a).

Sexual Harassment [Threat] . . . . . 11.763(1)

SEXUAL HARASSMENT [THREAT]

In order to find Defendant guilty of Sexual Harassment, you must find the State has proved the following two (2) elements beyond a reasonable doubt:

(1) Defendant engaged in conduct likely to result in the commission of a sexual offense against a person; and

(2) Defendant acted intentionally**,** knowingly**,** or recklessly.

"Intentionally" means it was Defendant's conscious objective or purpose to commit a sexual offense against a person.

"Knowingly" means Defendant was aware of the nature of the conduct and it was practically certain the conduct would result in a sexual offense against a person.

"Recklessly" means Defendant was aware of and consciously disregarded a substantial and unjustifiable risk a sexual offense against a person would result from Defendant's conduct. The State must demonstrate the risk was of such a nature and degree that Defendant's disregard of the risk was a gross deviation from the standard of conduct a reasonable person would observe under the same circumstances.

“Sexual offenses” means **[**sexual harassment/indecent exposure/incest/unlawful sexual contact/rape/sexual extortion/bestiality/continuous sexual abuse of a child/dangerous crime against a child/sexual offender unlawful sexual conduct against a child/sexual abuse of a child by a person in a position of trust, authority or supervision/female genital mutilation/sexual exploitation of a child/dealing in child pornography/possession of child pornography/sexual offenders prohibited from school zones/sexual solicitation of a child/promoting prostitution of person under 18 years of age**]**.

Applicable Code Sections and Case Law:

Sexual Harassment [Solicitation] . . . . . 11.763(2)

SEXUAL HARASSMENT [SOLICITATION]

In order to find Defendant guilty of Sexual Harassment, you must find the State has proved the following three (3) elements beyond a reasonable doubt:

(1) Defendant suggested, requested, commanded or attempted to induce a person to have **[**sexual contact/sexual intercourse/unlawful sexual penetration**]** with Defendant;

(2) Defendant was aware Defendant's comments would cause annoyance**,** offense**,** or alarm to the person; and

(3) Defendant acted knowingly.

"Unlawful" means contrary to law or not permitted by law. It does not mean wrongful or immoral.

"Knowingly" means Defendant was aware the conduct was practically certain to annoy**,** offend**,** or alarm a person.

"Sexual contact" means Defendant intentionally touched a person's anus, breast, buttocks or genitalia, or Defendant intentionally touched a person with Defendant's anus, breast, buttocks or genitalia, and a reasonable person, under the circumstances, would find the touching was intended to be sexual in nature.

"Sexual contact" includes touching through clothing. Sexual gratification is not required.

"Sexual intercourse" means any act of physical union of a person's genitalia or anus with another person's mouth, genitalia or anus. Ejaculation is not required. "Sexual intercourse" occurs upon any penetration. The term "sexual intercourse" also includes any act of cunnilingus or fellatio, regardless of whether penetration or ejaculation occurs. "Sexual intercourse" encompasses the crimes commonly known as rape and sodomy.

"Cunnilingus" means any oral contact with the female genitalia.

"Fellatio" means any oral contact with the male genitalia.

"Sexual penetration" means: (1) Defendant's placement of any object inside a person's anus or vagina; or (2) Defendant's placement of Defendant's genitalia or any sexual device inside a person's mouth.

Applicable Code Sections and Case Law:

11 *Del.C.* §§ 222(28), 231(c) and 761(b, c, f, g, i)

Indecent Exposure in the Second Degree . . . . . 11.764(a)

INDECENT EXPOSURE IN THE SECOND DEGREE

In order to find Defendant guilty of Indecent Exposure in the Second Degree, you must find the State has proved the following two (2) elements beyond a reasonable doubt:

(1) Defendant exposed his genitals or buttocks to a person; and

(2) Defendant knew or was aware his conduct was likely to cause the person affront or alarm.

"Knowingly" means Defendant was aware of the nature of the conduct and it was practically certain the conduct would cause the person affront or alarm.

Applicable Code Sections and Case Law:

11 *Del.C.* § 231(c).

Indecent Exposure in the Second Degree . . . . . 11.764(b)

INDECENT EXPOSURE IN THE SECOND DEGREE

In order to find Defendant guilty of Indecent Exposure in the Second Degree, you must find the State has proved the following two (2) elements beyond a reasonable doubt:

(1) Defendant exposed her genitals**,** breast**,** buttocks to a person; and

(2) Defendant knew or was aware her conduct was likely to cause the person affront or alarm.

"Knowingly" means Defendant was aware of the nature of the conduct and it was practically certain the conduct would cause the person affront or alarm.

Applicable Code Sections and Case Law:

11 *Del.C.* § 231(c).

Indecent Exposure in the First Degree . . . . . 11.765(a)

INDECENT EXPOSURE IN THE FIRST DEGREE

In order to find Defendant guilty of Indecent Exposure in the First Degree, you must find the State has proved the following two (2) elements beyond a reasonable doubt:

(1) Defendant exposed his genitals or buttocks to a person, who was less than 16 years of age at the time; and

(2) Defendant knew or was aware his conduct was likely to cause the person affront or alarm.

It is no defense to the charge of Indecent Exposure that Defendant did not know the person's age at the time of the indecent exposure, or reasonably believed the person had reached their sixteenth (16) birthday or was not younger than sixteen (16) at the time of the indecent exposure.

"Knowingly" means Defendant was aware of the nature of the conduct and it was practically certain the conduct would cause the person affront or alarm.

Applicable Code Sections and Case Law:

11 *Del.C.* §§ 231(c) and 762(a).

Indecent Exposure in the First Degree . . . . . 11.765(b)

INDECENT EXPOSURE IN THE FIRST DEGREE

In order to find Defendant guilty of Indecent Exposure in the First Degree, you must find the State has proved the following two (2) elements beyond a reasonable doubt:

(1) Defendant exposed her genitals, breast, or buttocks to a person, who was less than 16 years of age at the time; and

(2) Defendant knew or was aware her conduct was likely to cause the person affront or alarm.

It is no defense to the charge of Indecent Exposure that Defendant did not know the person's age at the time of the indecent exposure, or reasonably believed the person had reached their sixteenth (16) birthday or was not younger than sixteen (16) at the time of the indecent exposure.

"Knowingly" means Defendant was aware of the nature of the conduct and it was practically certain the conduct would cause the person affront or alarm.

Applicable Code Sections and Case Law:

11 *Del.C.* §§ 231(c) and 762(a).

Incest . . . . . 11.766(a)

INCEST

In order to find Defendant guilty of Incest, you must find the State has proved the following two (2) elements beyond a reasonable doubt:

(1) Defendant engaged in sexual intercourse with a person ; and

(2) The person was Defendant's **[**state relationship**]**.

"Incest" encompasses the crimes commonly known as rape and sodomy.

"Sexual intercourse" means any act of physical union of a person's genitalia or anus with another person's mouth, genitalia or anus. Ejaculation is not required. "Sexual intercourse" occurs upon any penetration. The term "sexual intercourse" also includes any act of cunnilingus or fellatio, regardless of whether penetration or ejaculation occurs. "Sexual intercourse" encompasses the crimes commonly known as rape and sodomy.

"Cunnilingus" means any oral contact with the female genitalia.

"Fellatio" means any oral contact with the male genitalia.

Applicable Code Sections and Case Law:

11 *Del. C.*§§ 251(b) and 761(b, c, g).

UNLAWFUL SEXUAL CONTACT IN THE THIRD DEGREE

In order to find Defendant guilty of Unlawful Sexual Contact in the Third Degree, you must find the State has proved the following three (3) elements beyond a reasonable doubt:

(1) Defendant **[**had sexual contact with a person/caused a person to have sexual contact with **(**Defendant/another person**)]**;

(2) Contact was **[**offensive to the person/occurred without the person's consent**]**; and

(3) Defendant acted intentionally.

"Intentionally" means it was Defendant's conscious objective or purpose to **[**have sexual contact with (victim)/cause (victim) to have sexual contact with Defendant/cause (victim) to have sexual contact with a another person**]**.

"Sexual contact" means Defendant intentionally touched the person's anus, breast, buttocks or genitalia, or Defendant intentionally touched the person with Defendant's anus, breast, buttocks or genitalia, and a reasonable person, under the circumstances, would find the touching was intended to be sexual in nature. "Sexual contact" includes touching through clothing. Sexual gratification is not required.

"Without consent" means Defendant compelled the person to submit by an act of coercion, force or gesture, by threat of death, physical injury, pain or kidnapping against the person or a third party; or by any other means that would compel a reasonable person under the circumstances to submit. There is no requirement that the person resist such force or threat to the utmost, or to resist if resistance would be futile or foolhardy. The person is required to resist only to the extent reasonably necessary to make the person's resistance known to Defendant. ***[****Supplement definition as needed pursuant to § 761(j).****]***

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 231(b) and 761(f, j).

Unlawful Sexual Contact in the Second Degree 11.768

UNLAWFUL SEXUAL CONTACT IN THE SECOND DEGREE

In order to find Defendant guilty of Unlawful Sexual Contact in the Second Degree, you must find the State has proved the following three (3) elements beyond a reasonable doubt:

(1) Defendant **[**had sexual contact with a person/caused a person to have sexual contact with **(**Defendant/another person**)]**;

(2) The person was less than 18 years of age at the time of the charged offense; and

(3) Defendant acted intentionally.

It is no defense to the charge of Unlawful Sexual Contact in the Second Degree that Defendant did not know the person's age at the time of the unlawful sexual contact, or reasonably believed the person had reached their sixteenth birthday or was not younger than sixteen (16) at the time of the unlawful sexual contact.

"Intentionally" means it was Defendant's conscious objective or purpose to **[**have sexual contact with (victim)/cause (victim) to have sexual contact with Defendant/cause (victim) to have sexual contact with a another person**]**.

"Sexual contact" means Defendant intentionally touched a person's anus, breast, buttocks or genitalia; or Defendant intentionally touched a person's with Defendant's anus, breast, buttocks or genitalia, where a reasonable person, under the circumstances, would find the touching was intended to be sexual in nature. "Sexual contact" includes touching through clothing. Sexual gratification is not required.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 231(b), 761(f) and 762(a).

Unlawful Sexual Contact in the First Degree . . . . . 1l.769(a)(1)

UNLAWFUL SEXUAL CONTACT IN THE FIRST DEGREE

In order to find Defendant guilty of Unlawful Sexual Contact in the First Degree, you must find the State has proved the following two (2) elements beyond a reasonable doubt:

(1) Defendant committed Unlawful Sexual Contact in the **[**Second/Third**]** Degree with **[**victim**]**; and

(2) Defendant **[**caused physical injury to **(**victim**)**/displayed to **(**victim) what appeared to be a **(**deadly weapon/dangerous instrument**)] [**in the course of committing the crime/during immediate flight after committing the crime/during an attempt to prevent the reporting of the crime**]**.

The State is not required to prove Defendant actually had or used a deadly weapon while committing the crime. However, the State must prove Defendant intentionally intimidated **[**victim**]**, by threat, gesture, or deed, with what appeared to the victim to be a deadly weapon.

"Dangerous instrument" means any instrument, article, or substance which, under the circumstances in which it is used, attempted to be used, or threatened to be used, is readily capable of causing death or serious physical injury.

“Deadly weapon” includes firearm, bomb, knife of any sort (other than an ordinary pocket knife carried in a closed position), switchblade knife, billy, blackjack, bludgeon, metal knuckles, slingshot, razor, bicycle chain, ice pick or any dangerous instrument which a person used, or tried to use, to cause death or serious physical injury. For the purpose of this definition, an ordinary pocket knife is a folding knife with a blade no longer than 3 inches.

"Physical injury" means any impairment of physical condition or substantial pain.

"Sexual contact" means Defendant intentionally touched a person’s anus, breast, buttocks or genitalia, or Defendant intentionally touched a person with Defendant’s anus, breast, buttocks or genitalia, and a reasonable person, under the circumstances, would find the touching was intended to be sexual in nature. “Sexual contact” includes touching through clothing. Sexual gratification is not required.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 222(4, 5, 24), 251(b), 761(f), 767 and 768.

Unlawful Sexual Contact in the First Third Degree . . . . . 11.769(a)(3)

UNLAWFUL SEXUAL CONTACT IN THE FIRST DEGREE In order to find Defendant guilty of Unlawful Sexual Contact in the First Degree, you must find the State has proved the following three (3) elements beyond a reasonable doubt:

(1) Defendant **[**had sexual contact with **(**victim**)**/caused **(**victim) to have sexual contact with **(**Defendant/another person**)]**;

(2) **[**victim**]** was less that thirteen (13) years of age at the time; and

(3) Defendant acted intentionally.

It is no defense to the charge of Unlawful Sexual Contact in the First Degree that Defendant did not know **[**victim's**]** age at the time of the unlawful sexual contact, or reasonably believed **[**victim**]** had reached **[**his/her**]** thirteenth (13) birthday or was not younger than thirteen (13) at the time of the unlawful sexual contact.

"Intentionally" means it was Defendant's conscious objective or purpose to cause the sexual contact to occur.

{Comment: Mistake as to age, 11 Del.C. § 762(a), only refers to those who have not reached their sixteenth birthday. This law should be expanded to include offenses such as 11 Del. C. § 772(a)(2)(g).}

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 231(b), 761(j) and 762(a).

Rape in the Fourth Degree [Victim Not Yet Sixteen] . . . . . 11.770(a)(1)

RAPE IN THE FOURTH DEGREE [VICTIM NOT YET SIXTEEN]

In order to find Defendant guilty of Rape in the Fourth Degree, you must find the State has proved the following three (3) elements beyond a reasonable doubt:

(1) Defendant engaged in sexual intercourse with a person;

(2) The person was less than 16 years of age at the time of the charged offense; and

(3) Defendant acted intentionally.

It is no defense to the charge of Rape in the Fourth Degree that Defendant did not know the person's age at the time of the charged offense, or reasonably believed the person had reached their sixteenth (16) birthday or was not younger than sixteen (16) at the time.

"Intentionally" means it was Defendant's conscious objective or purpose to have sexual intercourse with the person.

"Sexual intercourse" means any act of physical union of a person's genitalia or anus with another person's mouth, genitalia or anus. Ejaculation is not required. "Sexual intercourse" occurs upon any penetration. Within the meaning of this offense, "sexual intercourse" encompasses the crimes commonly known as rape

and sodomy. The term “sexual intercourse” also includes any act of cunnilingus or fellatio, regardless of whether penetration or ejaculation occurs.

“Cunnilingus” means any oral contact with the female genitalia.

“Fellatio” means any oral contact with the male genitalia.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 231(b), 761(g) and 762(a).

Rape in the Fourth Degree

[*Victim Not Yet 18; Defendant 30 or Older****]*** . . . . . 11.770(a)(2)

RAPE IN THE FOURTH DEGREE
[VICTIM NOT YET 18; DEFENDANT 30 OR OLDER]

In order to find Defendant guilty of Rape in the Fourth Degree, you must find the State has proved the following four (4) elements beyond a reasonable doubt:

(1) Defendant engaged in sexual intercourse with a person;

(2) The person was less than 18 years of age at the time;

(3) Defendant was at least 30 years of age at the time; and

(4) Defendant acted intentionally.

It is no defense to the charge of Rape in the Fourth Degree that Defendant did not know the person's age at the time of the charged offense, or reasonably believed the person had reached their eighteenth (18) birthday or was not younger than eighteen (18) at the time.

It is a defense that such intercourse is not unlawful because Defendant and the person were married to each other at the time of such intercourse.

"Intentionally" means it was Defendant's conscious objective or purpose to have sexual intercourse with the person.

"Sexual intercourse" means any act of physical union of a person's genitalia or anus with another person's mouth, genitalia or anus. Ejaculation is not required. "Sexual intercourse" occurs upon any penetration. Within the meaning of this offense, "sexual intercourse" encompasses the crimes commonly known as rape and sodomy. The term "sexual intercourse" also includes any act of cunnilingus or fellatio, regardless of whether penetration or ejaculation occurs.

"Cunnilingus" means any oral contact with the female genitalia.

"Fellatio" means any oral contact with the male genitalia.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 231(b), 761(g), 762(a) and 770(a)(2).

RAPE IN THE FOURTH DEGREE

[PENETRATION WITHOUT CONSENT]

In order to find Defendant guilty of Rape in the Fourth Degree, you must find the State has proved the following three (3) elements beyond a reasonable doubt:

(1) Defendant engaged in sexual penetration with a person;

(2) Sexual penetration occurred without the person's consent; and

(3) Defendant acted intentionally.

"Intentionally" means it was Defendant's conscious objective or purpose to engage in sexual penetration with the person.

"Sexual penetration" means: (1) Defendant's placement of any object inside the person's anus or vagina; or (2) Defendant's placement of Defendant's genitalia or any sexual device inside the person's mouth.

"Object" means any item, device, instrument, substance or any part of the body. It does not mean a medical instrument used by a licensed medical doctor or nurse for the purpose of diagnosis or treatment.

"Without consent" means Defendant compelled the person to submit by an act of coercion, force or gesture, by threat of death, physical injury, pain or

kidnapping against the person or a third party; or by any other means which would compel a reasonable person under the circumstances to submit. There is no requirement that the person resist such force or threat to the utmost, or to resist if resistance would be futile or foolhardy. The person is required to resist only to the extent reasonably necessary to make the person's resistance known to Defendant. ***[****Supplement definition as needed pursuant to § 761(j)****]****.*

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 231(b) and 761(d, i, j).

RAPE IN THE FOURTH DEGREE

[PENETRATION, VICTIM NOT YET 16]

In order to find Defendant guilty of Rape in the Fourth Degree, you must find the State has proved the following three (3) elements beyond a reasonable doubt:

(1) Defendant engaged in sexual penetration with a person;

(2) The person was less than 16 years of age at the time; and

(3) Defendant acted intentionally.

It is no defense to the charge of Rape in the Fourth Degree that Defendant did not know the person's age at the time of the charged offense, or reasonably believed the person had reached their sixteenth (16) birthday or was not younger than sixteen (16) at the time.

"Intentionally" means it was Defendant's conscious objective or purpose to engage in sexual penetration with the person.

"Sexual penetration" means: (1) Defendant's placement of any object inside the person's anus or vagina; or (2) Defendant's placement of Defendant's genitalia or any sexual device inside the person's mouth.

"Object" means any item, device, instrument, substance or any part of the body. It does not mean a medical instrument used by a licensed medical doctor or nurse for the purpose of diagnosis or treatment.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 231(b), 761(d, i) and 762(a).

Rape in the Third Degree . . . . . 11.771(a)(1)
[*Victim Not Yet 16 and Defendant at Least 10 Years of older, or Victim Not Yet 14 and Defendant at Least 19 Years of age****]***

RAPE IN THE THIRD DEGREE
[VICTIM NOT YET 16
AND DEFENDANT AT LEAST 10 YEARS OF AGE OR OLDER
OR VICTIM NOT YET 14
AND DEFENDANT AT LEAST 19 YEARS OF AGE]

In order to find Defendant guilty of Rape in the Third Degree, you must find the State has proved the following three (3) elements beyond a reasonable doubt:

(1) Defendant engaged in sexual intercourse with a person;

(2) The person was less than **[**16 years of age and Defendant was at least 10 years of older than (victim)/14 years of age and Defendant was at least 19 years of age**]** at the time; and

(3) Defendant acted intentionally.

By law, a child who, at the time of the charged offense, has not yet reached their sixteenth (16) birthday, is unable to consent to a sexual act with a person who is more than 4 years of older than the child. A child who has not yet reached their twelfth (12) birthday is unable to consent to a sexual act under any circumstances.

It is no defense to the charge of Rape in the Third Degree that Defendant did not know the child's age at the time of the charged offense, or reasonably

believed the child had reached their **[**sixteenth/fourteenth**] [**(16)/(14)**]** birthday or was not younger than **[**sixteen/fourteen**] [**(16)/(14)**]** at the time.

"Intentionally" means it was Defendant's conscious objective or purpose to engage in sexual intercourse with the child.

"Sexual intercourse" means any act of physical union of a person's genitalia or anus with another person's mouth, genitalia or anus. Ejaculation is not required. "Sexual intercourse" occurs upon any penetration. Within the meaning of this offense, "sexual intercourse" encompasses the crimes commonly known as rape and sodomy. The term "sexual intercourse" also includes any act of cunnilingus or fellatio, regardless of whether penetration or ejaculation occurs.

"Cunnilingus" means any oral contact with the female genitalia.

"Fellatio" means any oral contact with the male genitalia.

{Comment: Mistake as to age, 11 Del.C. § 762(a), only refers to those who have not reached their sixteenth birthday. This law should be expanded to include offenses such as 11 Del. C. § 772(a)(2)(g).}

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 231(b), 761(b, c, g, k) and 762(a).

Rape in the Third Degree

[*Penetration Without Consent and With Injury****]*** . . . . . 11.771(a)(2)a

RAPE IN THE THIRD DEGREE
[PENETRATION WITHOUT CONSENT AND WITH INJURY]

In order to find Defendant guilty of Rape in the Third Degree, you must find the State has proved the following four (4) elements beyond a reasonable doubt:

(1) Defendant engaged in sexual penetration with a person;

(2) Sexual penetration occurred without the person's consent;

(3) Defendant caused physical or serious mental or emotional injury to the person, **[**in the course of committing the crime/during immediate flight after committing the crime/during an attempt to prevent the reporting of the crime**]**; and

(4) Defendant acted intentionally.

"Physical injury" means any impairment of physical condition or physical pain.

"Intentionally" means it was Defendant's conscious objective or purpose to engage in sexual penetration with the person.

"Sexual penetration" means: (1) Defendant's placement of any object inside the person's anus or vagina; or (2) Defendant's placement of Defendant's genitalia or any sexual device inside the person's mouth.

"Object" means any item, device, instrument, substance or any part of the body. It does not mean a medical instrument used by a licensed medical doctor or nurse for the purpose of diagnosis or treatment.

"Without consent" means Defendant compelled the person to submit by an act of coercion, force or gesture, by threat of death, physical injury, pain or kidnapping against the person or a third party; or by any other means which would compel a reasonable person under the circumstances to submit. There is no requirement that the person resist such force or threat to the utmost, or to resist if resistance would be futile or foolhardy. The person is required to resist only to the extent reasonably necessary to make the person's resistance known to Defendant. ***[****Supplement definition as needed pursuant to § 761(j)****]****.*

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 222(24), 231(b) and 761(d, i, j).

Rape in the Third Degree
[*Penetration With Injury to Victim Not Yet Sixteen****]*** . . . . . 11.771(a)(2)b

RAPE IN THE THIRD DEGREE
[PENETRATION WITH INJURY TO VICTIM NOT YET SIXTEEN]

In order to find Defendant guilty of Rape in the Third Degree, you must find the State has proved the following four (4) elements beyond a reasonable doubt:

(1) Defendant engaged in sexual penetration with a person;

(2) The person was less than 16 years of age at the time;

(3) Defendant caused physical or serious mental or emotional injury to the person **[**in the course of committing the offense/during immediate flight after committing the offense/during an attempt to prevent the reporting of the offense**]**; and

(4) Defendant acted intentionally.

It is no defense to the charge of Rape in the Third Degree that Defendant did not know the person's age at the time of the assault, or reasonably believed the person had reached their sixteenth (16) birthday or was not younger than sixteen (16) at the time.

"Physical injury" means any impairment of physical condition or substantial physical pain.

"Intentionally" means it was Defendant's conscious objective or purpose to engage in sexual penetration with the person.

"Sexual penetration" means: (1) Defendant's placement of any object inside the person's anus or vagina; or (2) Defendant's placement of Defendant's genitalia or any sexual device inside the person's mouth.

"Object" means any item, device, instrument, substance or any part of the body. It does not mean a medical instrument used by a licensed medical doctor or nurse for the purpose of diagnosis or treatment.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 222(24), 231(b), 761(d, i) and 762(a).

Rape in the Second Degree ***[****Intercourse Without Consent****]*** . . . . . 11.772(a)(1)

RAPE IN THE SECOND DEGREE [INTERCOURSE WITHOUT CONSENT]

In order to find Defendant guilty of Rape in the Second Degree, you must find the State has proved the following three (3) elements beyond a reasonable doubt:

(1) Defendant had sexual intercourse with a person;

(2) Sexual intercourse occurred without the person's consent; and

(3) Defendant acted intentionally.

"Intentionally" means it was Defendant's conscious objective or purpose to have sexual intercourse with the person.

"Sexual intercourse" means any act of physical union of a person's genitalia or anus with another person's mouth, genitalia or anus. Ejaculation is not required. "Sexual intercourse" occurs upon any penetration. Within the meaning of this offense, "sexual intercourse" encompasses the crimes commonly known as rape and sodomy. The term "sexual intercourse" also includes any act of cunnilingus or fellatio, regardless of whether penetration or ejaculation occurs.

"Cunnilingus" means any oral contact with the female genitalia.

"Fellatio" means any oral contact with the male genitalia.

"Without consent" means Defendant compelled **[**victim**]** to submit by an act of coercion, force or gesture, by threat of death, physical injury, pain or kidnapping against the person or a third party; or by any other means which would compel a reasonable person under the circumstances to submit. There is no requirement that the person resist such force or threat to the utmost, or to resist if resistance would be futile or foolhardy. The person is required to resist only to the extent reasonably necessary to make the person's resistance known to Defendant. ***[****Supplement definition as needed pursuant to § 761(j)****]****.*

Applicable Code Sections and Case Law:

11 *Del. .C.* §§ 231(b) and 761(b, c, g, j).

Rape in the Second Degree . . . . . 11.772(a)(2)a
[Penetration Without Consent and With Serious Physical Injury]

RAPE IN THE SECOND DEGREE [PENETRATION WITHOUT CONSENT AND WITH SERIOUS PHYSICAL INJURY]

In order to find Defendant guilty of Rape in the Second Degree, you must find the State has proved the following four (4) elements beyond a reasonable doubt:

(1) Defendant engaged in sexual penetration with a person;

(2) Sexual penetration occurred without the person's consent;

(3) Defendant caused serious physical injury to the person **[**in the course of committing the crime/during immediate flight after committing the crime/during an attempt to prevent the reporting of the crime**]**; and

(4) Defendant acted intentionally;

"Serious physical injury" means any injury which creates a substantial risk of death, or which causes serious and prolonged disfigurement, prolonged impairment of physical health, or prolonged loss or impairment of the function of any bodily organ, or which causes the unlawful termination of a pregnancy without the consent of the pregnant female.

"Intentionally" means it was Defendant's conscious objective or purpose to sexually penetrate the person.

"Sexual penetration" means: (1) Defendant's placement of any object inside the person's anus or vagina; or (2) Defendant's placement of Defendant's genitalia or any sexual device inside the person's mouth.

"Object" means any item, device, instrument, substance or any part of the body. It does not mean a medical instrument used by a licensed medical doctor or nurse for the purpose of diagnosis or treatment.

"Without consent" means Defendant compelled the person to submit by an act of coercion, force or gesture, by threat of death, physical injury, pain or kidnapping against the person or a third party; or by any other means which would compel a reasonable person under the circumstances to submit. There is no requirement that the person resist such force or threat to the utmost, or to resist if resistance would be futile or foolhardy. The person is required to resist only to the extent reasonably necessary to make the person's resistance known to Defendant. ***[****Supplement definition as needed pursuant to § 761(j)****]****.*

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 222(25), 231(b), 761(d, i, j).

Rape in the Second Degree . . . . . 11.772(a)(2)b1
[Penetration Without Consent During Another Crime]

RAPE IN THE SECOND DEGREE
[PENETRATION WITHOUT CONSENT DURING ANOTHER CRIME]

In order to find Defendant guilty of Rape in the Second Degree, you must find the State has proved the following four (4) elements beyond a reasonable doubt:

(1) Defendant engaged in sexual penetration with a person;

(2) Sexual penetration occurred without the person's consent;

(3) Sexual penetration was facilitated by or occurred during the commission or attempted commission of a felony; and

(4) Defendant acted intentionally.

"Intentionally" means it was Defendant's conscious objective or purpose to sexually penetrate the person.

"Sexual penetration" means: (1) Defendant's placement of any object inside the person's anus or vagina; or (2) Defendant's placement of Defendant's genitalia or any sexual device inside the person's mouth.

"Object" means any item, device, instrument, substance or any part of the body. It does not mean a medical instrument used by a licensed medical doctor or nurse for the purpose of diagnosis or treatment.

"Without consent" means Defendant compelled the person to submit by an act of coercion, force or gesture, by threat of death, physical injury, pain or kidnapping against the person or a third party; or by any other means which would compel a reasonable person under the circumstances to submit. There is no requirement that the person resist such force or threat to the utmost, or to resist if resistance would be futile or foolhardy. The person is required to resist only to the extent reasonably necessary to make the person's resistance known to Defendant. ***[****Supplement definition as needed pursuant to § 761(j)****]****.*

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 231(b) and 761(d, i, j).

Rape in the Second Degree . . . . . 11.772(a)(2)b2
[Penetration Without Consent During Another Crime]

RAPE IN THE SECOND DEGREE
[PENETRATION WITHOUT CONSENT DURING ANOTHER CRIME]

In order to find Defendant guilty of Rape in the Second Degree, you must find the State has proved the following four (4) elements beyond a reasonable doubt:

(1) Defendant engaged in sexual penetration with a person;

(2) Sexual penetration occurred without the person's consent;

(3) Sexual penetration was facilitated by or occurred during the course of the commission or attempted commission of **[**reckless endangerment in the second degree/assault in the third degree/terroristic threatening/unlawful administering drugs/unlawful imprisonment in the second degree/coercion/ criminal trespass in the **(**first/second/third degree**)]**; and

(4) Defendant acted intentionally.

"Intentionally" means it was Defendant's conscious objective or purpose to sexually penetrate the person.

"Sexual penetration" means: (1) Defendant's placement of any object inside the person's anus or vagina; or (2) Defendant's placement of Defendant's genitalia or any sexual device inside the person's mouth.

"Object" means any item, device, instrument, substance or any part of the body. It does not mean a medical instrument used by a licensed medical doctor or nurse for the purpose of diagnosis or treatment.

"Without consent" means Defendant compelled the person to submit by an act of coercion, force or gesture, by threat of death, physical injury, pain or kidnapping against the person or a third party; or by any other means which would compel a reasonable person under the circumstances to submit. There is no requirement that the person resist such force or threat to the utmost, or to resist if resistance would be futile or foolhardy. The person is required to resist only to the extent reasonably necessary to make the person's resistance known to Defendant. ***[****Supplement definition as needed pursuant to § 761(j)****]****.*

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 231(b) and 761(d, i, j).

Rape in the Second Degree . . . . . 11.772(a)(2)c
[Penetration; Under Sixteen (16); Serious Physical Injury]

RAPE IN THE SECOND DEGREE
[PENETRATION; UNDER SIXTEEN (16)
SERIOUS PHYSICAL INJURY]

In order to find Defendant guilty of Rape in the Second Degree, you must find the State has proved the following four (4) elements beyond a reasonable doubt:

(1) Defendant engaged in sexual penetration with a person;

(2) The person was less than 16 years of age at the time;

(4) Defendant caused serious physical injury to the person **[**in the course of committing the crime/during immediate flight after committing the crime/during an attempt to prevent the reporting of the crime**]**; and

(4) Defendant acted intentionally.

It is no defense to the charge of Rape in the Second Degree that Defendant did not know the person's age at the time of the charged offense, or reasonably believed the person had reached their sixteenth (16) birthday or was not younger than sixteen (16) at the time.

"Serious physical injury" means any injury which creates a substantial risk of death, or which causes serious and prolonged disfigurement, prolonged

impairment of physical health, or prolonged loss or impairment of the function of any bodily organ, or which cause the unlawful termination of a pregnancy without the consent of the pregnant female.

"Intentionally" means it was Defendant's conscious objective or purpose to sexually penetrate the person.

"Sexual penetration" means: (1) Defendant's placement of any object inside the person's anus or vagina; or (2) Defendant's placement of Defendant's genitalia or any sexual device inside the person's mouth.

"Object" means any item, device, instrument, substance or any part of the body. It does not mean a medical instrument used by a licensed medical doctor or nurse for the purpose of diagnosis or treatment.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 222(25), 231(b), 761(d, I) and 762(a).

Rape in the Second Degree . . . . . 11.772(a)(2)d
[Penetration Without Consent and Displaying Deadly Weapon]

RAPE IN THE SECOND DEGREE [PENETRATION WITHOUT CONSENT AND DISPLAYED DEADLY WEAPON]

In order to find Defendant guilty of Rape in the Second Degree, you must find the State has proved the following four (4) elements beyond a reasonable doubt:

(1) Defendant engaged in sexual penetration with a person;

(2) Sexual penetration occurred without the person's consent; and

(3) Defendant displayed what appeared to be **(**or represented by word or conduct that Defendant was in possession or control of) a deadly weapon or dangerous instrument **[**in the course of committing the crime/during immediate flight after committing the crime/during an attempt to prevent the reporting of the crime**]**; and

(4) Defendant acted intentionally.

The State is not required to prove Defendant actually had or used a deadly weapon while committing the crime. However, the State must prove Defendant intentionally intimidated a person by threat, gesture, or deed, with what appeared to the person to be a deadly weapon.

“Intentionally” means it was Defendant’s conscious objective or purpose to sexually penetrate the person.

“Dangerous instrument” means any instrument, article, or substance which, under the circumstances in which it is used, attempted to be used, or threatened to be used, is readily capable of causing death or serious physical injury.

“Deadly weapon” includes firearm, bomb, knife of any sort (other than an ordinary pocket knife carried in a closed position), switchblade knife, billy, blackjack, bludgeon, metal knuckles, slingshot, razor, bicycle chain, ice pick or any dangerous instrument which a person used, or tried to use, to cause death or serious physical injury. For the purpose of this definition, an ordinary pocket knife is a folding knife with a blade no longer than 3 inches.

“Sexual penetration” means: (1) Defendant’s placement of any object inside the person’s anus or vagina; or (2) Defendant’s placement of Defendant’s genitalia or any sexual device inside the person’s mouth.

“Object” means any item, device, instrument, substance or any part of the body. It does not mean a medical instrument used by a licensed medical doctor or nurse for the purpose of diagnosis or treatment.

“Without consent” means Defendant compelled the person to submit by an act of coercion, force or gesture, by threat of death, physical injury, pain or

kidnapping against the person or a third party; or by any other means which would compel a reasonable person under the circumstances to submit. There is no requirement that the person resist such force or threat to the utmost, or to resist if resistance would be futile or foolhardy. The person is required to resist only to the extent reasonably necessary to make the person's resistance known to Defendant. ***[****Supplement definition as needed pursuant to § 761(j)****]****.*

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 222(4, 5), 231(b) and 761(d, i, j).

Rape in the Second Degree . . . . . 11.772(a)(2)e
[Penetration With Victim Not Yet Sixteen (16) and Displays a Deadly Weapon]

RAPE IN THE SECOND DEGREE [PENETRATION WITH VICTIM NOT YET SIXTEEN (16) AND DISPLAYS A DEADLY WEAPON]

In order to find Defendant guilty of Rape in the Second Degree, you must find the State has proved the following four (4) elements beyond a reasonable doubt:

(1) Defendant engaged in sexual penetration with a person;

(2) The person was less than 16 years of age at the time;

(3) Defendant displayed what appeared to be a deadly weapon or dangerous instrument (or represented by word or conduct that Defendant was in possession or control of a deadly weapon or dangerous instrument**) [**in the course of committing the crime/during immediate flight after committing the crime/during an attempt to prevent the reporting of the crime**]**; and

(4) Defendant acted intentionally.

The State is not required to prove Defendant actually had or used a deadly weapon while committing the crime. However, the State must prove Defendant intentionally intimidated the person, by threat, gesture, or deed, with what appeared to the person to be a deadly weapon.

It is no defense to the charge of Rape in the Second Degree that Defendant did not know the person's age at the time of the charged offense, or reasonably believed the person had reached their sixteenth (16) birthday or was not younger than sixteen (16) at the time.

"Intentionally" means it was Defendant's conscious objective or purpose to sexually penetrate the person.

"Dangerous instrument" means any instrument, article, or substance which, under the circumstances in which it is used, attempted to be used, or threatened to be used, is readily capable of causing death or serious physical injury.

"Deadly weapon" includes firearm, bomb, knife of any sort (other than an ordinary pocket knife carried in a closed position), switchblade knife, billy, blackjack, bludgeon, metal knuckles, slingshot, razor, bicycle chain, ice pick or any dangerous instrument which a person used, or tried to use, to cause death or serious physical injury. For the purpose of this definition, an ordinary pocket knife is a folding knife with a blade no longer than 3 inches.

"Sexual penetration" means: (1) Defendant's placement of any object inside the person's anus or vagina; or (2) Defendant's placement of Defendant's genitalia or any sexual device inside the person's mouth.

"Object" means any item, device, instrument, substance or any part of the body. It does not mean a medical instrument used by a licensed medical doctor or nurse for the purpose of diagnosis or treatment.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 222(4, 5), 231(b) and 761(d, i).

Rape in the Second Degree . . . . . 11.772(a)(2)f
[Penetration Without Consent and With a Principal Accomplice Relationship]

RAPE IN THE SECOND DEGREE [PENETRATION WITHOUT CONSENT AND WITH A PRINCIPAL-ACCOMPLICE RELATIONSHIP]

In order to find Defendant guilty of Rape in the Second Degree, you must find the State has proved the following four (4) elements beyond a reasonable doubt:

(1) Defendant engaged in sexual penetration with a person;

(2) Sexual penetration occurred without the person's consent;

(3) There was a principal-accomplice relationship between Defendant and another person**[**s**]**; and

(4) Defendant acted intentionally.

"Intentionally" means it was Defendant's conscious objective or purpose to sexually penetrate the person.

"Sexual penetration" means: (1) Defendant's placement of any object inside the person's anus or vagina; or (2) Defendant's placement of Defendant's genitalia or any sexual device inside the person's mouth.

"Object" means any item, device, instrument, substance or any part of the body. It does not mean a medical instrument used by a licensed medical doctor or nurse for the purpose of diagnosis or treatment.

A principal-accomplice relationship exists when, with the intent to promote or facilitate the commission of a crime, a person solicits, requests, commands, importunes or otherwise attempts to cause another person to commit the crime; or aids, counsels or agrees or attempts aid another person in planning or committing the crime.

"Without consent" means Defendant compelled the person to submit by an act of coercion, force or gesture, by threat of death, physical injury, pain or kidnapping against the person or a third party; or by any other means which would compel a reasonable person under the circumstances to submit. There is no requirement that the person resist such force or threat to the utmost, or to resist if resistance would be futile or foolhardy. The person is required to resist only to the extent reasonably necessary to make the person's resistance known to Defendant. ***[****Supplement definition as needed pursuant to § 761(j)****]****.*

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 231(b), 271, and 761(i, j).

Rape in the Second Degree . . . . . 11.772(a)(2)g
[*Penetration of Victim Under 12 by Defendant 18 or Older****]***

RAPE IN THE SECOND DEGREE [PENETRATION OF VICTIM UNDER 12 BY DEFENDANT 18 OR OLDER]

In order to find Defendant guilty of Rape in the Second Degree, you must find the State has proved the following three (3) elements beyond a reasonable doubt:

(1) Defendant engaged in sexual penetration with a person;

(2) The person was less than 12 years of age and Defendant was at least 18 years of age at the time; and

(3) Defendant acted intentionally.

By law, a child who has not yet reached their twelfth (12) birthday is unable to consent to a sexual act under any circumstances.

It is no defense to the charge of Rape in the Second Degree that Defendant did not know the child's age at the time of the charged offense, or reasonably believed the child had reached their twelfth (12)**]** birthday or was not younger than twelve (12) at the time.

"Intentionally" means it was Defendant's conscious objective or purpose to sexually penetrate the child.

"Sexual penetration" means: (1) Defendant's placement of any object inside the child's anus or vagina; or (2) Defendant's placement of Defendant's genitalia or any sexual device inside the child's mouth.

"Object" means any item, device, instrument, substance or any part of the body. It does not mean a medical instrument used by a licensed medical doctor or nurse for the purpose of diagnosis or treatment.

{Comment: Mistake as to age, 11 Del.C. § 762(a), only refers to those who have not reached their sixteenth birthday. This law should be expanded to include offenses such as 11 Del. C. § 772(a)(2)(g).}

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 231(a), 761(d, i, k) and 762(a).

Rape in the First Degree . . . . . 11.773(a)(1)
[Intercourse Without Consent and With Injury]

RAPE IN THE FIRST DEGREE
[INTERCOURSE WITHOUT CONSENT AND WITH INJURY]

In order to find Defendant guilty of Rape in the First Degree, you must find the State has proved the following four (4) elements beyond a reasonable doubt:

(1) Defendant engaged in sexual intercourse with a person;

(2) Sexual intercourse occurred without the person's consent;

(3) Defendant caused physical injury or serious mental or emotional injury to the person **[**in the course of committing the crime/during immediate flight after committing the crime/during an attempt to prevent the reporting of the crime**]**; and

(4) Defendant acted intentionally.

"Physical injury" means any impairment of physical condition or substantial physical pain.

"Intentionally" means it was Defendant's conscious objective or purpose to engage in sexual intercourse with the person.

"Sexual intercourse" means any act of physical union of a person's genitalia or anus with another person's mouth, genitalia or anus. Ejaculation is not required. "Sexual intercourse" occurs upon any penetration. Within the meaning of this offense, "sexual intercourse" encompasses the crimes commonly known as rape

and sodomy. The term “sexual intercourse” also includes any act of cunnilingus or fellatio, regardless of whether penetration or ejaculation occurs.

“Cunnilingus” means any oral contact with the female genitalia.

“Fellatio” means any oral contact with the male genitalia.

“Without consent” means Defendant compelled the person to submit by an act of coercion, force or gesture, by threat of death, physical injury, pain or kidnapping against the person or a third party; or by any other means which would compel a reasonable person under the circumstances to submit. There is no requirement that the person resist such force or threat to the utmost, or to resist if resistance would be futile or foolhardy. The person is required to resist only to the extent reasonably necessary to make the person’s resistance known to Defendant. ***[****Supplement definition as needed pursuant to § 761(j)****]***.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 222(24), 231(b) and 761(g, j).

Rape in the First Degree . . . . . 11.733(a)(2)a
[Intercourse Without Consent During a Felony or Violent Misdemeanor]

RAPE IN THE FIRST DEGREE
[INTERCOURSE WITHOUT CONSENT DURING A FELONY OR VIOLENT MISDEMEANOR]

In order to find Defendant guilty of Rape in the First Degree, you must find the State has proved the following four (4) elements beyond a reasonable doubt:

(1) Defendant engaged in sexual intercourse with a person;

(2) Sexual intercourse occurred without the person's consent;

(3) The sexual intercourse was facilitated by or occurred during the course of the commission or attempted commission of a felony; and

(4) Defendant acted intentionally.

"Intentionally" means it was Defendant's conscious objective or purpose to engage in sexual intercourse with the person.

"Sexual intercourse" means any act of physical union of a person's genitalia or anus with another person's mouth, genitalia or anus. Ejaculation is not required. "Sexual intercourse" occurs upon any penetration. Within the meaning of this offense, "sexual intercourse" encompasses the crimes commonly known as rape and sodomy. The term "sexual intercourse" also includes any act of cunnilingus or fellatio, regardless of whether penetration or ejaculation occurs.

"Cunnilingus" means any oral contact with the female genitalia.

"Fellatio" means any oral contact with the male genitalia.

"Without consent" means Defendant compelled the person to submit by an act of coercion, force or gesture, by threat of death, physical injury, pain or kidnapping against the person or a third party; or by any other means which would compel a reasonable person under the circumstances to submit. There is no requirement that the person resist such force or threat to the utmost, or to resist if resistance would be futile or foolhardy. The person is required to resist only to the extent reasonably necessary to make the person's resistance known to Defendant. ***[****Supplement definition as needed pursuant to § 761(j)****]****.*

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 231(b) and 261(g, j).

Rape in the First Degree . . . . . 11.773(a)(2)b
[Intercourse Without Consent During a Felony or Violent Misdemeanor]

RAPE IN THE FIRST DEGREE
[INTERCOURSE WITHOUT CONSENT DURING A FELONY OR VIOLENT MISDEMEANOR]

In order to find Defendant guilty of Rape in the First Degree, you must find the State proved the following four (4) elements beyond a reasonable doubt:

(1) Defendant engaged in sexual intercourse with a person;

(2) Sexual intercourse occurred without the person's consent; and

(3) The sexual intercourse was facilitated by or occurred during the course of the commission or attempted commission of **[**reckless endangering in the second degree/terroristic threatening/unlawfully administering drugs/unlawful imprisonment in the second degree/coercion/ criminal trespass in the **(**first/second/third**)** degree**]**; and

(4) Defendant acted intentionally.

"Intentionally" means it was Defendant's conscious objective or purpose to engage in sexual intercourse with a person.

"Sexual intercourse" means any act of physical union of a person's genitalia or anus with another person's mouth, genitalia or anus. Ejaculation is not required. "Sexual intercourse" occurs upon any penetration. Within the meaning of this

offense, “sexual intercourse” encompasses the crimes commonly known as rape and sodomy. The term “sexual intercourse” also includes any act of cunnilingus or fellatio, regardless of whether penetration or ejaculation occurs.

“Cunnilingus” means any oral contact with the female genitalia.

“Fellatio” means any oral contact with the male genitalia.

“Without consent” means Defendant compelled the person to submit by an act of coercion, force or gesture, by threat of death, physical injury, pain or kidnapping against the person or a third party; or by any other means which would compel a reasonable person under the circumstances to submit. There is no requirement that the person resist such force or threat to the utmost, or to resist if resistance would be futile or foolhardy. The person is required to resist only to the extent reasonably necessary to make the person’s resistance known to Defendant. ***[****Supplement definition as needed pursuant to § 761(j)****]****.*

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 231(b) and 261(g, j).

Rape in the First Degree ***[****Rape 2nd, 3rd or 4th With Weapon****]*** . . . . . 11.773(a)(3)

RAPE IN THE FIRST DEGREE
[RAPE 2ND, 3RD OR 4TH WITH WEAPON]

In order to find Defendant guilty of Rape in the First Degree, you must find the State has proved the following three (3) elements beyond a reasonable doubt:

(1) Defendant committed Rape in the **[**Second/Third/Fourth**]** Degree;

(2) Defendant displayed what appeared to be a deadly weapon or dangerous instrument**,** in the course of or in the immediate flight after committing the rape; and

(3) Defendant acted intentionally.

The elements of Rape in the **[**Second/Third/Fourth**]** Degree are: **[**state elements**]**.

The State is not required to prove Defendant actually had or used a deadly weapon or dangerous instrument while committing the crime. However, the State must prove Defendant intentionally intimidated the perons, by threat, gesture, or deed with what appeared to the victim to be a deadly weapon or dangerous instrument.

"Intentionally" means it was Defendant's conscious objective or purpose to engage in sexual penetration or sexual intercourse with the person.

"Dangerous instrument" means any instrument, article, or substance which, under the circumstances in which it is used, attempted to be used, or threatened to be used, is readily capable of causing death or serious physical injury.

"Deadly weapon" includes firearm, bomb, knife of any sort (other than an ordinary pocket knife carried in a closed position), switchblade knife, billy, blackjack, bludgeon, metal knuckles, slingshot, razor, bicycle chain, ice pick or any dangerous instrument which a person used, or tried to use, to cause death or serious physical injury. For the purpose of this definition, an ordinary pocket knife is a folding knife with a blade no longer than 3 inches.

{Comment: This instruction should also include the appropriate definitions of words used in §§ 770(a)(1), 770(a)(2), 771(a)(1) or 772(a)(1), such as "sexual intercourse," "consent," etc.}

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 222 (4, 5), 231(b), 261(g, j), 770(a), 771(a) and 772(a).

Rape in the First Degree . . . . . 11.773(a)(4)
[Intercourse Without Consent and Principal/Accomplice Relationship]

RAPE IN THE FIRST DEGREE [INTERCOURSE WITHOUT CONSENT AND PRINCIPAL/ACCOMPLICE RELATIONSHIP]

In order to find Defendant guilty of Rape in the First Degree, you must find the State has proved the following four (4) elements beyond a reasonable doubt:

(1) Defendant engaged in sexual intercourse with a person;

(2) Sexual intercourse occurred without the person's consent;

(3) There was a principal-accomplice relationship between Defendant and another person**[**s**]**; and

(4) Defendant acted intentionally.

"Intentionally" means it was Defendant's conscious objective or purpose to engage in sexual intercourse with the person.

"Sexual intercourse" means any act of physical union of a person's genitalia or anus with another person's mouth, genitalia or anus. Ejaculation is not required. "Sexual intercourse" occurs upon any penetration. The term "sexual intercourse" also includes any act of cunnilingus or fellatio, regardless of whether penetration or ejaculation occurs.

"Cunnilingus" means any oral contact with the female genitalia.

"Fellatio" means any oral contact with the male genitalia.

Within the meaning of this offense, "sexual intercourse" encompasses the crimes commonly known as rape and sodomy.

"Without consent" means Defendant compelled the person to submit by an act of coercion, force or gesture, by threat of death, physical injury, pain or kidnapping against the person or a third party; or by any other means which would compel a reasonable person under the circumstances to submit. There is no requirement that the person resist such force or threat to the utmost, or to resist if resistance would be futile or foolhardy. The person is required to resist only to the extent reasonably necessary to make the person's resistance known to Defendant. ***[****Supplement definition as needed pursuant to § 761(j)****]****.*

A principal-accomplice relationship exists, when, with the intent to promote or facilitate the commission of a crime, a person solicits, requests, commands, importunes or otherwise attempts to cause another person to commit a crime; or aids, counsels or agrees or attempts aid another person in planning or committing a crime.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 231(b), 271, and 761(g, j).

Rape in the First Degree . . . . . 11.773(a)(5)
[Intercourse With Victim Under Twelve (12) by Defendant Eighteen (18) or Order]

RAPE IN THE FIRST DEGREE
[INTERCOURSE WITH VICTIM UNDER TWELVE (12) BY DEFENDANT EIGHTEEN (18) OR OLDER]

In order to find Defendant guilty of Rape in the First Degree, you must find the State has proved the following three (3) elements beyond a reasonable doubt:

(1) Defendant engaged in sexual intercourse with a person;

(2) The person was less than 12 years of age and Defendant was at least18 years of age at the time; and

(3) Defendant acted intentionally.

By law, a child who has not yet reached their twelfth (12) birthday is unable to consent to a sexual act under any circumstances.

It is no defense to the charge of Rape in the First Degree that Defendant did not know the child's age at the time of the charged offense, or reasonably believed the child had reached their twelfth (12)**]** birthday or was not younger than twelve (12) at the time.

"Intentionally" means it was Defendant's conscious objective or purpose to engage in sexual intercourse with the child.

"Sexual intercourse" means any act of physical union of a person's genitalia or anus with another person's mouth, genitalia or anus. Ejaculation is not required. "Sexual intercourse" occurs upon any penetration. Within the meaning of this offense, "sexual intercourse" encompasses the crimes commonly known as rape and sodomy. The term "sexual intercourse" also includes any act of cunnilingus or fellatio, regardless of whether penetration or ejaculation occurs.

"Cunnilingus" means any oral contact with the female genitalia.

"Fellatio" means any oral contact with the male genitalia.

{Comment: Mistake as to age, 11 Del. C. § 762(a), only refers to those who have not reached their sixteenth birthday. This law should be expanded to include offenses such as 11 Del. C. § 773(a)(5).}

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 231(b), 761(g, j, k) and 762(a).

SEXUAL EXTORTION

In order to find Defendant guilty of Sexual Extortion, you must find the State has proved the following three (3) elements beyond a reasonable doubt:

(1) Defendant induced or compelled a person to engage in an act of sexual contact, sexual penetration, or sexual intercourse;

(2) Defendant instilled in the person a fear Defendant would cause physical injury to that person or to another person if the sexual act were not performed; and

(3) Defendant acted intentionally.

"Physical injury" means impairment of physical condition or substantial pain.

"Intentionally" means it was Defendant's conscious objective or purpose to induce or compel the person to engage in an act of sexual contact, sexual penetration, or sexual intercourse.

"Sexual contact" means Defendant intentionally touched the person's anus, breast, buttocks or genitalia, or Defendant intentionally touched the person with Defendant's anus, breast, buttocks or genitalia, and a reasonable person, under the circumstances, would find the touching was intended to be sexual in nature.

"Sexual contact" includes touching through clothing. Sexual gratification is not required.

"Sexual intercourse" means any act of physical union of a person's genitalia or anus with another person's mouth, genitalia or anus. Ejaculation is not required. "Sexual intercourse" occurs upon any penetration. Within the meaning of this offense, "sexual intercourse" encompasses the crimes commonly known as rape and sodomy. The term "sexual intercourse" also includes any act of cunnilingus or fellatio, regardless of whether penetration or ejaculation occurs.

"Cunnilingus" means any oral contact with the female genitalia.

"Fellatio" means any oral contact with the male genitalia.

"Sexual penetration" means: (1) Defendant's placement of any object inside the person's anus or vagina; or (2) Defendant's placement of Defendant's genitalia or any sexual device inside the person's mouth.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 222(24), 231(b) and 761(b, c, f, g, i).

SEXUAL EXTORTION

In order to find Defendant guilty of Sexual Extortion, you must find the State has proved the following three (3) elements beyond a reasonable doubt:

(1) Defendant induced or compelled a person to engage in an act of sexual contact, sexual penetration, or sexual intercourse;

(2) Defendant instilled in the person a fear that Defendant would cause damage to property if the act of sexual contact, sexual penetration, or sexual intercourse was not performed; and

(3) Defendant acted intentionally.

"Intentionally" means it was Defendant's conscious objective or purpose to induce or compel the person to engage in an act of sexual contact, sexual penetration, or sexual intercourse.

"Sexual contact" means Defendant intentionally touched the person's anus, breast, buttocks or genitalia, or Defendant intentionally touched the person with Defendant's anus, breast, buttocks or genitalia, and a reasonable person, under the circumstances, would find the touching was intended to be sexual in nature. "Sexual contact" includes touching through clothing. Sexual gratification is not required.

"Sexual intercourse" means any act of physical union of a person's genitalia or anus with another person's mouth, genitalia or anus. Ejaculation is not required. "Sexual intercourse" occurs upon any penetration. Within the meaning of this offense, "sexual intercourse" encompasses the crimes commonly known as rape and sodomy. The term "sexual intercourse" also includes any act of cunnilingus or fellatio, regardless of whether penetration or ejaculation occurs.

"Cunnilingus" means any oral contact with the female genitalia.

"Fellatio" means any oral contact with the male genitalia.

"Sexual penetration" means: (1) Defendant's placement of any object inside the person's anus or vagina; or (2) Defendant's placement of Defendant's genitalia or any sexual device inside the person's mouth.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 231(b), and 761(b, c, f, g, i).

Sexual Extortion . . . . . 11.774(3)

SEXUAL EXTORTION

In order to find Defendant guilty of Sexual Extortion, you must find the State has proved the following three (3) elements beyond a reasonable doubt:

(1) Defendant induced or compelled a person to engage in an act of sexual contact, sexual penetration, or sexual intercourse;

(2) Defendant instilled in the person a fear Defendant would engage in other conduct constituting a crime if the sexual act was not performed; and

(3) Defendant acted intentionally.

"Intentionally" means it was Defendant's conscious objective or purpose to induce or compel the person to engage in an act of sexual contact, sexual penetration, or sexual intercourse.

"Sexual contact" means Defendant intentionally touched the person's anus, breast, buttocks or genitalia, or Defendant intentionally touched the person with Defendant's anus, breast, buttocks or genitalia, and a reasonable person, under the circumstances, would find the touching was intended to be sexual in nature. "Sexual contact" includes touching through clothing. Sexual gratification is not required.

"Sexual intercourse" means any act of physical union of a person's genitalia or anus with another person's mouth, genitalia or anus. Ejaculation is not required. "Sexual intercourse" occurs upon any penetration. Within the meaning of this offense, "sexual intercourse" encompasses the crimes commonly known as rape and sodomy. The term "sexual intercourse" also includes any act of cunnilingus or fellatio, regardless of whether penetration or ejaculation occurs.

"Cunnilingus" means any oral contact with the female genitalia.

"Fellatio" means any oral contact with the male genitalia.

"Sexual penetration" means: (1) Defendant's placement of any object inside the person's anus or vagina; or (2) Defendant's placement of Defendant's genitalia or any sexual device inside the person's mouth.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 231(b), and 761(b, c, f, g, i).

Sexual Extortion . . . . . 11.774(4)

SEXUAL EXTORTION

In order to find Defendant guilty of Sexual Extortion, you must find the State has proved the following three (3) elements beyond a reasonable doubt:

(1) Defendant induced or compelled a person to engage in an act of sexual contact, sexual penetration, or sexual intercourse;

(2) Defendant instilled in the person a fear Defendant would accuse anyone of a crime or cause criminal charges to be instituted against anyone, if the sexual act was not performed; and

(3) Defendant acted intentionally.

"Intentionally" means it was Defendant's conscious objective or purpose to induce or compel a person to engage in an act of sexual contact, sexual penetration, or sexual intercourse.

"Sexual contact" means Defendant intentionally touched the person's anus, breast, buttocks or genitalia, or Defendant intentionally touched the person with Defendant's anus, breast, buttocks or genitalia, and a reasonable person, under the circumstances, would find the touching was intended to be sexual in nature. "Sexual contact" includes touching through clothing. Sexual gratification is not required.

"Sexual intercourse" means any act of physical union of a person's genitalia or anus with another person's mouth, genitalia or anus. Ejaculation is not required. "Sexual intercourse" occurs upon any penetration. Within the meaning of this offense, "sexual intercourse" encompasses the crimes commonly known as rape and sodomy. The term "sexual intercourse" also includes any act of cunnilingus or fellatio, regardless of whether penetration or ejaculation occurs.

"Cunnilingus" means any oral contact with the female genitalia.

"Fellatio" means any oral contact with the male genitalia.

"Sexual penetration" means: (1) Defendant's placement of any object inside the person's anus or vagina; or (2) Defendant's placement of Defendant's genitalia or any sexual device inside the person's mouth.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 231(b) and 761(b, c, f, g, i).

Sexual Extortion . . . . . 11.774(5)

SEXUAL EXTORTION

In order to find Defendant guilty of Sexual Extortion, you must find the State has proved the following three (3) elements beyond a reasonable doubt:

(1) Defendant induced or compelled a person to engage in an act of sexual contact, sexual penetration, or sexual intercourse;

(2) Defendant instilled in the person a fear Defendant would expose a secret or publicize an asserted fact, whether true or false, intending to subject anyone to hatred, contempt or ridicule, if the sexual act was not performed; and

(3) Defendant acted intentionally.

"Intentionally" means it was Defendant's conscious objective or purpose to induce or compel a person to engage in an act of sexual contact, sexual penetration, or sexual intercourse.

"Sexual contact" means Defendant intentionally touched the person's anus, breast, buttocks or genitalia, or Defendant intentionally touched the person with Defendant's anus, breast, buttocks or genitalia, and a reasonable person, under the circumstances, would find the touching was intended to be sexual in nature. "Sexual contact" includes touching through clothing. Sexual gratification is not required.

"Sexual intercourse" means any act of physical union of a person's genitalia or anus with another person's mouth, genitalia or anus. Ejaculation is not required. "Sexual intercourse" occurs upon any penetration. Within the meaning of this offense, "sexual intercourse" encompasses the crimes commonly known as rape and sodomy The term "sexual intercourse" also includes any act of cunnilingus or fellatio, regardless of whether penetration or ejaculation occurs.

"Cunnilingus" means any oral contact with the female genitalia.

"Fellatio" means any oral contact with the male genitalia.

"Sexual penetration" means: (1) Defendant's placement of any object inside the person's anus or vagina; or (2) Defendant's placement of Defendant's genitalia or any sexual device inside the person's mouth.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 231(b) and 761(b, c, f, g, i).

SEXUAL EXTORTION

In order to find Defendant guilty of Sexual Extortion, you must find the State has proved the following three (3) elements beyond a reasonable doubt:

(1) Defendant induced or compelled a person to engage in an act of sexual contact, sexual penetration, or sexual intercourse;

(2) Defendant instilled in the person a fear Defendant would falsely testify, provide information, or withhold testimony or information, with respect to another's legal claim or defense, if the sexual act was not performed; and

(3) Defendant acted intentionally.

"Intentionally" means it was Defendant's conscious objective or purpose to induce or compel a person victim to engage in an act of sexual contact, sexual penetration, or sexual intercourse.

"Sexual contact" means Defendant intentionally touched the person's anus, breast, buttocks or genitalia, or Defendant intentionally touched the person with Defendant's anus, breast, buttocks or genitalia, and a reasonable person, under the circumstances, would find the touching was intended to be sexual in nature. "Sexual contact" includes touching through clothing. Sexual gratification is not required.

"Sexual intercourse" means any act of physical union of a person's genitalia or anus with another person's mouth, genitalia or anus. Ejaculation is not required. "Sexual intercourse" occurs upon any penetration. Within the meaning of this offense, "sexual intercourse" encompasses the crimes commonly known as rape and sodomy. The term "sexual intercourse" also includes any act of cunnilingus or fellatio, regardless of whether penetration or ejaculation occurs.

"Cunnilingus" means any oral contact with the female genitalia.

"Fellatio" means any oral contact with the male genitalia.

"Sexual penetration" means: (1) Defendant's placement of any object inside the person's anus or vagina; or (2) Defendant's placement of Defendant's genitalia or any sexual device inside the person's mouth.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 231(b) and 761(b, c, f, g, i).

Sexual Extortion . . . . . 11.774(7)

SEXUAL EXTORTION

In order to find Defendant guilty of Sexual Extortion, you must find the State proved the following three (3) elements beyond a reasonable doubt:

(1) Defendant induced or compelled a person to engage in an act of sexual contact, sexual penetration, or sexual intercourse;

(2) Defendant instilled in a person a fear Defendant would perform any other act which was calculated to materially harm another person's health, safety, business, calling, career, financial condition, reputation, or person relationships, if the sexual act was not performed; and

(3) Defendant acted intentionally.

"Intentionally" means it was Defendant's conscious objective or purpose to induce/compel a person to engage in an act of sexual contact, sexual penetration, or sexual intercourse.

"Sexual contact" means Defendant intentionally touched the person's anus, breast, buttocks or genitalia, or Defendant intentionally touched the person with Defendant's anus, breast, buttocks or genitalia, and a reasonable person, under the circumstances, would find the touching was intended to be sexual in nature.

"Sexual contact" includes touching through clothing. Sexual gratification is not required.

"Sexual intercourse" means any act of physical union of a person's genitalia or anus with another person's mouth, genitalia or anus. Ejaculation is not required. "Sexual intercourse" occurs upon any penetration. Within the meaning of this offense, "sexual intercourse" encompasses the crimes commonly known as rape and sodomy. The term "sexual intercourse" also includes any act of cunnilingus or fellatio, regardless of whether penetration or ejaculation occurs.

"Cunnilingus" means any oral contact with the female genitalia.

"Fellatio" means any oral contact with the male genitalia.

"Sexual penetration" means: (1) Defendant's placement of any object inside the person's anus or vagina; or (2) Defendant's placement of Defendant's genitalia or any sexual device inside the person's mouth.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 231(b) and 761(b, c, f, g, i).

Bestiality 11.775

BESTIALITY

In order to find Defendant guilty of Bestiality, you must find the State has proved the following two (2) elements beyond a reasonable doubt:

(1) Defendant engaged, or caused another person to engage in, an act of sexual contact, sexual penetration, or sexual intercourse with the genitalia of an animal for purposes of sexual gratification; and

(2) Defendant acted intentionally.

"Intentionally" means it was Defendant's conscious objective or purpose to engage, or to caused another person to engage in, an act of sexual contact, sexual penetration, or sexual intercourse with the genitalia of an animal for purposes of sexual gratification.

"Sexual contact" means Defendant intentionally touched the animal's anus, breast, buttocks or genitalia, or Defendant intentionally touched the animal with Defendant's anus, breast, buttocks or genitalia, and a reasonable person, under the circumstances, would find the touching was intended to be sexual in nature. "Sexual contact" includes touching through clothing. Sexual gratification is not required.

"Sexual intercourse" means any act of physical union of a person's genitalia or anus with another's mouth, genitalia or anus. Ejaculation is not required. "Sexual intercourse" occurs upon any penetration. Within the meaning of this offense, "sexual intercourse" encompasses the crimes commonly known as rape and sodomy. The term "sexual intercourse" also includes any act of cunnilingus or fellatio, regardless of whether penetration or ejaculation occurs.

"Cunnilingus" means any oral contact with the female genitalia.

"Fellatio" means any oral contact with the male genitalia.

"Sexual penetration" means: (1) Defendant's placement of any object inside the animal's anus or vagina; or (2) Defendant's placement of Defendant's genitalia or any sexual device inside the animal's mouth.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 231(b) and 761(b, c, f, g, i).

Continuous Sexual Abuse of a Child . . . . . 11.776(a)

CONTINUOUS SEXUAL ABUSE OF A CHILD

In order to find Defendant guilty of Continuous Sexual Abuse of a Child, you must find the State has proved the following five (5) elements beyond a reasonable doubt:

(1) Defendant resided in the same home as the child or had recurring access to the child;

(2) Defendant engaged in 3 or more sexual acts of sexual conduct with the child;

(3) The child was less than 18 years of age at the time of the sexual acts;

(4) The sexual acts occurred over a period of time greater than 3 months; and

(5) Defendant acted intentionally.

It is no defense to the charge of Continuous Sexual Abuse of a Child that Defendant did not know the child's age at the time of the crime or reasonably believed the child had reached their eighteenth (18) birthday or was not younger than eighteen (18) at the time of the crime.

"Intentionally" means it was Defendant's conscious objective or purpose to engage in the identified sexual acts with the child.

"Sexual conduct" under this section is: unlawful sexual conduct in the first or second degree; rape in the first, second, third or fourth degree; unlawful sexual conduct against a child by a sex offender; sexual abuse of a child by a person in a position of trust, authority or supervision in the first or second degree; or sexual exploitation of a child.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 231(b) and 776(b).

DANGEROUS CRIME AGAINST A CHILD

In order to find Defendant guilty of a Dangerous Crime Against a Child, you must find the State has proved the following two (2) elements beyond a reasonable doubt:

(1) Defendant committed a dangerous crime against a child; and

(2) The child was less than 14 years of age at the time of the charged offense.

It is no defense to the charge of Dangerous Crime Against a Child that Defendant did not know the child's age at the time of the crime or reasonably believed the child had reached their fourteenth (14) birthday or was not younger than fourteen (14) at the time of the crime.

It is an affirmative defense to the charge of Dangerous Crime Against a Child that Defendant believed the child was over the age of 16 years of age.

"Dangerous crime" under this section is: rape in the first, second, third or fourth degree; sex offender unlawful sexual conduct against a child; sexual abuse of a child by a person in a position of trust, authority or supervision in the first or second degree; sexual exploitation of a child; dealing in child pornography; possession of child pornography; or sexual solicitation of a child.

{Comment: Mistake as to age, 11 Del.C. § 762(a), only refers to those who have not reached their sixteenth birthday. This law should be expanded to include offenses such as 11 Del. C. § 772(a)(2)(g).}

Applicable Code Sections and Case Law:

11 *Del.C.* §§ 251(b) and 304.

SEXUAL OFFENDER
UNLAWFUL SEXUAL CONDUCT AGAINST A CHILD

In order to find Defendant guilty of a Sexual Offender Unlawful Sexual Conduct Against a Child, you must find the State has proved the following four (4) elements beyond a reasonable doubt:

(1) Defendant is a person required to register as a sex offender under the laws of this State, another state, the United States or any territory of the United States;

(2) Defendant committed a sexual offense against a child;

(3) The child was less than 18 years of age at the time of the charged offense;

(4) Defendant acted knowingly.

It is no defense to the charge of Dangerous Crime Against a Child that Defendant did not know the child's age at the time of the crime or reasonably believed the child had reached their eighteenth (18) birthday or was not younger than eighteen (18) at the time of the crime.

"Sexual offense" shall mean [offense, as designated as a sexual offense by § 761(h) title 11].

"Child" means any individual who has not reached their eighteenth (18) birthday. [If the underlying sexual offense involves an offense defined by §§ 1108, 1109, 1110, 1111 and 1112A of this title, "child" shall also mean any individual intended by Defendant to appear to be 14 years of age or less. A sex offender who knowingly possesses any material prohibited by § 1111 of this title is committing an offense against a child for purposes of this section.]

Applicable Code Sections and Case Law:

11 *Del.C.* §§ 231(c) and 777A(b, c, d)

Sexual Abuse of a Child by a Person in a Position of Trust, Authority or Supervision [Intercourse] . . . . . 11.778(1)

SEXUAL ABUSE OF A CHILD BY A PERSON IN A POSITION OF TRUST, AUTHORITY OR SUPERVISION IN THE FIRST DEGREE [INTERCOURSE]

In order to find Defendant guilty of a Sexual Abuse of a Child by a Person in a Position of Trust, Authority, or Supervision in the First Degree, you must find the State has proved the following four (4) elements beyond a reasonable doubt:

(1) Defendant engaged in sexual intercourse with a child;

(2) Defendant stood in a position of trust, authority, or supervision over the child, or was a(n) invitee or designee of person who stood in a position of trust, authority, or supervision over the child;

(3) The child was less than sixteen (16) years of age at the time of the charged offense; and

(4) Defendant acted intentionally.

It is no defense to the charge of Dangerous Crime Against a Child that Defendant did not know the child's age at the time of the crime or reasonably believed the child had reached their sixteenth (16) birthday or was not younger than sixteen (16) at the time of the crime.

"Intentionally" means it was Defendant's conscious objective or purpose to engage in sexual intercourse with the child.

"Sexual intercourse" means any act of physical union of a person's genitalia or anus with another person's mouth, genitalia or anus. Ejaculation is not required. "Sexual intercourse" occurs upon any penetration. Within the meaning of this offense, "sexual intercourse" encompasses the crimes commonly known as rape and sodomy. The term "sexual intercourse" also includes any act of cunnilingus or fellatio, regardless of whether penetration or ejaculation occurs.

"Cunnilingus" means any oral contact with the female genitalia.

"Fellatio" means any oral contact with the male genitalia.

Applicable Code Sections and Case Law:

11 *Del.C.* §§ 231(b) and 761(b, c, g)

Sexual Abuse of a Child by a Person in a Position of Trust, Authority or Supervision [Penetration] . . . . . 11.778(2)

SEXUAL ABUSE OF A CHILD BY A PERSON IN A POSITION OF TRUST, AUTHORITY OR SUPERVISION IN THE FIRST DEGREE [PENETRATION]

In order to find Defendant guilty of a Sexual Offender Unlawful Sexual Conduct Against a Child, you must find the State proved the following four (4) elements beyond a reasonable doubt:

(1) Defendant engaged in sexual penetration with **[**victim**]**;

(2) Defendant stood in a position of trust, authority, or supervision over the child, or was a**(**n**)** invitee or designee of person who stood in a position of trust, authority, or supervision over the child;

(3) The child was less than sixteen (16) years of age at the time of the charged offense; and

(4) Defendant acted intentionally.

It is no defense to the charge of Dangerous Crime Against a Child that Defendant did not know the child's age at the time of the crime or reasonably believed the child had reached their sixteenth (16) birthday or was not younger than sixteen (16) at the time of the crime.

"Intentionally" means it was Defendant's conscious objective or purpose to engage in sexual penetration with the child.

"Sexual penetration" means: (1) Defendant's placement of any object inside the child's anus or vagina; or (2) Defendant's placement of Defendant's genitalia or any sexual device inside the child's mouth.

Applicable Code Sections and Case Law:

11 *Del.C.* §§ 231(b) and 761(i).

Sexual Abuse of a Child by a Person in a Position of Trust, Authority or Supervision [Victim 16 years of age to 18 years of age and Defendant 4 years older than victim] . . . . . 11.778(3)

SEXUAL ABUSE OF A CHILD BY A PERSON IN A POSITION OF TRUST, AUTHORITY OR SUPERVISION IN THE FIRST DEGREE [VICTIM 16 YEARS OF AGE TO 18 YEARS OF AGE AND DEFENDANT 4 YEARS OLDER THAN VICTIM]

In order to find Defendant guilty of a Sexual Abuse of a Child by a Person in a Position of Trust, Authority, or Supervision in the First Degree, you must find the State has proved the following five (5) elements beyond a reasonable doubt:

(1) Defendant engaged in sexual intercourse or penetration with a child;

(2) Defendant stood in a position of trust, authority, or supervision over the child, or was a(n) invitee or designee of person who stood in a position of trust, authority, or supervision over the child;

(3) The child was at least sixteen (16) years of age but not yet eighteen (18) years of age at the time of the charged offense

(4) Defendant was at least four (4) years older than the child; and

(5) Defendant acted intentionally.

It is no defense to the charge of Dangerous Crime Against a Child that Defendant did not know the child's age at the time of the crime or reasonably

believed the child had reached their eighteenth (18) birthday or was not younger than eighteen (18) at the time of the crime.

"Intentionally" means it was Defendant's conscious objective or purpose to engage in sexual intercourse or penetration with the child.

"Sexual intercourse" means any act of physical union of a person's genitalia or anus with another person's mouth, genitalia or anus. Ejaculation is not required. "Sexual intercourse" occurs upon any penetration. Within the meaning of this offense, "sexual intercourse" encompasses the crimes commonly known as rape and sodomy. The term "sexual intercourse" also includes any act of cunnilingus or fellatio, regardless of whether penetration or ejaculation occurs.

"Cunnilingus" means any oral contact with the female genitalia.

"Fellatio" means any oral contact with the male genitalia.

"Sexual penetration" means: (1) Defendant's placement of any object inside the child's anus or vagina; or (2) Defendant's placement of Defendant's genitalia or any sexual device inside the child's mouth.

Applicable Code Sections and Case Law:

11 *Del.C.* §§ 231(b) and 761(b, c, g, i)

Sexual Abuse of a Child by a Person in a Position of Trust, Authority or Supervision [Victim 16 years of age to 18 years of age] . . . . . 11.778(4)

SEXUAL ABUSE OF A CHILD BY A PERSON IN A POSITION OF TRUST, AUTHORITY OR SUPERVISION IN THE FIRST DEGREE [VICTIM 16 YEARS OF AGE TO 18 YEARS OF AGE]

In order to find Defendant guilty of a Sexual Abuse of a Child by a Person in a Position of Trust, Authority, or Supervision in the First Degree, you must find the State has proved the following four (4) elements beyond a reasonable doubt:

(1) Defendant engaged in sexual intercourse or penetration with a child;

(2) Defendant stood in a position of trust, authority, or supervision over the child, or was a**(**n**)** invitee or designee of person who stood in a position of trust, authority, or supervision over the child;

(3) The child was at least sixteen (16) years of age but not yet eighteen (18) years of age at the time of the charged offense; and

(4) Defendant acted intentionally.

It is no defense to the charge of Dangerous Crime Against a Child that Defendant did not know the child's age at the time of the crime or reasonably believed the child had reached their eighteenth (18) birthday or was not younger than eighteen (18) at the time of the crime.

"Intentionally" means it was Defendant's conscious objective or purpose to engage in sexual intercourse or penetration with the child.

"Sexual intercourse" means any act of physical union of a person's genitalia or anus with another person's mouth, genitalia or anus. Ejaculation is not required. "Sexual intercourse" occurs upon any penetration. Within the meaning of this offense, "sexual intercourse" encompasses the crimes commonly known as rape and sodomy. The term "sexual intercourse" also includes any act of cunnilingus or fellatio, regardless of whether penetration or ejaculation occurs.

"Cunnilingus" means any oral contact with the female genitalia.

"Fellatio" means any oral contact with the male genitalia.

"Sexual penetration" means: (1) Defendant's placement of any object inside the child's anus or vagina; or (2) Defendant's placement of Defendant's genitalia or any sexual device inside the child's mouth.

Applicable Code Sections and Case Law:

11 *Del.C.* §§ 231(b) and 761(b, c, g, i)

Sexual Abuse of a Child by a Person in a Position of Trust, Authority or Supervision [Sexual Extortion] . . . . . 11.778(5)

SEXUAL ABUSE OF A CHILD BY A PERSON IN A POSITION OF TRUST, AUTHORITY OR SUPERVISION IN THE FIRST DEGREE [SEXUAL EXTORTION]

In order to find Defendant guilty of a Sexual Abuse of a Child by a Person in a Position of Trust, Authority, or Supervision in the First Degree, you must find the State has proved the following four (4) elements beyond a reasonable doubt:

(1) Defendant engaged in an act of sexual extortion against a child;

(2) Defendant stood in a position of trust, authority, or supervision over the child, or was a**(**n**)** invitee or designee of person who stood in a position of trust, authority, or supervision over the child;

(3) The child was less than sixteen (16) years of age at the time of the charged offense; and

(4) Defendant acted intentionally.

It is no defense to the charge of Dangerous Crime Against a Child that Defendant did not know the child's age at the time of the crime or reasonably believed the child had reached their sixteenth (16) birthday or was not younger than sixteen (16) at the time of the crime.

"Intentionally" means it was Defendant's conscious objective or purpose to extort sexual favors from the child.

"Sexual extortion" means Defendant compelled or induced the child to engage in any sexual act involving intercourse, penetration, or sexual contact with another person, by instilling a fear that, if the sexual act was not performed, Defendant or another person would [cause physical injury to anyone/cause damage to property/engage in other conduct constituting a crime/accuse anyone of a crime/ cause criminal charges to be instituted against anyone/expose a secret or publicize an asserted fact, whether true or false, intending to subject anyone to hatred, contempt or ridicule/falsely testify/ provide information/withhold **(**testimony/information**)** with respect to another's **(**legal claim/defense**)**/perform any other act calculated to materially harm another person's **(**health/safety/business/calling/career/financial condition/reputation/personal relationships**)]**.

Applicable Code Sections and Case Law:

11 *Del.C.* §§ 231(b), 251(b) and 774.

Sexual Abuse of a Child by a Person in a Position of Trust, Authority or Supervision [Sexual Contact] . . . . . 11.778A(1)

SEXUAL ABUSE OF A CHILD BY A PERSON IN A POSITION OF TRUST, AUTHORITY OR SUPERVISION IN THE SECOND DEGREE [SEXUAL CONTACT]

In order to find Defendant guilty of a Sexual Abuse of a Child by a Person in a Position of Trust, Authority, or Supervision in the Second Degree, you must find the State has proved the following four (4) elements beyond a reasonable doubt:

(1) Defendant engaged in sexual contact with a child, or caused a child to have sexual contact with another person;

(2) Defendant stood in a position of trust, authority, or supervision over the child, or was a(n) invitee or designee of person who stood in a position of trust, authority, or supervision over the child;

(3) The child was less than sixteen (16) years of age at the time; and

(4) Defendant acted intentionally.

It is no defense to the charge of Dangerous Crime Against a Child that Defendant did not know the child's age at the time of the crime or reasonably believed the child had reached their sixteenth (16) birthday or was not younger than sixteen (16) at the time of the crime.

"Intentionally" means it was Defendant's conscious objective or purpose to engage in sexual intercourse with the child.

"Sexual contact" means intentional touching, causing touching, or allowing touching of another's anus, breast, buttocks, or genitalia under circumstances, as viewed by a reasonable person, is intended to be sexual in nature. Sexual contact includes touching when covered by clothing. .

Applicable Code Sections and Case Law:

11 *Del.C.* §§ 231(b) and 761(f).

SEXUAL ABUSE OF A CHILD BY A PERSON IN A POSITION OF TRUST, AUTHORITY OR SUPERVISION IN THE SECOND DEGREE [INTENTIONAL EXPOSURE - MALE]

In order to find Defendant guilty of a Sexual Abuse of a Child by a Person in a Position of Trust, Authority, or Supervision in the Second Degree, you must find the State has proved the following six (6) elements beyond a reasonable doubt:

(1) Defendant, a male, exposed his genitals or buttocks to a child;

(2) Defendant knew the conduct was likely to cause annoyance, affront, offense, or alarm to the child**;**

(3) Defendant was at least four (4) years older than the child;

(4) The child was less than sixteen (16) years of age at the time;

(5) Defendant stood in a position of trust, authority, or supervision over the child, or was a**(**n**)** invitee or designee of person who stood in a position of trust, authority, or supervision over the child; and

(6) Defendant acted intentionally.

It is no defense to the charge of Dangerous Crime Against a Child that Defendant did not know the child's age at the time of the crime or reasonably

believed the child had reached their sixteenth (16) birthday or was not younger than sixteen (16) at the time of the crime.

"Intentionally" means it was Defendant's conscious objective or purpose to expose himself to the child.

Applicable Code Sections and Case Law:

11 *Del.C.* §§ 231(b).

SEXUAL ABUSE OF A CHILD BY A PERSON IN A POSITION OF TRUST, AUTHORITY OR SUPERVISION IN THE SECOND DEGREE [INTENTIONAL EXPOSURE - FEMALE]

In order to find Defendant guilty of a Sexual Abuse of a Child by a Person in a Position of Trust, Authority, or Supervision in the Second Degree, you must find the State has proved the following six (6) elements beyond a reasonable doubt:

(1) Defendant, a female, exposed her genitals, breast, or buttocks to a child;

(2) Defendant knew the conduct was likely to cause annoyance, affront, offense, or alarm to the child**;**

(3) Defendant was at least four (4) years of older than the child;

(4) The child was less than sixteen (16) years of age at the time of the charged offense;

(5) Defendant stood in a position of trust, authority, or supervision over the child, or was a**(**n**)** invitee or designee of person who stood in a position of trust, authority, or supervision over the child; and

(6) Defendant acted intentionally.

It is no defense to the charge of Dangerous Crime Against a Child that Defendant did not know the child's age at the time of the crime or reasonably

believed the child had reached their sixteenth (16) birthday or was not younger than sixteen (16) at the time of the crime.

"Intentionally" means it was Defendant's conscious objective or purpose to expose herself to the child.

Applicable Code Sections and Case Law:

11 *Del.C.* §§ 231(b).

SEXUAL ABUSE OF A CHILD BY A PERSON IN A POSITION OF TRUST, AUTHORITY OR SUPERVISION IN THE SECOND DEGREE [SOLICITATION]

In order to find Defendant guilty of a Sexual Abuse of a Child by a Person in a Position of Trust, Authority, or Supervision in the Second Degree, you must find the State has proved the following six (6) elements beyond a reasonable doubt:

(1) Defendant suggested, requested, commanded, or otherwise attempted to induce a child to have sexual contact, intercourse, or penetration with Defendant or another person;

(2) Defendant knew such conduct would likely cause annoyance, affront, offense, or alarm to the child;

(3) Defendant was at least four (4) years of older than the child**;**

(4**)** The child had not reached their sixteenth (16) birthday;

(5) Defendant stood in a position of trust, authority, or supervision over the child, or was a**(**n**)** invitee or designee of person who stood in a position of trust, authority, or supervision over the child; and

(6) Defendant acted knowingly.

It is no defense to the charge of Dangerous Crime Against a Child that Defendant did not know the child's age at the time of the crime or reasonably believed the child had reached their sixteenth (16) birthday or was not younger than sixteen (16) at the time of the crime.

"Knowingly" means Defendant was aware Defendant suggested, requested, commanded, or otherwise attempted to induce a child to have sexual contact, intercourse, or penetration with Defendant or another person.

"Sexual intercourse" means any act of physical union of a person's genitalia or anus with another person's mouth, genitalia or anus. Ejaculation is not required. "Sexual intercourse" occurs upon any penetration. Within the meaning of this offense, "sexual intercourse" encompasses the crimes commonly known as rape and sodomy. The term "sexual intercourse" also includes any act of cunnilingus or fellatio, regardless of whether penetration or ejaculation occurs.

"Cunnilingus" means any oral contact with the female genitalia.

"Fellatio" means any oral contact with the male genitalia.

"Sexual penetration" means: (1) Defendant's placement of any object inside the child's anus or vagina; or (2) Defendant's placement of Defendant's genitalia or any sexual device inside the child's mouth.

"Sexual contact" means intentional touching**,** causing touching, allowing touching of another's anus, breast, buttocks, or genitalia under circumstances, as viewed by a reasonable person, is intended to be sexual in nature. Sexual contact includes touching when covered by clothing. .

Applicable Code Sections and Case Law:

11 *Del.C.* §§ 231(c) and 761(b, c, f, g, i).

Female Genital Mutilation . . . . . 11.780(a)(1)

FEMALE GENITAL MUTILATION

In order to find Defendant guilty of Female Genital Mutilation, you must find the State has proved the following three (3) elements beyond a reasonable doubt:

(1) Defendant circumcised, excised, or infibulated**,** in whole or in part of the labia majora, labia minora, or clitoris of a female;

(2) Defendant acted knowingly.

It is no defense the procedure was required as a matter of custom, ritual or standard practice or that the female consented to the procedure.

"Knowingly" means Defendant was aware Defendant was committing the mutilation.

Applicable Code Sections and Case Law:

11 *Del. C.* § 231(c).

Female Genital Mutilation . . . . . 11.780(a)(2)

FEMALE GENITAL MUTILATION

In order to find Defendant guilty of Female Genital Mutilation, you must find the State has proved the following three (3) elements beyond a reasonable doubt:

(1) Defendant allowed the circumcision, excision, or infibulation, in whole or in part of the labia majora, labia minora, or clitoris of a female;

(2) Defendant was the female's parent, guardian, or person legally responsible for or charged with the care or custody of the female; and

(3) The female was less than 18 years of age at the time of the charged offense.

It is no defense the procedure was required as a matter of custom, ritual or standard practice or that the female consented to the procedure.

It is no defense to the charge of Female Genital Mutilation that Defendant did not know the female's age at the time of the mutilation or reasonably believed the female had reached her eighteenth (18) birthday or was not younger than eighteen (18) at the time of the crime.

"Knowingly" means Defendant was aware Defendant was allowing the mutilation.

Applicable Code Sections and Case Law:

11 *Del. C.* § 251(b).

Unlawful Imprisonment in the Second Degree 11.781

UNLAWFUL IMPRISONMENT IN THE SECOND DEGREE

In order to find Defendant guilty of Unlawful Imprisonment in the Second Degree, you must find the State has proved the following three (3) elements beyond a reasonable doubt:

(1) Defendant restrained a person;

(2) Defendant acted knowingly; and

(3) Defendant acted unlawfully.

"Unlawfully" means contrary to law or not permitted by law.

"Knowingly" means Defendant was aware Defendant was restraining a person.

"Restrain" means Defendant intentionally restricted a person's movements, or substantially interfered with the person's liberty by moving the person from one place to another, or by confining the person in a place, without the person's consent. The person was moved or confined without consent if the movement or confinement was accomplished by physical force, intimidation or deception.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 222(28), 231(c), 786(c); *Walls v. State*, 560 A.2d 1038, 1052, *cert. denied*, 493 U.S. 967 (1989) (holding the restraint must be imposed for an unlawful purpose); *Weber v. State*, 547 A.2d 948, 959 (Del. 1988) (holding the movement and/or restraint is independent of, and not incidental to, the underlying crime).

Unlawful Imprisonment in the First Degree 11.782

UNLAWFUL IMPRISONMENT IN THE FIRST DEGREE

In order to find Defendant guilty of Unlawful Imprisonment in the First Degree, you must find the State has proved the following four (4) elements beyond a reasonable doubt:

(1) Defendant restrained a person;

(2) Restraint occurred under circumstances that exposed the person to the risk of serious physical injury;

(3) Defendant acted knowingly; and

(4) Defendant acted unlawfully.

"Serious physical injury" means any physical injury which creates a substantial risk of death, or which causes serious and prolonged disfigurement, prolonged impairment of health, or prolonged loss or impairment of the function of any bodily organ.

“Unlawfully” means contrary to law or not permitted by law.

“Knowingly” means Defendant was aware Defendant was restraining the person. In addition, Defendant was aware of the circumstances that exposed the person to the risk of serious physical injury.

"Restrain" means Defendant intentionally restricted the person's movements, or substantially interfered with the person's liberty by moving the person from one place to another, or by confining the person in a place, without the person's consent. The person was moved or confined "without consent" if the movement or confinement was accomplished by physical force, intimidation or deception.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 222(25), 231(c) and 786(c); *Walls v. State*, 560 A.2d 1038, 1052, *cert. denied*, 493 U.S. 967 (1989) (holding the restraint must be imposed for an unlawful purpose); *Weber v. State*, 547 A.2d 948, 959 (Del. 1988) (holding the movement and/or restraint is independent of, and not incidental to, the underlying crime).

Kidnapping in the Second Degree . . . . . .11.783(1)

KIDNAPPING IN THE SECOND DEGREE

In order to find Defendant guilty of Kidnapping in the Second Degree, you must find the State has proved the following three (3) elements beyond a reasonable doubt:

(1) Defendant restrained a person for ransom or reward;

(2) Defendant acted unlawfully; and

(3) Defendant voluntarily released the person alive, unharmed and in a safe place prior to trial.

“Unlawfully” means contrary to law or not permitted by law.

"Restrain" means Defendant intentionally restricted the person’s movements, or substantially interfered with the person’s liberty by moving the person from one place to another, or by confining the person in a place, without the person’s consent. The person was moved or confined "without consent" if the movement or confinement was accomplished by physical force, intimidation or deception. In addition to its ordinary meaning, "harm" to a kidnap victim means rape, unlawful sexual intercourse, unlawful sexual penetration or unlawful sexual contact, even if not accompanied by physical violence.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 251(b) and 786(a, b); *Walls v. State*, 560 A.2d 1038, 1052, *cert. denied*, 493 U.S. 967 (1989) (holding the restraint must be imposed for an unlawful purpose); *Weber v. State*, 547 A.2d 948, 959 (Del. 1988) (holding the movement and/or restraint is independent of, and not incidental to, the underlying crime).

Kidnapping in the Second Degree . . . . . .11.783(2)

KIDNAPPING IN THE SECOND DEGREE

In order to find Defendant guilty of Kidnapping in the Second Degree, you must find the State has proved the following five (5) elements beyond a reasonable doubt:

(1) Defendant restrained a person;

(2) Restraint of the person was independent of and not incidental to another crime;

(3) Defendant restrained the person as a hostage or shield;

(4) Defendant acted unlawfully; and

(5) Defendant voluntarily released the person alive, unharmed and in a safe place prior to trial.

"Unlawfully" means contrary to law or not permitted by law.

"Restrain" means Defendant intentionally restricted the person's movements, or substantially interfered with the person's liberty by moving the person from one place to another, or by confining the person in a place, without the person's consent. The person was moved or confined "without consent" if the movement or confinement was accomplished by physical force, intimidation or deception.

Restraint is "independent of and not incidental to" another crime when it involves significantly more interference with the person's liberty than what is normally incidental to the other crime.

In addition to its ordinary meaning, "harm" to a kidnap victim means rape, unlawful sexual intercourse, unlawful sexual penetration or unlawful sexual contact, even if not accompanied by physical violence.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 251(b) and 786(a, b); *Walls v. State*, 560 A.2d 1038, 1052, *cert. denied*, 493 U.S. 967 (1989) (holding the restraint must be imposed for an unlawful purpose); *Weber v. State*, 547 A.2d 948, 959 (Del. 1988) (holding the movement and/or restraint is independent of, and not incidental to, the underlying crime).

Kidnapping in the Second Degree . . . . . .11.783(3)

KIDNAPPING IN THE SECOND DEGREE

In order to find Defendant guilty of Kidnapping in the Second Degree, you must find the State has proved the following five (5) elements beyond a reasonable doubt:

(1) Defendant restrained a person;

(2) Restraint of the person was independent of and not incidental to another crime;

(3) Defendant restrained the person to facilitate the commission of a felony, or during flight from the commission of a felony;

(4) Defendant acted unlawfully; and

(5) Defendant voluntarily released the person alive, unharmed and in a safe place prior to trial.

"Unlawfully" means contrary to law or not permitted by law. "Restrain" means Defendant intentionally restricted the person's movements, or substantially interfered with the person's liberty by moving the person from one place to another, or by confining the person in a place, without the person's consent. The person was moved or confined "without consent" if the movement or confinement was accomplished by physical force, intimidation or deception.

Restraint is "independent of and not incidental to" another crime when it involves significantly more interference with the person's liberty than what is normally incidental to the other crime.

In addition to its ordinary meaning, "harm" to a kidnap victim means rape, unlawful sexual intercourse, unlawful sexual penetration or unlawful sexual contact, even if not accompanied by physical violence.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 251(b) and 786(a, b); *Walls v. State*, 560 A.2d 1038, 1052, *cert. denied*, 493 U.S. 967 (1989) (holding the restraint must be imposed for an unlawful purpose); *Weber v. State*, 547 A.2d 948, 959 (Del. 1988) (holding the movement and/or restraint is independent of, and not incidental to, the underlying crime).

Kidnapping in the Second Degree . . . . . .11.783(4)

KIDNAPPING IN THE SECOND DEGREE

In order to find Defendant guilty of Kidnapping in the Second Degree, you must find the State has proved the following four (4) elements beyond a reasonable doubt:

(1) Defendant restrained a person;

(2) Defendant restrained the person to inflict physical injury, violate, or sexually abuse the person;

(3) Defendant acted unlawfully; and

(4) Defendant voluntarily released the person alive, unharmed and in a safe place prior to trial.

"Unlawfully" means contrary to law or not permitted by law.

"Physical injury" means any impairment of physical condition or substantial pain.

"Restrain" means Defendant intentionally restricted the person's movements, or substantially interfered with the person's liberty by moving the person from one place to another, or by confining the person in a place, without the person's consent. The person was moved or confined "without consent" if the

movement or confinement was accomplished by physical force, intimidation or deception.

Restraint is "independent of and not incidental to" another crime when it involves significantly more interference with the person's liberty than what is normally incidental to the other crime.

In addition to its ordinary meaning, "harm" to a kidnap victim means rape, unlawful sexual intercourse, unlawful sexual penetration or unlawful sexual contact, even if not accompanied by physical violence.

{Comment: This instruction assumes an underlying charge, such as rape, where the purpose of the restraint is to violate or abuse the victim sexually or physically.}

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 222(24), 251(b) and 786(a, b); *Walls v. State*, 560 A.2d 1038, 1052, *cert. denied*, 493 U.S. 967 (1989) (holding the restraint must be imposed for an unlawful purpose); *Weber v. State*, 547 A.2d 948, 959 (Del. 1988) (holding the movement and/or restraint is independent of, and not incidental to, the underlying crime).

Kidnapping in the Second Degree . . . . . .11.783(5)

KIDNAPPING IN THE SECOND DEGREE

In order to find Defendant guilty of Kidnapping in the Second Degree, you must find the State has proved the following five (5) elements beyond a reasonable doubt:

(1) Defendant restrained a person;

(2) Restraint of the person was independent of and not incidental to another crime;

(3) Defendant restrained the person for the purpose of terrorizing them or a third person;

(4) Defendant acted unlawfully;

(5) Defendant voluntarily released the person alive, unharmed and in a safe place prior to trial.

“Unlawfully” means contrary to law or not permitted by law.

"Restrain" means Defendant intentionally restricted the person’s movements, or substantially interfered with the person’s liberty by moving the person from one place to another, or by confining the person in a place, without the person’s consent. The person was moved or confined "without consent" if the movement or confinement was accomplished by physical force, intimidation or

deception. Restraint is "independent of and not incidental to" another crime when it involves significantly more interference with the person's liberty than what is normally incidental to the other crime.

In addition to its ordinary meaning, "harm" to a kidnap victim means rape, unlawful sexual intercourse, unlawful sexual penetration or unlawful sexual contact, even if not accompanied by physical violence.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 251(b) and 786(a, b); *Walls v. State*, 560 A.2d 1038, 1052, *cert. denied*, 493 U.S. 967 (1989) (holding the restraint must be imposed for an unlawful purpose); *Weber v. State*, 547 A.2d 948, 959 (Del. 1988) (holding the movement and/or restraint is independent of, and not incidental to, the underlying crime).

Kidnapping in the Second Degree . . . . . .11.783(6)

KIDNAPPING IN THE SECOND DEGREE

In order to find Defendant guilty of Kidnapping in the Second Degree, you must find the State has proved the following five (5) elements beyond a reasonable doubt:

(1) Defendant restrained a person, who was less than eighteen (18) years of age at the time of the charged offense;

(2) Defendant restrained the person for the purpose of removal of a child from custody of its parent, guardian, or lawful custodian;

(3) Restraint of the person was independent of and not incidental to removal of a child from custody of the parent**,** guardian, or lawful custodian;

(4) Defendant acted unlawfully; and

(5) Defendant voluntarily released the person alive, unharmed and in a safe place prior to trial.

"Unlawfully" means contrary to law or not permitted by law.

"Restrain" means Defendant intentionally restricted the person's movements, or substantially interfered with the person's liberty by moving the person from one place to another, or by confining the person in a place, without the person's consent. The person was moved or confined "without consent" if the

movement or confinement was accomplished by physical force, intimidation or deception. Restraint is "independent of and not incidental to" when it involves significantly more interference with the person's liberty than what is normally incidental to removal of a child from custody.

In addition to its ordinary meaning, "harm" to a kidnap victim means rape, unlawful sexual intercourse, unlawful sexual penetration or unlawful sexual contact, even if not accompanied by physical violence.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 251(b) and 786(a, b); *Walls v. State*, 560 A.2d 1038, 1052, *cert. denied*, 493 U.S. 967 (1989) (holding the restraint must be imposed for an unlawful purpose); *Weber v. State*, 547 A.2d 948, 959 (Del. 1988) (holding the movement and/or restraint is independent of, and not incidental to, the underlying crime).

Kidnapping in the First Degree . . . . . .11.783A(1)

KIDNAPPING IN THE FIRST DEGREE

In order to find Defendant guilty of Kidnapping in the First Degree, you must find the State has proved the following four (4) elements beyond a reasonable doubt:

(1) Defendant restrained a person;

(2) Defendant restrained the person for ransom or reward;

(3) Defendant acted unlawfully; and

(4) Defendant did not voluntarily release the person alive, unharmed and in a safe place prior to trial.

"Unlawfully" means contrary to law or not permitted by law.

"Restrain" means Defendant intentionally restricted the person's movements, or substantially interfered with the person's liberty by moving the person from one place to another, or by confining the person in a place, without the person's consent. The person was moved or confined "without consent" if the movement or confinement was accomplished by physical force, intimidation or deception. In addition to its ordinary meaning, "harm" to a kidnap victim means rape, unlawful sexual intercourse, unlawful sexual penetration or unlawful sexual contact, even if not accompanied by physical violence.

{Comment: A kidnapping can occur without an underlying charge, for example, a kidnapping for ransom.}

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 251(b) and 786(a, c); *Walls v. State*, 560 A.2d 1038, 1052, *cert. denied*, 493 U.S. 967 (1989) (holding the restraint must be imposed for an unlawful purpose); *Weber v. State*, 547 A.2d 948, 959 (Del. 1988) (holding the movement and/or restraint is independent of, and not incidental to, the underlying crime).

Kidnapping in the First Degree . . . . . .11.783A(2)

KIDNAPPING IN THE FIRST DEGREE

In order to find Defendant guilty of Kidnapping in the First Degree, you must find the State has proved the following five (5) elements beyond a reasonable doubt:

(1) Defendant restrained a person;

(2) Defendant restrained the person to use the person as a shield or hostage;

(3) Restraint of the person was independent of and not incidental to another crime;

(4) Defendant acted unlawfully; and

(5) Defendant did not voluntarily release the person alive, unharmed and in a safe place prior to trial.

"Unlawfully" means contrary to law or not permitted by law.

"Restrain" means Defendant intentionally restricted the person's movements, or substantially interfered with the person's liberty by moving the person from one place to another, or by confining the person in a place, without the person's consent. The person was moved or confined "without consent" if the movement or confinement was accomplished by physical force, intimidation or deception.

Restraint is "independent of and not incidental to" another crime when it involves significantly more interference with the person's liberty than what is normally incidental to the other crime.

In addition to its ordinary meaning, "harm" to a kidnap victim means rape, unlawful sexual intercourse, unlawful sexual penetration or unlawful sexual contact, even if not accompanied by physical violence.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 251(b) and 786(a, c); *Walls v. State*, 560 A.2d 1038, 1052, *cert. denied*, 493 U.S. 967 (1989) (holding the restraint must be imposed for an unlawful purpose); *Weber v. State*, 547 A.2d 948, 959 (Del. 1988) (holding the movement and/or restraint is independent of, and not incidental to, the underlying crime).

Kidnapping in the First Degree . . . . . .11.783A(3)

KIDNAPPING IN THE FIRST DEGREE

In order to find Defendant guilty of Kidnapping in the First Degree, you must find the State has proved the following five (5) elements beyond a reasonable doubt:

(1) Defendant restrained a person;

(2) Restraint of the person was independent of and not incidental to another crime;

(3) Defendant restrained the person to facilitate the commission of a felony or flight from the commission of a felony;

(4) Defendant acted unlawfully; and

(5) Defendant did not voluntarily release the person alive, unharmed and in a safe place prior to trial.

“Unlawfully” means contrary to law or not permitted by law.

"Restrain" means Defendant intentionally restricted the person’s movements, or substantially interfered with the person’s liberty by moving the person from one place to another, or by confining the person in a place, without the person’s consent. The person was moved or confined "without consent" if the movement or confinement was accomplished by physical force, intimidation or

deception. Restraint is "independent of and not incidental to" another crime when it involves significantly more interference with a person's liberty than what is normally incidental to the other crime/.

In addition to its ordinary meaning, "harm" to a kidnap victim means rape, unlawful sexual intercourse, unlawful sexual penetration or unlawful sexual contact, even if not accompanied by physical violence.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 251(b) and 786(a, c); *Walls v. State*, 560 A.2d 1038, 1052, *cert. denied*, 493 U.S. 967 (1989) (holding the restraint must be imposed for an unlawful purpose); *Weber v. State*, 547 A.2d 948, 959 (Del. 1988) (holding the movement and/or restraint is independent of, and not incidental to, the underlying crime).

Kidnapping in the First Degree . . . . . .11.783A(4)

KIDNAPPING IN THE FIRST DEGREE

In order to find Defendant guilty of Kidnapping in the First Degree, you must find the State has proved the following five (5) elements beyond a reasonable doubt:

(1) Defendant restrained a person;

(2) Restraint of the person was independent of and not incidental to another crime;

(3) Defendant restrained the person to inflict physical injury, sexually violate, or abuse the person;

(4) Defendant acted unlawfully; and

(5) Defendant did not voluntarily release the person alive, unharmed and in a safe place prior to trial.

“Unlawfully” means contrary to law or not permitted by law.

"Restrain" means Defendant intentionally restricted the person’s movements, or substantially interfered with the person’s liberty by moving the person from one place to another, or by confining the person in a place, without the person’s consent. The person was moved or confined "without consent" if the

movement or confinement was accomplished by physical force, intimidation or deception.

Restraint is "independent of and not incidental to" another crime when it involves significantly more interference with the person's liberty than what is normally incidental to the other crime.

In addition to its ordinary meaning, "harm" to a kidnap victim means rape, unlawful sexual intercourse, unlawful sexual penetration or unlawful sexual contact, even if not accompanied by physical violence.

{Comment: This instruction assumes an underlying charge such as rape where the purpose of the restraint is to violate or abuse the victim sexually or physically.}

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 251(b) and 786(a, c); *Walls v. State*, 560 A.2d 1038, 1052, *cert. denied*, 493 U.S. 967 (1989) (holding the restraint must be imposed for an unlawful purpose); *Weber v. State*, 547 A.2d 948, 959 (Del. 1988) (holding the movement and/or restraint is independent of, and not incidental to, the underlying crime).

Kidnapping in the First Degree . . . . . .11.783A(5)

KIDNAPPING IN THE FIRST DEGREE

In order to find Defendant guilty of Kidnapping in the First Degree, you must find the State has proved the following five (5) elements beyond a reasonable doubt:

(1) Defendant restrained a person;

(2) Defendant restrained the person to terrorize them or a third person;

(3) Restraint of the person was independent of and not incidental to another crime;

(4) Defendant acted unlawfully; and

(5) Defendant did not voluntarily release the person alive, unharmed and in a safe place prior to trial.

“Unlawfully” means contrary to law or not permitted by law.

"Restrain" means Defendant intentionally restricted the person’s movements, or substantially interfered with the person’s liberty by moving the person from one place to another, or by confining the person in a place, without the person’s consent. The person was moved or confined "without consent" if the movement or confinement was accomplished by physical force, intimidation or deception.

Restraint is "independent of and not incidental to" another crime when it involves significantly more interference with the person's liberty than what is normally incidental to the other crime.

In addition to its ordinary meaning, "harm" to a kidnap victim means rape, unlawful sexual intercourse, unlawful sexual penetration or unlawful sexual contact, even if not accompanied by physical violence.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 251(b) and 786(a, c); *Walls v. State*, 560 A.2d 1038, 1052, *cert. denied*, 493 U.S. 967 (1989) (holding the restraint must be imposed for an unlawful purpose); *Weber v. State*, 547 A.2d 948, 959 (Del. 1988) (holding the movement and/or restraint is independent of, and not incidental to, the underlying crime).

Kidnapping in the First Degree . . . . . .11.783A(6)

KIDNAPPING IN THE FIRST DEGREE

In order to find Defendant guilty of Kidnapping in the First Degree, you must find the State has proved the following five (5) elements beyond a reasonable doubt:

(1) Defendant restrained a person, who was less than eighteen (18) years of age at the time;

(2) Defendant restrained the person for the purpose of removal of a child from custody of its parent, guardian, or lawful custodian;

(3) Restraint of the person was independent of and not incidental to removal of a child from custody;

(4) Defendant acted unlawfully; and

(5) Defendant did not voluntarily release the person alive, unharmed and in a safe place prior to trial.

"Unlawfully" means contrary to law or not permitted by law.

"Restrain" means Defendant intentionally restricted the person's movements, or substantially interfered with the person's liberty by moving the person from one place to another, or by confining the person in a place, without the person's consent. The person was moved or confined "without consent" if the

movement or confinement was accomplished by physical force, intimidation or deception. Restraint is "independent of and not incidental to" when it involves significantly more interference with the person's liberty than what is normally incidental to removal of a child from custody.

In addition to its ordinary meaning, "harm" to a kidnap victim means rape, unlawful sexual intercourse, unlawful sexual penetration or unlawful sexual contact, even if not accompanied by physical violence.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 251(b) and 786(a, c); *Walls v. State*, 560 A.2d 1038, 1052, *cert. denied*, 493 U.S. 967 (1989) (holding the restraint must be imposed for an unlawful purpose); *Weber v. State*, 547 A.2d 948, 959 (Del. 1988) (holding the movement and/or restraint is independent of, and not incidental to, the underlying crime).

Unlawful Imprisonment/Kidnapping

[*Affirmative Defense Relative of Victim****]*** 11.784

UNLAWFUL IMPRISONMENT/KIDNAPPING
[AFFIRMATIVE DEFENSE - RELATIVE OF VICTIM]

In order to establish this affirmative defense, Defendant must prove each of the following two (2) elements by a preponderance of the evidence:

(1) Defendant is the person's relative; and

(2) Defendant's sole purpose was to take custody of the person.

In context of this affirmative defense, "relative" means a parent, ancestor, brother, sister, uncle or aunt.

Proof by a preponderance of the evidence means proof something is more likely than not. It means certain evidence, when compared to the evidence opposed to it, has the more convincing force and makes you believe something is more likely true than not. Preponderance of the evidence does not depend on the number of witnesses. If the evidence supporting the defense is evenly balanced, then Defendant has not proved the defense by a preponderance of the evidence, and you must find against Defendant on that point. The state has no burden to present any evidence on this matter.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 302, 304, 786(b); *United States ex. rel. Crosby v. Delaware*, 346 F.Supp. 213, 216 (D. Del. 1972) (holding an affirmative defense may lay the burden of proof on Defendant); *Tyre v. State*, 412 A.2d 326 (Del. 1980) (defining kidnapping).

INTERFERENCE WITH CUSTODY [RELATIVE]

In order to find Defendant guilty of Interference With Custody, you must find the State has proved the following five (5) elements beyond a reasonable doubt:

(1) Defendant was a relative of the person, who was less than 16 years of age at the time;

(2) Defendant took or enticed the chile from the child's lawful custodian;

(3) Defendant intended to hold the child permanently or for a prolonged period;

(4) Defendant knew Defendant had no legal right to take or entice the child from the child's lawful custodian; and

(5) Defendant acted intentionally.

"Intentionally" means it was Defendant's conscious objective or purpose to take or entice the child from its lawful custodian and hold the child permanently or for a prolonged period.

"Knowingly" means Defendant was aware Defendant had no legal right to lawful custody of the child .

"Relative" means a parent, ancestor, brother, sister, uncle or aunt.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 231(a, b) and 786(b); *State v. Todd*, 509 A.2d 1112 (Del. Super. 1986).

Interference with Custody [Incompetent Person] . . . . . .11.785(2)

INTERFERENCE WITH CUSTODY [INCOMPETENT PERSON]

In order to find Defendant guilty of Interference With Custody, you must find the State has proved the following two (2) elements beyond a reasonable doubt:

(1) Defendant took or enticed an incompetent person from the lawful custody of another person or institution; and

(2) Defendant acted knowingly.

"Knowingly" means Defendant was aware Defendant had no legal right to lawful custody of the incompetent person.

Applicable Code Sections and Case Law:

11 *Del.C.* § 231(c).

Involuntary Servitude . . . . . 11.787(b)(1)a

INVOLUNTARY SERVITUDE

In order to find Defendant guilty of Involuntary Servitude, you must find the State has proved the following two (2) elements beyond a reasonable doubt:

(1) Defendant subjected or attempted to subject a person to forced labor or servitude by causing or threatening to cause physical harm; and

(2) Defendant acted knowingly.

"Knowingly" means Defendant was aware of the nature of the conduct and it was practically certain the conduct would cause the person to agree to involuntary servitude.

Applicable Code Sections and Case Law:

11 *Del.C.* § 231(c).

Involuntary Servitude . . . . . 11.787(b)(1)b

INVOLUNTARY SERVITUDE

In order to find Defendant guilty of Involuntary Servitude, you must find the State has proved the following two (2) elements beyond a reasonable doubt:

(1) Defendant subjected or attempted to subject a person to forced labor or servitude by physically restraining or threatening to physical restrain the person; and

(2) Defendant acted knowingly.

"Knowingly" means Defendant was aware of the nature of the conduct and it was practically certain the conduct would cause the person to agree to involuntary servitude.

Applicable Code Sections and Case Law:

11 *Del.C.* § 231(c).

Involuntary Servitude . . . . . 11.787(b)(1)c

INVOLUNTARY SERVITUDE

In order to find Defendant guilty of Involuntary Servitude, you must find the State has proved the following two (2) elements beyond a reasonable doubt:

(1) Defendant subjected or attempted to subject a person to forced labor or servitude by abusing or threatening to abuse the law or legal process; and

(2) Defendant acted knowingly.

"Knowingly" means Defendant was aware of the nature of the conduct and it was practically certain the conduct would cause the person to agree to involuntary servitude.

Applicable Code Sections and Case Law:

11 *Del.C.* § 231(c).

Involuntary Servitude . . . . . 11.787(b)(1)d

INVOLUNTARY SERVITUDE

In order to find Defendant guilty of Involuntary Servitude, you must find the State has proved the following two (2) elements beyond a reasonable doubt:

(1) Defendant subjected or attempted to subject a person to forced labor or servitude by **[**destroying/concealing/removing/confiscating/possessing**]** any **[**actual/purported**] [**passport/other immigration document/other actual government identification document**]** of the person; and

(2) Defendant acted knowingly.

"Knowingly" means Defendant was aware of the nature of the conduct and it was practically certain the conduct would cause the person to agree to involuntary servitude.

Applicable Code Sections and Case Law:

11 *Del.C.* § 231(c).

Involuntary Servitude . . . . . 11.787(b)(1)e

INVOLUNTARY SERVITUDE

In order to find Defendant guilty of Involuntary Servitude, you must find the State has proved the following two (2) elements beyond a reasonable doubt:

(1) Defendant subjected or attempted to subject a person to forced labor or servitude by using blackmail, or by causing or threatening to cause financial harm, or by using financial control over a person; and

(2) Defendant acted knowingly.

"Knowingly" means Defendant was aware of the nature of the conduct and it was practically certain the conduct would cause the person to agree to involuntary servitude.

"Blackmail" is to be given its ordinary meaning and includes, but is not limited to, a threat to expose any secret tending to subject any person to hatred, contempt or ridicule.

Applicable Code Sections and Case Law:

11 *Del.,C.* §§ 231(c) and 787(a)(1).

Sexual Servitude of a Minor . . . . . 11.787(b)(2)a

SEXUAL SERVITUDE OF A MINOR

In order to find Defendant guilty of Sexual Servitude of a Minor, you must find the State has proved the following four (4) elements beyond a reasonable doubt:

(1) Defendant recruited**,** enticed, harbored, transported, provided, or obtained a person by any means;

(2) Defendant knew the person would be engaging in commercial sexual activity, a sexually explicit performance, or production of pornography;

(3) The person was under eighteen years of age at the time of the charged offense; and

(4) Defendant acted knowingly.

"Knowingly" means Defendant was aware of the nature of the conduct and it was practically certain the conduct would cause the person to agree to sexual servitude.

"Commercial sexual activity" means any sex act on account of which anything of value is given, promised to, or received by any person.

"Obtain" means to secure performance of labor or services.

"Sexually explicit performance" means a live public act or show intended to arouse or satisfy the sexual desires, or to appeal to the prurient interest of patrons.

Applicable Code Sections and Case Law:

11 *Del.C.* § 231(c) and 787(a)(2, 6, 8).

SEXUAL SERVITUDE OF A MINOR

In order to find Defendant guilty of Sexual Servitude of a Minor, you must find the State proved the following four (4) elements beyond a reasonable doubt:

(1) Defendant caused a person to engage in commercial sexual activity or a sexually explicit performance;

(2) The person was at least fourteen (14) but not yet eighteen (18) years of age at the time;

(3) Defendant did not use overt force or threat; and

(4) Defendant acted knowingly.

"Knowingly" means Defendant was aware of the nature of the conduct and it was practically certain the conduct would cause the person to agree to sexual servitude.

"Commercial sexual activity" means any sex act on account of which anything of value is given, promised to, or received by any person.

"Sexually explicit performance" means a live public act or show intended to arouse or satisfy the sexual desires or to appeal to the prurient interest of patrons.

Applicable Code Sections and Case Law:

11 *Del.C.* § 231(c) and 787(a)(2, 8).

SEXUAL SERVITUDE OF A MINOR

In order to find Defendant guilty of Sexual Servitude of a minor, you must find the State has proved the following four (4) elements beyond a reasonable doubt:

(1) Defendant caused a child to engage in commercial sexual activity or a sexually explicit performance;

(2) The child was not yet fourteen (14) years of age at the time;

(3) Defendant did not use overt force or threat; and

(4) Defendant acted knowingly.

"Knowingly" means Defendant was aware of the nature of the conduct and it was practically certain the conduct would cause the child to agree to sexual servitude.

"Commercial sexual activity" means any sex act on account of which anything of value is given, promised to, or received by any person.

"Sexually explicit performance" means a live public act or show intended to arouse or satisfy the sexual desires or to appeal to the prurient interest of patrons.

Applicable Code Sections and Case Law:

11 *Del.C.* § 231(c) and 787(a)(2, 8).

Sexual Servitude of Minor . . . . . 11.787(b)(2)b3

SEXUAL SERVITUDE OF A MINOR

In order to find Defendant guilty of Sexual Servitude of a Minor, you must find the State has proved the following four (4) elements beyond a reasonable doubt:

(1) Defendant caused a person to engage in commercial sexual activity or a sexually explicit performance;

(2) The person was not yet eighteen (18) years of age at the time of the charged offense;

(3) Defendant used overt force or threat; and

(4) Defendant acted knowingly.

"Knowingly" means Defendant was aware of the nature of the conduct and it was practically certain the conduct would cause the person to agree to sexual servitude.

"Commercial sexual activity" means any sex act on account of which anything of value is given, promised to, or received by any person.

"Sexually explicit performance" means a live public act or show intended to arouse or satisfy the sexual desires or to appeal to the prurient interest of patrons.

Applicable Code Sections and Case Law:

11 *Del.C.* § 231(c) and 787(a)(2, 8).

Trafficking of Persons for Forced Labor or Services . . . . . 11.787(b)(3)a

TRAFFICKING OF PERSONS FOR FORCED LABOR OR SERVICES

In order to find Defendant guilty of Trafficking of Persons for Forced Labor or Services, you must find the State has proved the following three (3) elements beyond a reasonable doubt:

(1) Defendant recruited, enticed, harbored, transported, provided, or obtained a person by any means;

(2) Defendant knew the person would be subject to forced labor or services; and

(3) Defendant acted intentionally or knowingly.

"Intentionally" means it was Defendant's conscious objective or purpose to cause the trafficking of the person victim for forced labor or services to occur.

"Knowingly" means Defendant was aware of the nature of the conduct and it was practically certain the conduct would cause the person victim to agree to forced labor or services.

"Forced labor or services" means labor, work of economic or financial value, or services, or an ongoing relationship between the person and Defendant in which

the person performs activities under the supervision of or for the benefit of Defendant.

Applicable Code Sections and Case Law:

11 *Del.C.* §§ 231(b, c) and 787(a)(3, 4, 7).

TRAFFICKING OF PERSONS FOR FORCED LABOR OR SERVICES

In order to find Defendant guilty of Trafficking of Persons and Involuntary Servitude, you must find the State has proved the following two (2) elements beyond a reasonable doubt:

(1) Defendant benefitted financially or received anything of value for participating in a venture which caused a person to participate in forced labor or services; and

(2) Defendant acted knowingly.

"Knowingly" means Defendant was aware of the nature of the conduct and it was practically certain the conduct would cause the person to agree to forced labor or services.

"Forced labor or services" means labor, work of economic or financial value, or services, or an ongoing relationship between the person and Defendant in which the person performs activities under the supervision of or for the benefit of Defendant.

Applicable Code Sections and Case Law:

11 *Del.C.* §§ 231(c) and 787(a)(3, 4, 7).

Trafficking of Persons for Use of Body Parts . . . . . 11.787(b)(4)a

TRAFFICKING OF PERSONS FOR USE OF BODY PARTS

In order to find Defendant guilty of Trafficking of Persons for Use of Body Parts, you must find the State has proved the following two (2) elements beyond a reasonable doubt:

(1) Defendant recruited, enticed, harbored, transported, provided, or obtained a person by any means;

(2) Defendant knew the person would have body parts removed for sale; and

(3) Defendant acted intentionally or knowingly.

"Knowingly" means Defendant was aware of the nature of the conduct and it was practically certain the conduct would cause the person to agree to the removal of the body part(s).

Applicable Code Sections and Case Law:

Trafficking of Persons for Use of Body Parts . . . . . 11.787(b)94)b

TRAFFICKING OF PERSONS FOR USE OF BODY PARTS

In order to find Defendant guilty of Trafficking of Persons for Use of Body Parts, you must find the State proved the following two (2) elements beyond a reasonable doubt:

(1) Defendant benefitted financially or received anything of value for participating in a venture which caused a person to have body parts removed for sale; and

(2) Defendant acted knowingly.

"Knowingly" means Defendant was aware of the nature of the conduct and it was practically certain the conduct would cause the person to agree to the removal of the body part(s).

Applicable Code Sections and Case Law:

11 *Del.C.* § 231(c)

Coercion . . . . . .11.791(1)

COERCION

In order to find Defendant guilty of Coercion, you must find the State has proved the following three (3) elements beyond a reasonable doubt:

(1) Defendant compelled or induced a person: to engage in conduct which the person had a legal right to abstain from engaging in; or to abstain from engaging in conduct in which victim had a legal right to engage;

(2) Defendant instilled in the person a fear that if the person did not act according to Defendant's wishes, Defendant or another person would cause physical injury to the person; and

(3) Defendant acted intentionally or knowingly.

"Physical injury" means any impairment of physical condition or substantial pain.

“Intentionally” means it was Defendant’s conscious objective or purpose to engage in the conduct alleged.

“Knowingly” means Defendant was aware Defendant was engaging in the conduct alleged.

Applicable Code Sections and Case Law:

11 *Del. C.* § 222(24), 231(b, c), 251(b) and 786(a).

Coercion . . . . . .11.791(2)

COERCION

In order to find Defendant guilty of Coercion, you must find the State proved the following three (3) elements beyond a reasonable doubt:

(1) Defendant compelled or induced a person: to engage in conduct which the person had a legal right to abstain from engaging in; or to abstain from engaging in conduct in which victim had a legal right to engage;

(2) Defendant instilled in the person a fear that if the person did not act according to Defendant's wishes, Defendant or another person would cause damage to property; and

(3) Defendant acted intentionally or knowingly.

"Intentionally" means it was Defendant's conscious objective or purpose to engage in the conduct alleged.

"Knowingly" means Defendant was aware Defendant was engaging in the conduct alleged.

Applicable Code Sections and Case Law:

11 *Del. C.* § 222(24), 231(b, c), 251(b) and 786(a).

Coercion . . . . . .11.791(3)

COERCION

In order to find Defendant guilty of Coercion, you must find the State proved the following three (3) elements beyond a reasonable doubt:

(1) Defendant compelled or induced a person: to engage in conduct which the person had a legal right to abstain from engaging in; or to abstain from engaging in conduct in which victim had a legal right to engage;

(2) Defendant instilled in the person a fear that if the person did not act according to Defendant's wishes, Defendant or another person would engage in other conduct constituting a crime; and

(3) Defendant acted intentionally or knowingly.

"Intentionally" means it was Defendant's conscious objective or purpose to engage in the conduct alleged.

"Knowingly" means Defendant was aware Defendant was engaging in the conduct alleged.

Applicable Code Sections and Case Law:

11 *Del. C.* § 222(24), 231(b, c), 251(b) and 786(a).

Coercion . . . . . .11.791(4)

COERCION

In order to find Defendant guilty of Coercion, you must find the State proved the following three (3) elements beyond a reasonable doubt:

(1) Defendant compelled or induced a person: to engage in conduct which the person had a legal right to abstain from engaging in; or to abstain from engaging in conduct in which victim had a legal right to engage;

(2) Defendant instilled in the person a fear that if the person did not act according to Defendant's wishes, Defendant or another would accuse the person of a crime or cause criminal charges to be instituted against the person; and

(3) Defendant acted intentionally or knowingly.

"Intentionally" means it was Defendant's conscious objective or purpose to engage in the conduct alleged.

"Knowingly" means Defendant was aware Defendant was engaging in the conduct alleged.

Applicable Code Sections and Case Law:

11 *Del. C.* § 222(24), 231(b, c), 251(b) and 786(a).

Coercion . . . . . .11.791(5)

COERCION

In order to find Defendant guilty of Coercion, you must find the State proved the following three (3) elements beyond a reasonable doubt:

(1) Defendant compelled or induced a person: to engage in conduct which the person had a legal right to abstain from engaging in; or to abstain from engaging in conduct in which victim had a legal right to engage;

(2) Defendant instilled in the person a fear that if the person did not act according to Defendant's wishes, Defendant or another would expose a secret or publicize an asserted fact (whether true or false) tending to subject the person to hatred, contempt or ridicule; and

(3) Defendant acted intentionally or knowingly.

"Intentionally" means it was Defendant's conscious objective or purpose to engage in the conduct alleged.

"Knowingly" means Defendant was aware Defendant was engaging in the conduct alleged.

Applicable Code Sections and Case Law:

11 *Del. C.* § 222(24), 231(b, c), 251(b) and 786(a).

Coercion . . . . . .11.791(6)

COERCION

In order to find Defendant guilty of Coercion, you must find the State proved the following three (3) elements beyond a reasonable doubt:

(1) Defendant compelled or induced a person: to engage in conduct which the person had a legal right to abstain from engaging in; or to abstain from engaging in conduct in which victim had a legal right to engage;

(2) Defendant instilled in the person a fear that if the person did not act according to Defendant's wishes, Defendant or another would testify or provide information, or would withhold testimony or information, with respect to the person or some other person's legal claim or defense; and

(3) Defendant acted intentionally or knowingly.

"Intentionally" means it was Defendant's conscious objective or purpose to engage in the conduct alleged.

"Knowingly" means Defendant was aware Defendant was engaging in the conduct alleged.

Applicable Code Sections and Case Law:

11 *Del. C.* § 222(24), 231(b, c), 251(b) and 786(a).

Coercion . . . . . .11.791(7)

COERCION

In order to find Defendant guilty of Coercion, you must find the State proved the following three (3) elements beyond a reasonable doubt:

(1) Defendant compelled or induced a person: to engage in conduct which the person had a legal right to abstain from engaging in; or to abstain from engaging in conduct in which victim had a legal right to engage;

(2) Defendant instilled in the person a fear that if the person did not act according to Defendant's wishes, Defendant or another would use or abuse Defendant's position as a public servant by performing (or failing to perform) an official duty in such a manner as to affect the person or someone else adversely; and

(3) Defendant acted intentionally or knowingly.

"Intentionally" means it was Defendant's conscious objective or purpose to engage in the conduct alleged.

"Knowingly" means Defendant was aware Defendant was engaging in the conduct alleged.

Applicable Code Sections and Case Law:

11 *Del. C.* § 222(24), 231(b, c), 251(b) and 786(a).

Coercion . . . . . .11.791(8)

COERCION

In order to find Defendant guilty of Coercion, you must find the State proved the following three (3) elements beyond a reasonable doubt:

(1) Defendant compelled or induced a person: to engage in conduct which the person had a legal right to abstain from engaging in; or to abstain from engaging in conduct in which victim had a legal right to engage;

(2) Defendant instilled in the person a fear that if the person did not act according to Defendant's wishes, Defendant or another would act in a manner calculated to materially harm the person's health, safety, business, calling, career, financial condition, reputation or personal relationships; and

(3) Defendant acted intentionally or knowingly.

"Intentionally" means it was Defendant's conscious objective or purpose to engage in the conduct alleged.

"Knowingly" means Defendant was aware Defendant was engaging in the conduct alleged.

Applicable Code Sections and Case Law:

11 *Del. C.* § 222(24), 231(b, c), 251(b) and 786(a).

Coercion [Statutory, Non Affirmative Defense] 11.792

COERCION [STATUTORY, NON-AFFIRMATIVE DEFENSE]

In this case, Defendant has asserted the defense that, at the time Defendant threatened to accuse a person of a crime, or to cause criminal proceeding to be instituted against the person, Defendant believed the person had committed the crime, and Defendant's sole purpose was to cause the person to take reasonable action to remedy or correct the wrongdoing.

{Comment: This instruction is to be given only respecting statutory defenses which are not also affirmative defenses. This instruction shall not be given unless the Court first determines that some credible evidence supporting the defense has been presented. Where some credible evidence supporting a statutory defense, which is not also an affirmative defense is presented, Defendant is entitled to this instruction. The Court has no duty to give this instruction if a defense is not supported by some credible evidence. Ward v. State, 366 A.2d 1194 (Del. 1976); Pendry v. State, 367 A.2d 627 (Del. 1976).}

Applicable Code Sections and Case Law:

11 *Del. C.* § 303.

Arson in the Third Degree . . . . . .11.801(a)

ARSON IN THE THIRD DEGREE

In order to find Defendant guilty of Arson in the Third Degree, you must find the State has proved the following three (3) elements beyond a reasonable doubt:

(1) Defendant intentionally **[**started a fire/caused an explosion**]**;

(2) Defendant damaged a building as the result of the **[**fire/explosion**]**; and

(3) Defendant acted recklessly.

"Building" is defined as any structure, vehicle or watercraft. When a building consists of two or more units separately secured or occupied, each unit is considered a separate building.

"Intentionally" means it was Defendant's conscious objective or purpose to **[**start a fire/cause an explosion**]** at a building.

"Recklessly" means Defendant was aware of and consciously disregarded a substantial and unjustifiable risk that Defendant's conduct in would cause damage to a building. The State must demonstrate that the risk was of such a nature and degree that Defendant's disregard of the risk was a gross deviation from the standard of conduct a reasonable person would observe under the same circumstances.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 222(1) and 231(b, e).

Arson in the Third Degree [Affirmative Defense] . . . . . .11.801(b)

ARSON IN THE THIRD DEGREE [AFFIRMATIVE DEFENSE]

In order to establish this affirmative defense, Defendant must prove by a preponderance of the evidence that no one other than Defendant had a possessory or proprietary interest in the building.

“Building” is defined as any structure, vehicle or watercraft. When a building consists of two or more units separately secured or occupied, each unit is considered a separate building.

“Possessory interest" means a right to possess the building.

"Proprietary interest" means an ownership right in the building.

Proof by a preponderance of the evidence means proof something is more likely than not. It means certain evidence, when compared to the evidence opposed to it, has the more convincing force and makes you believe something is more likely true than not. Preponderance of the evidence does not depend on the number of witnesses. If the evidence is evenly balanced, then Defendant has not proved the existence of the defense by a preponderance of the evidence, and you must find against Defendant on that point. The State has no burden to present any evidence on this matter.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 222(1) and 304; BLACK'S LAW DICTIONARY 488, 509 (pocket ed. 1996).

Arson in the Second Degree . . . . . .11.802(a)

ARSON IN THE SECOND DEGREE

In order to find Defendant guilty of Arson in the Second Degree, you must find the State has proved the following three (3) elements beyond a reasonable doubt:

(1) Defendant **[**started a fire/caused an explosion**]**;

(2) Defendant damaged a building as the result of the **[**fire/explosion**]**; and

(3) Defendant acted intentionally.

"Building" is defined as any structure, vehicle or watercraft. When a building consists of two or more units separately secured or occupied, each unit is considered a separate building.

"Intentionally" means it was Defendant's conscious objective or purpose to **[**start a fire/cause an explosion**]** and to damage a building.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 222(1) and 231(b); *Miller v. State*, 426 A.2d 842, 844-5 (Del. 1981).

ARSON IN THE SECOND DEGREE [AFFIRMATIVE DEFENSE]

In order to establish this affirmative defense, Defendant must prove each of the following three (3) elements by a preponderance of the evidence:

(1) No one other than Defendant had a possessory or proprietary interest in the building **[**or if other persons had such interests, all of them consented to Defendant's conduct**]**;

(2) Defendant's sole intent was to destroy or damage the building for a lawful purpose; and

(3) Defendant had no reasonable ground to believe Defendant's conduct might endanger the life or safety of another person or damage another building.

"Building" is defined as any structure, vehicle or watercraft. When a building consists of two or more units separately secured or occupied, each unit is considered a separate building.

"Possessory interest" means a right to possess the building.

"Proprietary interest" means an ownership right in the building.

Proof by a preponderance of the evidence means proof something is more likely than not. It means certain evidence, when compared to the evidence opposed to it, has the more convincing force and makes you believe something is more likely

true than not. Preponderance of the evidence does not depend on the number of witnesses. If the evidence is evenly balanced, then Defendant has not proved the existence of the defense by a preponderance of the evidence, and you must find against Defendant on that point. The State has no burden to present any evidence on this matter.

Applicable Code Sections and Case Law:

11 *Del.C.* § 304; BLACK'S LAW DICTIONARY 488, 509 (pocket ed. 1996).

ARSON IN THE FIRST DEGREE

In order to find Defendant guilty of Arson in the First Degree, you must find the State has proved the following four (4) elements beyond a reasonable doubt:

(1) Defendant **[**started a fire/caused an explosion**]**;

(2) Defendant damaged a building as the result of the **[**fire/explosion**]**;

(3) Defendant knew another person, not an accomplice, was present in the building at that time; and

(4) Defendant acted intentionally.

"Building" is defined as any structure, vehicle or watercraft. Where a building consists of two or more units separately secured or occupied, each unit is considered a separate building.

"Intentionally" means it was Defendant's conscious objective or purpose to damage a building by **[**starting a fire/causing an explosion**]**.

"Knowingly" means Defendant was aware that another person, not an accomplice, was present in the building at that time, or that circumstances existed which made it reasonably possible another person, not an accomplice, was present in the building at that time. The State is not required to prove Defendant wanted or intended to injure anyone.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 222(1) and 231(b, c); *Zimmerman v. State*, 565 A.2d 887, 892 (Del. 1989); *Miller v. State*, 426 A.2d 842, 844-5 (Del. 1981).

RECKLESS BURNING OR EXPLODING

In order to find Defendant guilty of Reckless **[**Burning/Exploding**]**, you must find the State has proved the following two (2) elements beyond a reasonable doubt:

(1) Defendant **[**started a fire/caused an explosion**]**;

(2) Defendant recklessly placed **[**(a building/real property/personal property) in danger of **(**destruction/damage**)**/another person in danger of physical injury**]**; and

(3) Defendant intentionally [started a fire/caused an explosion].

[In this case, the State alleges that the damage to the property is more than $1500. The State must prove beyond a reasonable doubt that the damage is in fact more than $1500 before you can convict Defendant of felony Reckless (Burning/Exploding)**]**.

"Building" is defined as any structure, vehicle or watercraft. Where a building consists of two or more units separately secured or occupied, each unit is considered a separate building.

"Physical injury" means any impairment of physical condition or substantial pain.

“Intentionally” means it was Defendant’s conscious objective or purpose to

[start a fire/cause an explosion**]**.

"Recklessly" means Defendant was aware of and consciously disregarded a substantial and unjustifiable risk **[**(a building/real or personal property) would be destroyed or damaged/another person would be physically injured**]**. The State must demonstrate the risk was of such a nature and degree Defendant's disregard of the risk was a gross deviation from the standard of conduct a reasonable person would observe under the same circumstances.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 222(1, 24) and 231(b, c).

Cross or Religious Symbol Burning 11.805

CROSS OR RELIGIOUS SYMBOL BURNING

In order to find Defendant guilty of **[**Cross/Religious Symbol**]** Burning, you must find the State has proved the following three (3) elements beyond a reasonable doubt:

(1) Defendant burned or caused to be burned a **[**cross/religious symbol**]**;

(2) Defendant did not have the express written consent of the owner of the property and did not notify officials in the county in which the burning took place at least 48 hours in advance of the proposed burning; and

(3) Defendant acted **[**intentionally/knowingly/recklessly**]**.

"Intentionally" means it was Defendant's conscious objective or purpose to **[**burn/cause to be burned**]** a **[**cross/religious symbol**]**.

"Knowingly" means Defendant was aware Defendant was **[**burning/causing to be burned**]** a **[**cross/religious symbol**]**.

"Recklessly" means Defendant was aware of and consciously disregarded a substantial and unjustifiable risk that a **[**cross/religious symbol**]** would be burned as the result of Defendant's conduct. The State must demonstrate the risk was of such a nature and degree Defendant's disregard of the risk was a gross deviation from the standard of conduct a reasonable person would observe under the same

circumstances.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 231(b, c, e) and 251(b).

Criminal Mischief [Tangible Property] . . . . . 11.811(a)(1)

CRIMINAL MISCHIEF [DAMAGE TO TANGIBLE PROPERTY]

In order to find Defendant guilty of Criminal Mischief, you must find the State has proved the following two (2) elements beyond a reasonable doubt:

(1) Defendant damaged tangible property of another person; and

(2) Defendant acted either intentionally or recklessly.

"Intentionally" means it was Defendant's conscious objective or purpose to damage the tangible property of another person.

"Recklessly" means Defendant was aware of and consciously disregarded a substantial and unjustifiable risk that Defendant's conduct would damage another person's tangible property. The State must demonstrate the risk was of such a nature and degree Defendant's disregard of the risk was a gross deviation from the standard of conduct a reasonable person would observe under the same circumstances.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 224 and 231(b, e); *Davis v. State*, 453 A.2d 802, 803 (Del. 1982) (holding value of property may be established by the testimony of the owner).

Criminal Mischief [Tangible Property] . . . . . 11.811(a)(2)

CRIMINAL MISCHIEF [TAMPERING WITH TANGIBLE PROPERTY]

In order to find Defendant guilty of Criminal Mischief, you must find the State has proved the following two (2) elements beyond a reasonable doubt:

(1) Defendant tampered with the tangible property of another person in a manner that endangered persons or property; and

(2) Defendant acted intentionally or recklessly.

"Intentionally" means it was Defendant's conscious objective or purpose to tamper with the tangible property of another person in a manner that endangered persons or property.

"Recklessly" means Defendant was aware of and consciously disregarded a substantial and unjustifiable risk that Defendant's conduct would endanger persons or property. The State must demonstrate the risk was of such a nature and degree Defendant's disregard of the risk was a gross deviation from the standard of conduct a reasonable person would observe under the same circumstances.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 224 and 231(b, e); *Davis v. State*, 453 A.2d 802, 803 (Del. 1982) (holding value of property may be established by the testimony of the owner).

Criminal Mischief [Utility] . . . . . 11.811(a)(3)

CRIMINAL MISCHIEF [UTILITY]

In order to find Defendant guilty of Criminal Mischief, you must find the State proved the following two (2) elements beyond a reasonable doubt:

(1) Defendant **[**tampered/made connection**]** with the tangible property of **[**utility**]**; and

(2) Defendant acted intentionally or recklessly.

If applicable: **[**A defense raised by Defendant in this case is that Defendant had a right to **(**tamper/make contact**)** with the tangible property of the utility. In order to establish this affirmative defense, Defendant must prove, by a preponderance of the evidence, that Defendant had a lawful purpose to engage in that conduct.**]**

"Intentionally" means it was Defendant's conscious objective or purpose to **[**tamper/make connection**]** with the tangible property of **[**utility**]**.

"Recklessly" means Defendant was aware of and consciously disregarded a substantial and unjustifiable risk Defendant was **[**tampering/making connection**]** with the tangible property of **[**utility**]**. The State must demonstrate the risk was of such a nature and degree Defendant's disregard of the risk was a gross deviation from the

standard of conduct a reasonable person would observe under the same circumstances.

Proof by a preponderance of the evidence means proof something is more likely than not. It means certain evidence, when compared to the evidence opposed to it, has the more convincing force and makes you believe something is more likely true than not. Preponderance of the evidence does not depend on the number of witnesses. If the evidence is evenly balanced, then Defendant has not proved the defense by a preponderance of the evidence, and you must find against Defendant on that point. The State has no burden to present any evidence on this matter.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 224, 231(b, e), and 304; *Davis v. State*, 453 A.2d 802, 803 (Del. 1982) (holding value of property may be established by the testimony of the owner).

CRIMINAL MISCHIEF

[STATUTORY DEFENSE, NON-AFFIRMATIVE]

A defense raised by Defendant in this case is Defendant had a right to engage in **[**conduct**]**. The Delaware Criminal Code defines the defense as Defendant had a reasonable ground to believe Defendant had a right to engage in the conduct which ultimately **[**damaged/tampered with**]** the tangible property of **[**another person or public utility**]**.

{Comment: Although not entirely free from doubt, the Committee believes the statutory, non-affirmative defense set forth within subsection (c) applies only to subsections (a)(1) and (a)(2), but not to (a)(3).}

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 302-305.

Graffiti and Possession of Graffiti Implements . . . . . 11.812(a)(1)

GRAFFITI

In order to find Defendant guilty of the act of graffiti, you must find the State has proved the following two (2) elements beyond a reasonable doubt:

(1) Defendant made any significant mark or inscription upon any property of another without the permission of the owner of the property; and

(2) Defendant acted **[**intentionally/knowingly/recklessly**]**.

"Intentionally" means it was Defendant's conscious objective or purpose to make a significant mark on the property of another without permission of the owner.

"Knowingly" means Defendant was aware Defendant was making marks on property without permission of the owner.

"Recklessly" means Defendant was aware of and consciously disregarded a substantial and unjustifiable risk Defendant was making marks on property without permission of the owner. The State must demonstrate the risk was of such a nature and degree Defendant's disregard of it was a gross deviation from the standard of conduct a reasonable person would observe under the same circumstances.

Applicable Code Sections and Case Law:

11 *Del. C.* § 231(b, c, e).

POSSESSION OF GRAFFITI IMPLEMENTS

In order to find Defendant guilty of the possession of graffiti implements, you must find the State has proved the following three (3) elements beyond a reasonable doubt:

(1) Defendant possessed any tool, instrument, article, substance, solution or other compound**,** designed or commonly used to make any significant mark or inscription on any property of another, without the permission of the property of owner;

(2) Defendant evidenced an intent to use such tool, instrument, article, substance, solution or other compound to commit an act of graffiti or to damage property; and

(3) Defendant acted **[**intentionally/knowingly/recklessly**]**.

"Intentionally" means it was Defendant's conscious objective or purpose to possess graffiti implements.

"Knowingly" means Defendant was aware Defendant was making marks on the property without permission of the owner.

"Recklessly" means Defendant was aware of and consciously disregarded a substantial and unjustifiable risk. The State must demonstrate the risk was of such a

nature and degree Defendant's disregard of it was a gross deviation from the standard of conduct a reasonable person would observe under the same circumstances.

Applicable Code Sections and Case Law:

11 *Del. C.* § 231(b, c, e).

TRESPASSING WITH INTENT TO PEER OR PEEP INTO THE WINDOW OR DOOR OF ANOTHER

In order to find Defendant guilty of Trespassing With Intent to Peer or Peep, you must find the State has proved the following five (5) elements beyond a reasonable doubt:

(1) Defendant entered onto the occupied property of another person**;**

(2) The property was used as a dwelling;

(3) Defendant intended to peer or peep into a window or door of the dwelling;

(4) Defendant acted in a manner commonly referred to as "Peeping Tom"; and

(5) Defendant acted knowingly.

"Building" is defined as any structure, vehicle or watercraft. When a building consists of two or more units separately secured or occupied, each unit is considered a separate building.

"Intentionally" means it was Defendant's conscious objective or purpose to look into a window or door of the dwelling.

"Knowingly" means Defendant was aware Defendant was entering the property or was certain Defendant would enter the property.

"Dwelling" means a building is usually occupied by a person who lives there

at night.

“Entering property" means Defendant introduced a part of Defendant’s body or part of an instrument, by whatever means, onto the property.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 222(1), 231(b, c), and 829(b, c).

Criminal Trespass in the Third Degree 11.821

CRIMINAL TRESPASS IN THE THIRD DEGREE

In order to find Defendant guilty of Criminal Trespass in the Third Degree, you must find the State has proved the following two (2) elements beyond a reasonable doubt:

(1) Defendant knowingly entered or remained on real property; and

(2) Defendant acted unlawfully.

"Unlawfully" means Defendant had no legal authority, license or permission to enter or remain on the property.

"Knowingly" means Defendant was aware Defendant was entering or remaining on the real property.

"Enter" means Defendant introduced a part of Defendant's body or a part of an instrument, by whatever means, onto the property.

"Real property" means land and anything growing on, attached to, or erected on it, excluding anything that may be severed without injury to the land.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 222(28), 231(c) and 829(b); BLACK'S LAW DICTIONARY (8th ed. 2004).

CRIMINAL TRESPASS IN THE SECOND DEGREE

In order to find Defendant guilty of Criminal Trespass in the Second Degree, you must find the State has proved the following two (2) elements beyond a reasonable doubt:

(1) Defendant knowingly entered or remained in a building, or on real property that is fenced or otherwise enclosed in a manner clearly designed to exclude intruders; and

(2) Defendant acted unlawfully.

"Enter" means Defendant introduced a part of Defendant's body or apart of an instrument, by whatever means, in a building or on property.

"Building" means any structure, vehicle or watercraft. When a building consists of two or more units separately secured or occupied, each unit is considered a separate building

"Real property" means land and anything growing on, attached to, or erected on it, excluding anything that may be severed without injury to the land.

"Knowingly" means Defendant was aware Defendant was entering or remaining in a building or on property.

"Unlawfully" means Defendant had no legal authority, license or permission

to enter or remain in the building or on the property.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 222(1), 231(c), and 829(c); BLACK'S LAW DICTIONARY (8th ed. 2004).

CRIMINAL TRESPASS IN THE FIRST DEGREE [DWELLING]

In order to find Defendant guilty of Criminal Trespass in the First Degree, you must find the State has proved the following two (2) elements beyond a reasonable doubt:

(1) Defendant knowingly entered or remained in a dwelling; and

(2) Defendant acted unlawfully.

"Unlawfully" means Defendant had no legal authority, license or permission to enter or remain in the dwelling.

"Knowingly" means Defendant was aware Defendant was entering or remaining in the dwelling.

"Dwelling" means a building is usually occupied by a person who lives there at night.

"Enter" means Defendant introduced a part of Defendant's body or a part of an instrument, by whatever means, into the dwelling.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 222(1, 28), 231(c) and 829(b, c).

CRIMINAL TRESPASS IN THE FIRST DEGREE

[BUILDING SHELTERING ANIMALS]

In order to find Defendant guilty of Criminal Trespass in the First Degree, you must find the State has proved the following two (2) elements beyond a reasonable doubt:

(1) Defendant knowingly entered or remained in a building used to shelter, house, milk, raise, feed, breed, study or exhibit animals; and

(2) Defendant acted unlawfully.

"Building" is defined as any structure, vehicle or watercraft. When a building consists of two or more units separately secured or occupied, each unit is considered a separate building.

"Unlawfully" means Defendant had no legal authority, license or permission to enter or remain in the building used to shelter animals.

"Knowingly" means Defendant was aware Defendant was entering or remaining in the building used to shelter animals.

"Enter" means Defendant introduced a part of Defendant's body or part of an instrument, by whatever means, into the building.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 222(1, 28), 231(c) and 829(b, c).

Burglary in the Third Degree 11.824

BURGLARY IN THE THIRD DEGREE

In order to find Defendant guilty of Burglary in the Third Degree, you must find the State has proved the following three (3) elements beyond a reasonable doubt:

(1) Defendant knowingly entered or remained in a building;

(2) Defendant intended to commit a crime in the building; and

(3) Defendant acted unlawfully.

"Building" is defined as any structure, vehicle or watercraft. When a building consists of two or more units separately secured or occupied, each unit is considered a separate building.

"Unlawfully" means Defendant had no legal authority, license or permission to enter into the building.

"Intentionally" means it was Defendant's conscious objective or purpose to commit a crime in the building.

"Knowingly" means Defendant was aware Defendant was entering the building to commit a crime.

"Enter" means Defendant introduced a part of Defendant's body or part of an instrument, by whatever means, into the building.

Applicable Code Sections and Case Law:

Through 77 Del. Laws - June 30, 2010.

11 *Del. C.* §§ 222(1, 28), 231(b, c) and 829(c); *State v. Minnick*, 168 A.2d 93, 96 (Del. Super. 1960).

Burglary in the Second Degree ***[****Dwelling****]*** . . . . . 11.825(a)(1)

BURGLARY IN THE SECOND DEGREE [DWELLING]

In order to find Defendant guilty of Burglary in the Second Degree, you must find the State has proved the following four (4) elements beyond a reasonable doubt:

(1) Defendant knowingly entered or remained in a building;

(2) The building was a dwelling;

(3) Defendant intended to commit a crime in the dwelling; and

(4) Defendant acted unlawfully.

"Building" is defined as any structure, vehicle or watercraft. When a building consists of two or more units separately secured or occupied, each unit is considered a separate building.

"Unlawfully" means Defendant had no legal authority, license or permission to enter into the dwelling.

"Intentionally" means it was Defendant's conscious objective or purpose to commit a crime in the dwelling.

"Knowingly" means Defendant was aware Defendant was entering the dwelling to commit a crime offense.

"Dwelling" means a building that is usually occupied by a person who lives there at night.

“Enter" means Defendant introduced a part of Defendant’s body or part of an instrument, by whatever means, into the dwelling.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 222(1, 28), 231(b, c) and 829(b, c); *Pauls v. State*, 476 A.2d 157, 158-9 (Del. 1984); *State v. Hamilton*, 318 A.2d 624, 626-7 (Del. 1974).

Burglary in the Second Degree ***[****Building, Defendant Armed****]*** . . . . . 11.825(a)(2)a

BURGLARY IN THE SECOND DEGREE

[BUILDING, DEFENDANT ARMED]

In order to find Defendant guilty of Burglary in the Second Degree, you must find the State has proved the following three (3) elements beyond a reasonable doubt:

(1) Defendant knowingly entered or remained in a building;

(2) Defendant, or another participant in the crime, was armed with an explosive or deadly weapon, while entering, remaining in, or in immediate flight from the building; and

(4) Defendant acted unlawfully.

"Building" is defined as any structure, vehicle or watercraft. When a building consists of two or more units separately secured or occupied, each unit is considered a separate building.

"Deadly weapon" includes: firearm, bomb, knife of any sort (other than an ordinary pocket knife carried in a closed position), switchblade knife, billy, blackjack, bludgeon, metal knuckles, slingshot, razor, bicycle chain, ice pick or any dangerous instrument which a person used, or tried to use, to cause death or serious physical injury. For the purpose of this definition, an ordinary pocket knife is a folding knife with a blade no longer than 3 inches.

“Unlawfully” means Defendant had no legal authority, license or permission to enter into the building.

“Knowingly” means Defendant was aware Defendant was entering or remaining in**,** or in immediate flight from the building.

“Enter" means Defendant introduced a part of Defendant’s body or part of an instrument, by whatever means, into the building.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 222(1, 5, 28), 231(c) and 829(c).

Burglary in the Second Degree ***[****Building, Injury****]*** . . . . . 11.825(a)(2)b

BURGLARY IN THE SECOND DEGREE

[BUILDING, INJURY]

In order to find Defendant guilty of Burglary in the Second Degree, you must find the State has proved the following three (3) elements beyond a reasonable doubt:

(1) Defendant knowingly entered or remained in a building;

(2) Defendant or another participant in the crime caused injury to a person, who was not a participant in the crime, while entering, remaining in, or in immediate flight from the building; and

(4) Defendant acted unlawfully.

"Building" is defined as any structure, vehicle or watercraft. When a building consists of two or more units separately secured or occupied, each unit is considered a separate building.

"Deadly weapon" includes: firearm, bomb, knife of any sort (other than an ordinary pocket knife carried in a closed position), switchblade knife, billy, blackjack, bludgeon, metal knuckles, slingshot, razor, bicycle chain, ice pick or any dangerous instrument which a person used, or tried to use, to cause death or serious physical injury. For the purpose of this definition, an ordinary pocket knife is a folding knife with a blade no longer than 3 inches.

"Physical injury" means any impairment of physical condition or substantial pain.

“Unlawfully” means Defendant had no legal authority, license or permission to enter into the building.

“Knowingly” means Defendant was aware Defendant was entering, remaining in, or in immediate flight from the building.

“Enter" means Defendant introduced a part of Defendant’s body or part of an instrument, by whatever means, into the building.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 222(1, 5, 24, 28), 231(c) and 829(c).

Burglary in the First Degree [Defendant Armed] . . . . . .11.826(a)(1)

BURGLARY IN THE FIRST DEGREE

[DEFENDANT ARMED]

In order to find Defendant guilty of Burglary in the First Degree, you must find the State has proved the following six (6) elements beyond a reasonable doubt:

(1) Defendant knowingly entered or remained in a building;

(2) The building was a dwelling;

(3) Defendant's actions occurred at night;

(4) Defendant intended to commit a crime in the dwelling; and

(5) Defendant or another participant in the crime was armed with an explosive or a deadly weapon, while entering, remaining in, or in immediate flight from the dwelling; and

(6) Defendant acted unlawfully.

"Building" is defined as any structure, vehicle or watercraft. When a building consists of two or more units separately secured or occupied, each unit is considered a separate building.

"Deadly weapon" includes: firearm, bomb, knife of any sort (other than an ordinary pocket knife carried in a closed position), switchblade knife, billy, blackjack, bludgeon, metal knuckles, slingshot, razor, bicycle chain, ice pick or any dangerous

instrument which a person used, or tried to use, to cause death or serious physical injury. For the purpose of this definition, an ordinary pocket knife is a folding knife with a blade no longer than 3 inches.

"Unlawfully" means Defendant had no legal authority, license or permission to enter into the dwelling.

"Knowingly" means Defendant was aware Defendant was entering, remaining in, or in immediate flight from the dwelling.

"Dwelling" means a building that is usually occupied by a person who lives there at night.

"Enter" means Defendant introduced a part of Defendant's body or part of an instrument, by whatever means, into the dwelling.

"Night" means between 30 minutes after sunset and 30 minutes before sunrise.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 222(1, 5, 28), 231(c) and 829(b, c, f); *Pauls v. State*, 476 A.2d 157, 158-9 (Del. 1984); *Blankenship v. State*, 447 A.2d 428, 443 (Del. 1982); *State v. Hamilton*, 318 A.2d 624, 626-7 (Del. 1974).

Burglary in the First Degree [Injury] . . . . . .11.826(a)(2)

BURGLARY IN THE FIRST DEGREE [INJURY]

In order to find Defendant guilty of Burglary in the First Degree, you must find the State has proved the following six (6) elements beyond a reasonable doubt:

(1) Defendant knowingly entered or remained in a building;

(2) The building was a dwelling;

(3) Defendant's actions occurred at night;

(4) Defendant intended to commit a crime in the dwelling;

(5) Defendant or another participant in the crime caused physical injury to any person not a participant in the crime, while entering, remaining in, or in immediate flight from the dwelling; and

(6) Defendant acted unlawfully.

"Building" is defined as any structure, vehicle or watercraft. When a building consists of two or more units separately secured or occupied, each unit is considered a separate building.

"Deadly weapon" includes: firearm, bomb, knife of any sort (other than an ordinary pocket knife carried in a closed position), switchblade knife, billy, blackjack, bludgeon, metal knuckles, slingshot, razor, bicycle chain, ice pick or any dangerous instrument which a person used, or tried to use, to cause death or serious physical

injury. For the purpose of this definition, an ordinary pocket knife is a folding knife with a blade no longer than 3 inches.

"Physical injury" means any impairment of physical condition or substantial pain.

“Unlawfully” means Defendant had no legal authority, license or permission to enter into the dwelling.

“Knowingly” means Defendant was aware Defendant was entering or remaining in the dwelling.

“Dwelling” means a building that is usually occupied by a person who lives there at night.

“Enter" means Defendant introduced a part of Defendant’s body or part of an instrument, by whatever means, into the dwelling.

“Night” means between 30 minutes after sunset and 30 minutes before sunrise.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 222(1, 5, 24, 28), 231(c) and 829(b, c, f); *Pauls v. State*, 476 A.2d 157, 159 (Del. 1984); *Blankenship v. State*, 447 A.2d 428, 443 (Del. 1982); *State v. Hamilton*, 318 A.2d 624, 626-7 (Del. 1974).

Possession of Burglar's Tools or Instruments Facilitating Theft . . . . . 11.828(a)(1)

POSSESSION OF BURGLAR'S TOOLS

OR INSTRUMENTS FACILITATING THEFT

In order to find Defendant guilty of Possession of Burglar's Tools or Instruments Facilitating Theft, you must find the State has proved the following two (2) elements beyond a reasonable doubt:

(1) Defendant was in possession of any tool or instrument, commonly used for committing or facilitating unlawful entry into premises; and

(2) Defendant intended to use, or knew another person intended to use, any tool or instrument for the purpose of unlawful entry into premises.

"In possession" means Defendant possessed the tool or instrument at a time and place close to the commission of unlawful entry into premises, or under circumstances not clearly appropriate for the tool or instrument's lawful use.

"Possession" means the tool or instrument was in the immediate personal possession of, or under the immediate control of, Defendant so it was physically available or accessible during the commission of the unlawful entry into premises.

Applicable Code Sections and Case Law:

11 *Del. C.* § 829(i).

Possession of Burglar's Tools or Instruments Facilitating Theft

[Disabling Security Device] . . . . . 11.828(a)(2)

POSSESSION OF BURGLAR'S TOOLS OR INSTRUMENTS FACILITATING THEFT [DISABLING SECURITY DEVICE]

In order to find Defendant guilty of Possession of Burglar's Tools or Instruments Facilitating Theft, you must find the State has proved the following two (2) elements beyond a reasonable doubt:

(1) Defendant was in possession of any tool or instrument, commonly used for committing or facilitating unlocking, overriding, or disabling a security device, without authorization; and

(2) Defendant intended to use, or knew another person intended to use, the tool or instrument to unlock, override, or disable a security device, without authorization.

"In possession" means Defendant possessed the tool or instrument at a time and place close to the commission of unlocking, overriding, or disabling a security device, without authorization, or under circumstances not clearly appropriate for the tool or instrument's lawful use.

"Possession" means the tool or instrument was in the immediate personal possession of, or under the immediate control of, Defendant so it was physically

available or accessible during the commission of unlocking, overriding, or disabling a security device, without authorization.

Applicable Code Sections and Case Law:

11 *Del. C.* § 829(i).

Possession of Burglar's Tools or Instruments Facilitating Theft

[Breaking into Safe Boxes] . . . . . 11.828(a)(3)

POSSESSION OF BURGLAR'S TOOLS OR

INSTRUMENTS FACILITATING THEFT

[BREAKING INTO SAFE BOXES]

In order to find Defendant guilty of Possession of Burglar's Tools or Instruments Facilitating Theft, you must find the State has proved the following two (2) elements beyond a reasonable doubt:

(1) Defendant was in possession of any tool or instrument, commonly used for committing or facilitating forcibly breaking into or opening safes, vending machines**,** automatic teller machines, lock boxes, gates, doors, or any container or depository of property**;** and

(2) Defendant intended to use, or knew another person intended to use, the tool or instrument to forcibly break or open a safe, vending machine, automatic teller machine**,** lock box, gate, door, or any container or depository of property.

"In possession" means Defendant possessed the tool or instrument at a time and place close to the commission of forcibly breaking or opening the safes, vending machines**,** automatic teller machines, lock boxes, gates, doors, or any container or depository of property, or under circumstances not clearly appropriate for the tool or

instrument's lawful use.

"Possession" means the tool or instrument was in the immediate personal possession of, or under the immediate control of, Defendant so it was physically available or accessible during the commission of forcibly breaking or opening safes, vending machines, automatic teller machines, lock boxes, gates, doors, or any container or depository of property.

Applicable Code Sections and Case Law:

11 *Del. C.* § 829(i).

Possession of Burglar's Tools or Instruments Facilitating Theft

[False Documents] . . . . . 11.828(a)(4)

POSSESSION OF BURGLAR'S TOOLS OR

INSTRUMENTS FACILITATING THEFT

[FALSE DOCUMENTS]

In order to find Defendant guilty of Possession of Burglar's Tools or Instruments Facilitating Theft, you must find the State has proved the following two (2) elements beyond a reasonable doubt:

(1) Defendant was in possession of a credit card, driver's license, or other document**,** issued in a name other than Defendant's, commonly used for committing or facilitating identity theft; and

(2) Defendant intended to use, or knew another person intended to use, the document in the commission of identity theft.

"In possession" means Defendant possessed the document at a time and place close to the commission of identity theft, or under circumstances not clearly appropriate for lawful use of the document.

"Possession" means the document was in the immediate personal possession of, or under the immediate control of, Defendant so it was physically available or accessible during the commission of identity theft.

Applicable Code Sections and Case Law:

11 *Del. C.* § 829(i).

ROBBERY IN THE SECOND DEGREE

In order to find Defendant guilty of Robbery in the Second Degree, you must find the State proved the following four (4) elements beyond a reasonable doubt:

(1) Defendant's conduct occurred while Defendant was committing theft;

(2) Defendant used force, or threatened the immediate use of force;

(3) Defendant acted to prevent or overcome resistance to the theft; and

(4) Defendant acted intentionally.

"Intentionally" means it was Defendant's conscious objective or purpose to prevent or overcome resistance to the theft**,** or to retain possession of the property after the theft.

"While Defendant was committing theft" includes any act during the theft, or in immediate flight after the theft. This also includes any other conduct which aided in the commission of the theft in any way.

"Theft" means Defendant took, exercised control over, or obtained the property of another person with the intent to deprive that person of the property.

"Force" means the capacity or power to persuade, convince, compel, restrain, intimidate or coerce and does not necessarily imply physical violence.

"Use of force" means a show of power or strength sufficient to compel a person

to give up property.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 231(b), 831(b), 841, and 857(6); *State v. Harrigan*, 447 A.2d 1194, 1196 (Del. Super.), *aff'd*, 447 A.2d 1191 (Del. 1982) (defining "force" or "show of force"); *State v. Mitchell*, C.A. No. IN93-11-0654, 0655 and 0656, Toliver, J. (Del. Super. Nov. 28, 1994), *aff'd*, No. 376, 1994, Walsh, J. (Del. June 21, 1995) (slight "bumping" of victim is enough to constitute sufficient force to fall within robbery statute); *See also*, *Commonwealth v. Brown*, 484 A.2d 738, 740-741 (Pa. 1984); *State v. Sanchez*, 430 P.2d 781, 782 (N.M. 1967)(finding the amount of force is *not* the issue).

Robbery in the First Degree [Physical Injury] . . . . . 11.832(a)(1)

ROBBERY IN THE FIRST DEGREE [PHYSICAL INJURY]

In order to find Defendant guilty of Robbery in the First Degree, you must find the State has proved the following five (5) elements beyond a reasonable doubt:

(1) Defendant's conduct occurred while Defendant was committing theft;

(2) Defendant used force, or threatened the immediate use of force;

(3) Defendant acted to prevent or overcome resistance to the theft;

(4) Defendant, or another participant in the crime, caused physical injury to a person who was not another participant in the crime, while committing (or during the immediate flight after committing**)** theft; and

(5) Defendant acted intentionally.

"Intentionally" means it was Defendant's conscious objective or purpose to prevent or overcome resistance to the theft**,** or to retain possession of the property after the theft.

"While Defendant was committing theft" includes any act during the theft, or in immediate flight after the theft. This also includes any other conduct which aided in the commission of the theft in any way.

"Theft" means Defendant took, exercised control over, or obtained the property of another person with the intent to deprive that person of the property.

"Force" means the capacity or power to persuade, convince, compel, restrain, intimidate or coerce and does not necessarily imply physical violence.

“Use of force” means a show of power or strength sufficient to compel a person to give up property.

"Physical injury" means any impairment of physical condition or substantial pain.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 222(24), 251(b), 841 and 857(6).

Robbery in the First Degree ***[****Display Deadly Weapon****]*** . . . . . 11.832(a)(2)

ROBBERY IN THE FIRST DEGREE [DISPLAY DEADLY WEAPON]

In order to find Defendant guilty of Robbery in the First Degree, you must find the State has proved the following five (5) elements beyond a reasonable doubt:

(1) Defendant's conduct occurred while Defendant was committing theft;

(2) Defendant used force, or threatened the immediate use of force;

(3) Defendant acted to prevent or overcome resistance to the theft;

(4) While committing theft (or during the immediate flight after committing theft), Defendant, or another participant in the crime, displayed what appeared to be a deadly weapon **(**or represented by word or conduct that Defendant or another participant in the crime was in possession or control of a deadly weapon); and

(5) Defendant acted intentionally.

"Intentionally" means it was Defendant's conscious objective or purpose to prevent or overcome resistance to the theft**,** or to retain possession of the property after the theft.

"While Defendant was committing theft" includes any act during the theft, or in immediate flight after the theft. This also includes any other conduct which aided in the commission of the theft in any way.

"Theft" means Defendant took, exercised control over, or obtained the

property of another person with the intent to deprive that person of the property.

"Force" means the capacity or power to persuade, convince, compel, restrain, intimidate or coerce and does not necessarily imply physical violence.

“Use of force” means a show of power or strength sufficient to compel a person to give up property.

"Physical injury" means any impairment of physical condition or substantial pain.

The State is not required to prove Defendant actually had or used a deadly weapon while committing the crime. However, the State must prove Defendant intentionally intimidated another person, by threat, gesture, or deed, with what appeared to that person to be a deadly weapon.

“Deadly weapon" includes: firearm, bomb, knife of any sort (other than an ordinary pocket knife carried in a closed position), switchblade knife, billy, blackjack, bludgeon, metal knuckles, slingshot, razor, bicycle chain, ice pick or any dangerous instrument which a person used, or tried to use, to cause death or serious physical injury. For the purpose of this definition, an ordinary pocket knife is a folding knife with a blade no longer than 3 inches.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 222(5), 251(b), 841 and 857(6).

ROBBERY IN THE FIRST DEGREE
[ARMED WITH DANGEROUS INSTRUMENT]

In order to find Defendant guilty of Robbery in the First Degree, you must find the State has proved the following five (5) elements beyond a reasonable doubt:

(1) Defendant's conduct occurred while Defendant was committing theft;

(2) Defendant used force, or threatened the immediate use of force;

(3) Defendant acted to prevent or overcome resistance to the theft;

(4) While committing theft (or during the immediate flight after committing theft), Defendant, or another participant in the crime, was armed with and used (or threatened to use**)** a dangerous instrument; and

(5) Defendant acted intentionally.

"Intentionally" means it was Defendant's conscious objective or purpose to prevent or overcome resistance to the theft**,** or to retain possession of the property after the theft.

"While Defendant was committing theft" includes any act during the theft, or in immediate flight after the theft. This also includes any other conduct which aided in the commission of the theft in any way.

"Theft" means Defendant took, exercised control over, or obtained the

property of another person with the intent to deprive that person of the property.

"Force" means the capacity or power to persuade, convince, compel, restrain, intimidate or coerce and does not necessarily imply physical violence.

“Use of force” means a show of power or strength sufficient to compel a person to give up property.

“Dangerous instrument” means any instrument, article, or substance which, under the circumstances in which it is used, attempted to be used, or threatened to be used, is readily capable of causing death or serious physical injury.

"Physical injury" means any impairment of physical condition or substantial pain.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 222(5), 251(b), 841 and 857(6).

Robbery in the First Degree ***[****Victim 65 or Older****]*** . . . . . 11.832(a)(4)

ROBBERY IN THE FIRST DEGREE [VICTIM 62 OR OLDER]

In order to find Defendant guilty of Robbery in the First Degree, you must find the State has proved the following five (5) elements beyond a reasonable doubt:

(1) Defendant's conduct occurred while Defendant was committing theft;

(2) Defendant used force, or threatened the immediate use of force against a person;

(3) Defendant acted to prevent or overcome the person's resistance to the theft;

(4) The person was at least 62 years old, at the time of the theft; and

(5) Defendant acted intentionally.

"Intentionally" means it was Defendant's conscious objective or purpose to prevent or overcome resistance to the theft**,** or to retain possession of the property after the theft.

"While Defendant was committing theft" includes any act during the theft, or in immediate flight after the theft. This also includes any other conduct which aided in the commission of the theft in any way.

"Theft" means Defendant took, exercised control over, or obtained the property of another person with the intent to deprive that person of the property.

"Force" means the capacity or power to persuade, convince, compel, restrain,

intimidate or coerce and does not necessarily imply physical violence.

"Use of force" means a show of power or strength sufficient to compel a person to give up property.

It is no defense to the charge of Robbery in the First Degree that Defendant did not know the person's age at the time of the crime, or reasonably believed the person had not reached their sixty-second (62) birthday, or was younger than sixty-two (62) at the time.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 251(b), 841, and 857(6).

CARJACKING IN THE SECOND DEGREE

In order to find Defendant guilty of Carjacking in the Second Degree, you must find the State has proved the following four (4) elements beyond a reasonable doubt:

(1) Defendant took possession or control of a motor vehicle from a person, or while in the immediate presence of a person;

(2) Defendant took by coercion, duress, or otherwise without the person's permission;

(3) Defendant acted knowingly; and

(4) Defendant acted unlawfully.

The person may be the owner of the vehicle, or any operator, occupant or passenger of the vehicle, or any person who has an interest in the vehicle which Defendant is not entitled to infringe.

It is no defense to a carjacking that Defendant did not physically drive or operate the motor vehicle. Further, it is not a defense that Defendant did not intend to permanently deprive the person of the use of the vehicle.

"Unlawfully" means contrary to law or not permitted by law.

"Knowingly" means Defendant was aware Defendant was taking possession or control of a motor vehicle without the person's permission.

"Motor vehicle" includes any watercraft, in addition to its ordinary meaning.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 222(28), 231(c), 835(c) and 837(b).

Carjacking in the Second Degree

[Risk of Death/Serious Physical Injury] . . . . . 11.835(b)(2)a

CARJACKING IN THE SECOND DEGREE

[RISK OF DEATH/SERIOUS PHYSICAL INJURY]

In order to find Defendant guilty of Carjacking in the Second Degree, you must find the State has proved the following five (5) elements beyond a reasonable doubt:

(1) Defendant took possession or control of a motor vehicle from a person, or while in the immediate presence of a person;

(2) Defendant took by coercion, duress, or otherwise without the person's permission;

(3) Defendant recklessly engaged in conduct while in possession or control of the vehicle which created a substantial risk of death or serious physical injury to a person;

(4) Defendant acted knowingly; and

(5) Defendant acted unlawfully.

The person may be the owner of the vehicle, or any operator, occupant or passenger of the vehicle, or any person who has an interest in the vehicle which Defendant is not entitled to infringe.

It is no defense to a carjacking that Defendant did not physically drive or operate the motor vehicle. Further, it is not a defense that Defendant did not intend

to permanently deprive the person of the use of the vehicle.

“Unlawfully” means contrary to law or not permitted by law.

“Knowingly” means Defendant was aware Defendant was taking possession or control of a motor vehicle without the person’s permission.

“Motor vehicle” includes any watercraft, in addition to its ordinary meaning.

"Serious physical injury" means any injury which creates a substantial risk of death or which causes serious and prolonged disfigurement, prolonged impairment of physical health or prolonged loss or impairment of the function of any bodily organ.

“Recklessly” means Defendant was aware of and consciously disregarded a substantial and unjustifiable risk serious physical injury would be caused to a person as a result of Defendant’s conduct. The State must demonstrate the risk was of such a nature and degree Defendant’s disregard of the risk was a gross deviation from the standard of conduct a reasonable person would observe under the same circumstances.

A vehicle is operated recklessly” when it is operated in wilful or wanton disregard for the safety of persons or property. “Wanton” conduct is conduct that shows a conscious indifference to consequences in circumstances where the probability of harm is reasonably apparent.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 222(25, 28), 231(c, e), 835(c), 837(b); 21 *Del. C.* § 4175; *Eustic v. Rupert*, 460 A.2d 507, 509 (Del. 1983) (defining wanton conduct).

Carjacking in the Second Degree

[*Victim Compelled to Leave Vehicle****]*** . . . . . 11.835(b)(2)b

CARJACKING IN THE SECOND DEGREE

[VICTIM COMPELLED TO LEAVE VEHICLE]

In order to find Defendant guilty of Carjacking in the Second Degree, you must find the State has proved the following five (5) elements beyond a reasonable doubt:

(1) Defendant took possession or control of a motor vehicle from a person, or while in the immediate presence of a person;

(2) Defendant took by coercion, duress, or otherwise without the person's permission;

(3) Defendant compelled the person to leave the vehicle;

(4) Defendant acted knowingly; and

(5) Defendant acted unlawfully.

The person may be the owner of the vehicle, or any operator, occupant or passenger of the vehicle, or any person who has an interest in the vehicle which Defendant is not entitled to infringe.

It is no defense to a carjacking that Defendant did not physically drive or operate the motor vehicle. Further, it is not a defense that Defendant did not intend to permanently deprive the person of the use of the vehicle.

"Unlawfully" means contrary to law or not permitted by law.

"Knowingly" means Defendant was aware Defendant was taking possession or control of a motor vehicle without the person's permission.

"Motor vehicle" includes any watercraft, in addition to its ordinary meaning.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 222(25, 28), 231(c, e), 835(c), 837(b); 21 *Del. C.* § 4175; *Eustic v. Rupert*, 460 A.2d 507, 509 (Del. 1983) (defining wanton conduct).

Carjacking in the Second Degree

[*Vehicle Operated Recklessly****]*** . . . . . 11.835(b)(2)c

CARJACKING IN THE SECOND DEGREE

[VEHICLE OPERATED RECKLESSLY]

In order to find Defendant guilty of Carjacking in the Second Degree, you must find the State has proved the following five (5) elements beyond a reasonable doubt:

(1) Defendant took possession or control of a motor vehicle from a person, or while in the immediate presence of a person;

(2) Defendant took by coercion, duress, or otherwise without the person's permission;

(3) Defendant, while in possession or control of the vehicle, caused the vehicle to be operated recklessly;

(4) Defendant acted knowingly; and

(5) Defendant acted unlawfully.

The person may be the owner of the vehicle, or any operator, occupant or passenger of the vehicle, or any person who has an interest in the vehicle which Defendant is not entitled to infringe.

It is no defense to a carjacking that Defendant did not physically drive or operate the motor vehicle. Further, it is not a defense that Defendant did not intend to permanently deprive the person of the use of the vehicle.

"Unlawfully" means contrary to law or not permitted by law.

"Knowingly" means Defendant was aware Defendant was taking possession or control of a motor vehicle without the person's permission.

"Motor vehicle" includes any watercraft, in addition to its ordinary meaning.

"Recklessly" means Defendant was aware of and consciously disregarded a substantial and unjustifiable risk. The State must demonstrate the risk was of such a nature and degree Defendant's disregard of the risk was a gross deviation from the standard of conduct a reasonable person would observe under the same circumstances.

A vehicle is operated "recklessly" when it is operated in wilful or wanton disregard for the safety of persons or property. "Wanton" conduct is conduct that shows a conscious indifference to consequences in circumstances where the probability of harm is reasonably apparent.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 222(28), 231(c, e), 835(c), 837(b); 21 *Del. C.* § 4175; *Eustic v. Rupert*, 460 A.2d 507, 509 (Del. 1983) (defining wanton conduct).

Carjacking in the First Degree

[Felony While in Possession of Vehicle] . . . . . 11.836(a)(1)

CARJACKING IN THE FIRST DEGREE

[FELONY WHILE IN POSSESSION OF VEHICLE]

In order to find Defendant guilty of Carjacking in the First Degree, you must find the State has proved the following five (5) elements beyond a reasonable doubt:

(1) Defendant took possession or control of a motor vehicle from a person, or while in the immediate presence of a person;

(2) Defendant took by coercion, duress, or otherwise without the person's permission;

(3) Defendant committed, or attempted to commit, a felony, while in possession or control of the vehicle;

(4) Defendant acted knowingly; and

(5) Defendant acted unlawfully.

The person may be the owner of the vehicle, or any operator, occupant or passenger of the vehicle, or any person who has an interest in the vehicle which Defendant is not entitled to infringe.

It is no defense to a carjacking that Defendant did not physically drive or operate the motor vehicle. Further, it is not a defense that Defendant did not intend to permanently deprive the person of the use of the vehicle.

"Unlawfully" means contrary to law or not permitted by law.

"Knowingly" means Defendant was aware Defendant was taking possession or control of a motor vehicle without the person's permission.

"Motor vehicle" includes any watercraft, in addition to its ordinary meaning.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 222(28), 231(c), 836(c) and 837(b).

Carjacking in the First Degree

[Defendant Under the Influence] . . . . . 11.836(a)(2)

CARJACKING IN THE FIRST DEGREE

[DEFENDANT UNDER THE INFLUENCE]

In order to find Defendant guilty of Carjacking in the First Degree, you must find the State has proved the following five (5) elements beyond a reasonable doubt:

(1) Defendant took possession or control of a motor vehicle from a person, or while in the immediate presence of a person;

(2) Defendant took by coercion, duress, or otherwise without the person's permission;

(3) Defendant drove or operated the vehicle under the influence of alcohol or drugs;

(4) Defendant acted knowingly; and

(5) Defendant acted unlawfully.

The person may be the owner of the vehicle, or any operator, occupant or passenger of the vehicle, or any person who has an interest in the vehicle which Defendant is not entitled to infringe.

It is no defense to a carjacking that Defendant did not physically drive or operate the motor vehicle. Further, it is not a defense that Defendant did not intend to permanently deprive the person of the use of the vehicle.

"Unlawfully" means contrary to law or not permitted by law.

"Knowingly" means Defendant was aware Defendant was taking possession or control of a motor vehicle without the person's permission.

"Motor vehicle" includes any watercraft, in addition to its ordinary meaning.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 222(28), 231(c), 836(c) and 837(a, b).

Carjacking in the First Degree

[Drug Offense While in Possession of Vehicle] . . . . . 11.836(a)(3)

CARJACKING IN THE FIRST DEGREE

[DRUG OFFENSE WHILE IN POSSESSION OF VEHICLE]

In order to find Defendant guilty of Carjacking in the First Degree, you must find the State has proved the following five (5) elements beyond a reasonable doubt:

(1) Defendant took possession or control of a motor vehicle from a person, or while in the immediate presence of a person;

(2) Defendant took by coercion, duress, or otherwise without the person's permission;

(3) Defendant committed a drug offense, while in possession or control of the vehicle;

(4) Defendant acted knowingly; and

(5) Defendant acted unlawfully.

The person may be the owner of the vehicle, or any operator, occupant or passenger of the vehicle, or any person who has an interest in the vehicle which Defendant is not entitled to infringe.

It is no defense to a carjacking that Defendant did not physically drive or operate the motor vehicle. Further, it is not a defense that Defendant did not intend to permanently deprive the person of the use of the vehicle.

"Unlawfully" means contrary to law or not permitted by law.

"Knowingly" means Defendant was aware Defendant was taking possession or control of a motor vehicle without the person's permission.

"Motor vehicle" includes any watercraft, in addition to its ordinary meaning.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 222(28), 231(c), 836(c) and 837(a, b).

Carjacking in the First Degree

[Displayed Deadly Weapon] . . . . . 11.836(a)(4)

CARJACKING IN THE FIRST DEGREE

[DISPLAYED DEADLY WEAPON]

In order to find Defendant guilty of Carjacking in the First Degree, you must find the State has proved the following five (5) elements beyond a reasonable doubt:

(1) Defendant took possession or control of a motor vehicle from a person, or while in the immediate presence of a person;

(2) Defendant took by coercion, duress, or otherwise without the person's permission;

(3) Defendant displayed what appeared to be a deadly weapon (or represented that Defendant was in possession or control of a deadly weapon), while Defendant was in possession or control of the vehicle (or was taking or attempting to take the vehicle);

(4) Defendant acted knowingly; and

(5) Defendant acted unlawfully.

The person may be the owner of the vehicle, or any operator, occupant or passenger of the vehicle, or any person who has an interest in the vehicle which Defendant is not entitled to infringe.

It is no defense to a carjacking that Defendant did not physically drive or

operate the motor vehicle. Further, it is not a defense that Defendant did not intend to permanently deprive the person of the use of the vehicle.

"Unlawfully" means contrary to law or not permitted by law.

"Knowingly" means Defendant was aware Defendant was taking possession or control of a motor vehicle without the person's permission.

"Motor vehicle" includes any watercraft, in addition to its ordinary meaning.

The State is not required to prove Defendant actually had or used a deadly weapon while committing the crime. However, the State must prove Defendant intentionally intimidated a person, by threat, gesture, or deed, with what appeared to the person to be a deadly weapon.

"Deadly weapon" includes: firearm, bomb, knife of any sort (other than an ordinary pocket knife carried in a closed position), switchblade knife, billy, blackjack, bludgeon, metal knuckles, slingshot, razor, bicycle chain, ice pick or any dangerous instrument which a person used, or tried to use, to cause death or serious physical injury. For the purpose of this definition, an ordinary pocket knife is a folding knife with a blade no longer than 3 inches.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 222(5, 28), 231(c), 836(c) and 837(a, b).

Carjacking in the First Degree

[Physical Injury] . . . . . 11.836(a)(5)

CARJACKING IN THE FIRST DEGREE

[PHYSICAL INJURY]

In order to find Defendant guilty of Carjacking in the First Degree, you must find the State has proved the following five (5) elements beyond a reasonable doubt:

(1) Defendant took possession or control of a motor vehicle from a person, or while in the immediate presence of a person;

(2) Defendant took by coercion, duress, or otherwise without the person's permission;

(3) Defendant caused physical injury to another person while in possession or control of the vehicle;

(4) Defendant acted knowingly; and

(5) Defendant acted unlawfully.

The person may be the owner of the vehicle, or any operator, occupant or passenger of the vehicle, or any person who has an interest in the vehicle which Defendant is not entitled to infringe.

It is no defense to a carjacking that Defendant did not physically drive or operate the motor vehicle. Further, it is not a defense that Defendant did not intend to permanently deprive the person of the use of the vehicle.

“Unlawfully” means contrary to law or not permitted by law.

“Knowingly” means Defendant was aware Defendant was taking possession or control of a motor vehicle without the person’s permission.

“Motor vehicle” includes any watercraft, in addition to its ordinary meaning.

"Physical injury" means any impairment of physical condition or substantial pain. The State is not required to prove Defendant intentionally, knowingly or recklessly caused physical injury to a person.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 222(24, 28), 231(c), 836(c) and 837(a, b).

Carjacking in the First Degree

[Victim Under 14; 62 or Older] . . . . . 11.836(a)(6)

CARJACKING IN THE FIRST DEGREE

[VICTIM UNDER 14; 62 OR OLDER]

In order to find Defendant guilty of Carjacking in the First Degree, you must find the State has proved the following five (5) elements beyond a reasonable doubt:

(1) Defendant took possession or control of a motor vehicle from a person, or while in the immediate presence of a person;

(2) Defendant took by coercion, duress, or otherwise without the person's permission;

(3) The operator, occupan**t,** or passenger in the vehicle, was at least 62 years of age (or was not yet 14 years of age**)** at the time;

(4) Defendant acted knowingly; and

(5) Defendant acted unlawfully.

The person may be the owner of the vehicle, or any operator, occupant or passenger of the vehicle, or any person who has an interest in the vehicle which Defendant is not entitled to infringe.

It is no defense to a carjacking that Defendant did not physically drive or operate the motor vehicle. Further, it is not a defense that Defendant did not intend to permanently deprive the person of the use of the vehicle.

"Unlawfully" means contrary to law or not permitted by law.

"Knowingly" means Defendant was aware Defendant was taking possession or control of a motor vehicle without the person's permission.

"Motor vehicle" includes any watercraft, in addition to its ordinary meaning. interest in the vehicle which Defendant is not entitled to infringe.

It is no defense to the charge of Carjacking in the First Degree that Defendant did not know the person's age at the time. It is also no defense that Defendant reasonably believed the person had not reached their sixty-second (62) birthday (or was older than fourteen (14)) at the time.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 222(28), 231(c), 836(c, d), 837(b).

Shoplifting . . . . . 11.840(a)(1)

SHOPLIFTING

In order to find Defendant guilty of Shoplifting, you must find the State has proved the following four (4) elements beyond a reasonable doubt:

(1) Defendant was in a store;

(2) Defendant removed merchandise from any other place within the store;

(3) Defendant appropriated the merchandise to Defendant's own use, or deprived the owner of the use, value, or possession of the merchandise without paying the value of the merchandise; and

(4) Defendant acted intentionally.

[The State contends that the (value of the merchandise is at least $1,500/aggregate value of goods is $1,500 or more and is from three or more separate mercantile establishments and the goods were shoplifted in the same or continuing course of conduct). In order to find Defendant guilty, you must find beyond a reasonable doubt the value of the merchandise is at least $1,500.

{Comment: It is permissible to include in this instruction the statutory inferences set forth in 11 Del.C. § 840(b) when requested.}

"Value" means the market value of the merchandise at the time and place of the offense, or if that cannot be easily determined, the cost of replacing the merchandise within a reasonable time after the crime occurred.]

“Intentionally” means it was Defendant’s conscious objective or purpose to appropriate merchandise.

"Appropriate" means to exercise control over someone else’s property permanently or for such an extended period of time so as to obtain a major part of the item’s economic value.

“Deprive” means to withhold property of another person permanently or for so extended a period or under such circumstances as to withhold a major portion of its economic value or benefit, or with intent to restore it only upon payment of a reward or other compensation, or to dispose of property to another person so as to make it unlikely that the owner will recover it.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 224(1), 231(b), 857(1, 3).

Shoplifting [Charging Merchandise to Another] . . . . . 11.840(a)(2)

SHOPLIFTING [CHARGING MERCHANDISE TO ANOTHER]

In order to find Defendant guilty of Shoplifting, you must find the State has proved the following three (3) elements beyond a reasonable doubt:

(1) Defendant was in a store;

(2) Defendant obtained possession of merchandise by charging it to someone else, or to a fictional person, without authorization; and

(3) Defendant acted intentionally.

[The State contends that the (value of the merchandise is at least $1,500/aggregate value of goods is $1,500 or more and is from three or more separate mercantile establishments and the goods were shoplifted in the same or continuing course of conduct). In order to find Defendant guilty, you must find beyond a reasonable doubt the value of the merchandise is at least $1,500.

{Comment: It is permissible to include in this instruction the statutory inferences set forth in 11 Del.C. § 840(b) when requested.}

"Value" means the market value of the merchandise at the time and place of the offense, or if that cannot be easily determined, the cost of replacing the merchandise within a reasonable time after the crime occurred.]

"Intentionally" means it was Defendant's conscious objective or purpose to appropriate merchandise.

"Appropriate" means to exercise control over someone else's property permanently or for such an extended period of time so as to obtain a major part of the item's economic value.

"Deprive" means to withhold property of another person permanently or for so extended a period or under such circumstances as to withhold a major portion of its economic value or benefit, or with intent to restore it only upon payment of a reward or other compensation, or to dispose of property to another person so as to make it unlikely that the owner will recover it.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 224(1) and 231(b).

Shoplifting [Concealing Merchandise] . . . . . 11.840(a)(3)

SHOPLIFTING [CONCEALING MERCHANDISE]

In order to find Defendant guilty of Shoplifting, you must find the State has proved the following three (3) elements beyond a reasonable doubt:

(1) Defendant was in a store;

(2) Defendant concealed merchandise; and

(3) Defendant acted intentionally.

[The State contends that the (value of the merchandise is at least $1,500/aggregate value of goods is $1,500 or more and is from three or more separate mercantile establishments and the goods were shoplifted in the same or continuing course of conduct). In order to find Defendant guilty, you must find beyond a reasonable doubt the value of the merchandise is at least $1,500.

{Comment: It is permissible to include in this instruction the statutory inferences set forth in 11 Del.C. § 840(b) when requested.}

"Value" means the market value of the merchandise at the time and place of the offense, or if that cannot be easily determined, the cost of replacing the merchandise within a reasonable time after the crime occurred.]

When a person wilfully conceals unpurchased merchandise, either inside or outside the premises of the store, there is a presumption the person concealed the merchandise with the intention of stealing it. When merchandise is found hidden on

a person, or among their belongings, outside the premises of the store, there is a presumption the person intentionally concealed the merchandise.

“Intentionally” means it was Defendant’s conscious objective or purpose to appropriate merchandise.

"Appropriate" means to exercise control over someone else’s property permanently or for such an extended period of time so as to obtain a major part of the item’s economic value.

“Deprive” means to withhold property of another person permanently or for so extended a period or under such circumstances as to withhold a major portion of its economic value or benefit, or with intent to restore it only upon payment of a reward or other compensation, or to dispose of property to another person so as to make it unlikely that the owner will recover it.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 224(1), 231(b) and 840(b).

Shoplifting [Altered or Removed Price Tag] . . . . . 11.840(a)(4)

SHOPLIFTING [ALTERED OR REMOVED PRICE TAG]

In order to find Defendant guilty of Shoplifting, you must find the State has proved the following three (3) elements beyond a reasonable doubt:

(1) Defendant was in a store;

(2) Defendant altered, removed or disfigured a label or price tag on merchandise; and

(3) Defendant acted intentionally.

[The State contends that the (value of the merchandise is at least $1,500/aggregate value of goods is $1,500 or more and is from three or more separate mercantile establishments and the goods were shoplifted in the same or continuing course of conduct). In order to find Defendant guilty, you must find beyond a reasonable doubt the value of the merchandise is at least $1,500.

{Comment: It is permissible to include in this instruction the statutory inferences set forth in 11 Del.C. § 840(b) when requested.}

"Value" means the market value of the merchandise at the time and place of the offense, or if that cannot be easily determined, the cost of replacing the merchandise within a reasonable time after the crime occurred.]

"Intentionally" means it was Defendant's conscious objective or purpose to appropriate merchandise.

"Appropriate" means to exercise control over someone else's property permanently or for such an extended period of time so as to obtain a major part of the item's economic value.

"Deprive" means to withhold property of another person permanently or for so extended a period or under such circumstances as to withhold a major portion of its economic value or benefit, or with intent to restore it only upon payment of a reward or other compensation, or to dispose of property to another person so as to make it unlikely that the owner will recover it.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 224(1) and 231(b).

SHOPLIFTING

[TRANSFER MERCHANDISE TO ANOTHER CONTAINER]

In order to find Defendant guilty of Shoplifting, you must find the State has proved the following three (3) elements beyond a reasonable doubt:

(1) Defendant was in a store;

(2) Defendant transferred merchandise from one container or package to another; and

(3) Defendant acted intentionally.

[The State contends that the (value of the merchandise is at least $1,500/aggregate value of goods is $1,500 or more and is from three or more separate mercantile establishments and the goods were shoplifted in the same or continuing course of conduct). In order to find Defendant guilty, you must find beyond a reasonable doubt the value of the merchandise is at least $1,500.

{Comment: It is permissible to include in this instruction the statutory inferences set forth in 11 Del.C. § 840(b) when requested.}

"Value" means the market value of the merchandise at the time and place of the offense, or if that cannot be easily determined, the cost of replacing the merchandise within a reasonable time after the crime occurred.]

"Intentionally" means it was Defendant's conscious objective or purpose to

appropriate merchandise.

"Appropriate" means to exercise control over someone else's property permanently or for such an extended period of time so as to obtain a major part of the item's economic value.

"Deprive" means to withhold property of another person permanently or for so extended a period or under such circumstances as to withhold a major portion of its economic value or benefit, or with intent to restore it only upon payment of a reward or other compensation, or to dispose of property to another person so as to make it unlikely that the owner will recover it.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 224(1) and 231(b).

Shoplifting [Commercial Instrument] . . . . . 11.840(a)(6)

SHOPLIFTING [USE OF COMMERCIAL INSTRUMENT]

In order to find Defendant guilty of Shoplifting, you must find the State has proved the following three (3) elements beyond a reasonable doubt:

(1) Defendant was in a store;

(2) Defendant used a commercial instrument or credit slip to take possession of merchandise for Defendant's own use, without paying the owner its value; and

(3) Defendant acted intentionally.

[The State contends that the (value of the merchandise is at least $1,500/aggregate value of goods is $1,500 or more and is from three or more separate mercantile establishments and the goods were shoplifted in the same or continuing course of conduct). In order to find Defendant guilty, you must find beyond a reasonable doubt the value of the merchandise is at least $1,500.

{Comment: It is permissible to include in this instruction the statutory inferences set forth in 11 Del.C. § 840(b) when requested.}

"Value" means the market value of the merchandise at the time and place of the offense, or if that cannot be easily determined, the cost of replacing the merchandise within a reasonable time after the crime occurred.]

"Intentionally" means it was Defendant's conscious objective or purpose to appropriate merchandise.

"Appropriate" means to exercise control over someone else's property permanently or for such an extended period of time so as to obtain a major part of the item's economic value.

"Deprive" means to withhold property of another person permanently or for so extended a period or under such circumstances as to withhold a major portion of its economic value or benefit, or with intent to restore it only upon payment of a reward or other compensation, or to dispose of property to another person so as to make it unlikely that the owner will recover it.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 224(1), 231(b) and 857(1).

Use of Illegitimate Retail Sales Receipt or Universal Product Code Label

. . . . . 11.840A(a)

USE OF ILLEGITIMATE RETAIL SALES RECEIPT OR UNIVERSAL PRODUCT CODE LABEL

In order to find Defendant guilty of Use of an Illegitimate Retail Sales Receipt or Universal Product Code Label, you must find the State has proved the following three (3) elements beyond a reasonable doubt:

(1) Defendant possessed, used, transferred**,** made, altered, counterfeited or reproduced a retail sales receipt or Universal Product Code Label;

(2) Defendant meant to cheat or defraud; and

(3) Defendant acted intentionally.

"Intentionally" means it was Defendant's conscious objective or purpose to appropriate merchandise.

Applicable Code Sections and Case Law:

11 *Del.C.* § 231(b).

Theft . . . . . 11.841(a)

THEFT

In order to find Defendant guilty of Theft, you must find the State has proved the following three (3) elements beyond a reasonable doubt:

(1) Defendant took or exercised control over the property of another person;

(2) Defendant meant to deprive the person of the property; and

(3) Defendant acted intentionally.

[The State contends that the value of the property is $1,500 or more. In order to find Defendant guilty, you must find beyond a reasonable doubt that the value of the property is at least $1,500.

"Value" means the market value of the property at the time and place of the offense, or if that cannot be easily determined, the cost of replacing the property within a reasonable time after the crime occurred.]

"Intentionally" means it was Defendant's conscious objective or purpose to deprive the person of the property**,** or to appropriate the property.

"Deprive" means to withhold someone else's property permanently or for such an extended period of time so as to withhold a major part of its economic value.

"Appropriate" means to exercise control over someone else's property permanently or for such an extended period of time so as to obtain a major part of its economic value.

"Property of another" means property that belongs to someone other than Defendant and Defendant does not have permission to take.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 224(1), 231(b) and 857(1, 3, 7); *Wright v. State*, 405 A.2d 685, 687 (Del. 1979); *State v. Shahan*, 335 A.2d 277, 283 (Del. Super. 1975).

Theft [by Fraudulent Conversion] . . . . . 11.841(b)

THEFT [BY FRAUDULENT CONVERSION]

In order to find Defendant guilty of Theft, you must find the State has proved the following three (3) elements beyond a reasonable doubt:

(1) Defendant legally received, took or exercised control over the property of another person;

(2) Defendant fraudulently converted the property to Defendant's own use; and.

(3) Defendant acted intentionally.

[The State contends that the value of the property is $1,500 or more. In order to find Defendant guilty, you must find beyond a reasonable doubt that the value of the property is at least $1,500.

"Value" means the market value of the property at the time and place of the offense, or if that cannot be easily determined, the cost of replacing the property within a reasonable time after the crime occurred.]

"Intentionally" means it was Defendant's conscious objective or purpose to deprive the person of the property**,** or to appropriate the property.

"Deprive" means to withhold someone else's property permanently or for such an extended period of time so as to withhold a major part of its economic value.

"Appropriate" means to exercise control over someone else's property

permanently or for such an extended period of time so as to obtain a major part of its economic value.

"Property of another" means property that belongs to someone other than Defendant and Defendant does not have permission to take.

“Convert property” means to wrongfully exercise control over another’s property, and to deprive that person’s of their right to the property.

“Fraudulently” means Defendant intentionally misrepresented or concealed the truth.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 224(1), 231(b) and 857(7); *Wright v. State*, 405 A.2d 685, 687 (Del. 1979); *State v. Shahan*, 335 A.2d 277, 283 (Del. Super. 1975).

*Theft **[**from a Person 62 Years of Age or Older**]*** . . . . . 11.841(c)(2)

THEFT [FROM A PERSON 62 YEARS OF AGE OR OLDER]

In order to find Defendant guilty of Theft, you must find the State has proved the following four (4) elements beyond a reasonable doubt:

(1) Defendant took or exercised control over the property of another person;

(2) The person was at least 62 years of age [an "infirm adult"/a "disabled person"] at the time;

(3) Defendant meant to deprive the person of the property; and

(4) Defendant acted intentionally.

[The State contends that the value of the property is $1,500 or more. In order to find Defendant guilty, you must find beyond a reasonable doubt that the value of the property is at least $1,500.

"Value" means the market value of the property at the time and place of the offense, or if that cannot be easily determined, the cost of replacing the property within a reasonable time after the crime occurred.]

"Intentionally" means it was Defendant's conscious objective or purpose to deprive the person of the property**,** or to appropriate the property.

"Deprive" means to withhold someone else's property permanently or for such an extended period of time so as to withhold a major part of its economic value.

"Appropriate" means to exercise control over someone else's property

permanently or for such an extended period of time so as to obtain a major part of its economic value.

"Property of another" means property that belongs to someone other than Defendant and Defendant does not have permission to take.

It is no defense to the charge of Theft that Defendant did not know the person's age at the time, or that Defendant reasonably believed the person was younger than sixty-two (620 at the time.

"Disabled person" means a person who, by reason of mental or physical incapacity, is unable properly to manage or care for their own person or property, or both; or is at risk of becoming subject to abuse by other persons or of becoming the victim of designing persons.

"Infirm adult" means any person 18 years of age or older who, because of physical or mental disability, is substantially impaired in the ability to provide adequately for their own care and custody.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 224(1), 231(b), and 857(1, 3, 7); 12 *Del.C.* § 3901(a)(2); 31 *Del.C.* §3902(1); *Wright v. State*, 405 A.2d 685, 687 (Del. 1979); *State v. Shahan*, 335 A.2d 277, 283 (Del. Super. 1975).

THEFT OF A MOTOR VEHICLE

In order to find Defendant guilty of Theft of a Motor Vehicle, you must find the State has proved the following three (3) elements beyond a reasonable doubt:

(1) Defendant took or exercised control over a motor vehicle;

(2) Defendant meant to appropriate the motor vehicle; and

(3) Defendant acted intentionally.

"Intentionally" means it was Defendant's conscious objective or purpose to take the motor vehicle.

"Motor vehicle" means an automobile, motorcycle, van, truck, trailer, semitrailer, truck tractor and semitrailer combination, or any other vehicle which is self-propelled, which is designed to be operated primarily on a roadway, and in, upon or by which any person or property is or may be transported. "Motor vehicle" does not include any device that is included within the definitions of "moped", "off-highway (OHV)", "triped", "motorized scooter or skateboard", "motorized wheelchair" or "electric personal assistive mobility device (EPAMD)".

"Appropriate" means to exercise control over someone else's property permanently or for such an extended period of time so as to obtain a major part of its economic value.

Applicable Code Sections and Case Law:

11 *Del.C.* §§ 231(b), 841A(b) and 857(1).

Theft: Organized Retail Crime . . . . . 11.841B(a)

THEFT: ORGANIZED RETAIL CRIME

In order to find Defendant guilty of Theft: Organized Retail Crime, you must find the State has proved the following three (3) elements beyond a reasonable doubt:

(1) Defendant took or exercised control over retail merchandise;

(2) Defendant acted to deprive a person or business of retail merchandise, or received stolen property**,** in quantities not normally purchased for personal use or consumption; and

(3) Defendant acted intentionally to appropriate or resell the merchandise.

"Intentionally" means it was Defendant's conscious objective or purpose to take the motor vehicle.

"Appropriate" means to exercise control over someone else's property permanently or for such an extended period of time so as to obtain a major part of its economic value.

Applicable Code Sections and Case Law:

11 *Del.C.* § 231(b).

Theft or Possession of a Prescription Form or Pad . . . . . 11.841C(a)

POSSESSION OR THEFT OF A PRESCRIPTION FORM OR PAD

In order to find Defendant guilty of Theft or Possession of a Prescription Form or Pad, you must find the has State proved the following two (2) elements beyond a reasonable doubt:

(1) Defendant was in control of a blank prescription form or pad; and

(2) Defendant was not a practitioner.

"Possession" includes location on or about the defendant's person, premises, belongings, vehicle or otherwise within the defendant's reasonable control.

"Practitioner" means a physician, dentist, pharmacy, hospital or other institution, veterinarian, scientific investigator, or other person licensed, registered or otherwise permitted to distribute, dispense, administer or conduct research with a controlled or noncontrolled substance.

Applicable Code Sections and Case Law:

11 *Del.C.* §§ 251(b) and 841C(a, b(1, 2)).

POSSESSION OR THEFT OF A PRESCRIPTION FORM OR PAD

In order to find Defendant guilty of Theft or Possession of a Prescription Form or Pad, you must find the State proved the following three (3) elements beyond a reasonable doubt:

(1) Defendant exercised control over, obtained, received, produced, reproduced, transferred, used, gave, or sold any copy, facsimile, or counterfeit version of a prescription form or pad;

(2) Defendant was not a practitioner; and

(3) Defendant intended to deprive a practitioner of the use of the prescription form or pad**,** or to facilitate drug diversion.

"Intentionally" means it was Defendant's conscious objective or purpose to take possession of the prescription form or pad.

"Possession" includes location on or about the defendant's person, premises, belongings, vehicle or otherwise within the defendant's reasonable control.

"Practitioner" means a physician, dentist, pharmacy, hospital or other institution, veterinarian, scientific investigator, or other person licensed, registered or otherwise permitted to distribute, dispense, administer or conduct research with a

controlled or noncontrolled substance.

Applicable Code Sections and Case Law:

11 *Del.C.* §§ 231(b) and 841C(a, b).

THEFT [LOST OR MISLAID PROPERTY]

In order to find Defendant guilty of Theft, you must find the State has proved the following four (4) elements beyond a reasonable doubt:

(1) Defendant exercised control over property of another;

(2) Defendant knew the property had been lost, misplaced, or delivered under a mistake as to the identity of the recipient, the nature, or the value) of the property;

(3) Defendant did not take reasonable steps to return the property to its owner; and

(4) Defendant intended to appropriate the property for Defendant's own use.

[The State contends that the value of the property is $1,500 or more. Therefore, in order to find Defendant guilty, you must find beyond a reasonable doubt the value of the property is $1,500 or more.

"Value" means the market value of the property at the time and place of the crime, or if that cannot be easily determined, the cost of replacing the property within a reasonable time after the crime occurred.]

"Intentionally" means it was Defendant's conscious objective or purpose to appropriate someone of property.

"Appropriate" means to exercise control over someone else's property permanently or for such an extended period of time so as to obtain a major part of its

economic value.

"Property of another" means property that belongs to someone other than Defendant and that Defendant does not have permission to take.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 224(1), 231(b) and 857(1, 7).

THEFT BY FALSE PRETENSE

In order to find Defendant guilty of Theft by False Pretense, you must find the State has proved the following four (4) elements beyond a reasonable doubt:

(1) Defendant obtained property of another;

(2) Defendant created or reinforced a false impression, or prevented the other person from acquiring information**,** which adversely affected that person's judgment about the transaction;

(3) Defendant intended to appropriate the property for Defendant's own use; and

(4) Defendant acted intentionally.

[The State contends that the value of the property is $1,500 or more. Therefore, in order to find Defendant guilty, you must find beyond a reasonable doubt the value of the property is $1,500 or more.

"Value" means the market value of the property at the time and place of the crime, or if that cannot be easily determined, the cost of replacing the property within a reasonable time after the crime occurred.]

"Intentionally" means it was Defendant's conscious objective or purpose to create a false impression in another person's mind about the transaction.

"Appropriate" means to exercise control over someone else's property

permanently or for such an extended period of time so as to obtain a major part of its economic value.

"Property of another" means property that belongs to someone other than Defendant and that Defendant does not have permission to take.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 224(1), 231(b), and 857(1, 7).

THEFT BY FALSE PROMISE

In order to find Defendant guilty of Theft by False Promise, you must find the State has proved the following five (5) elements beyond a reasonable doubt:

(1) Defendant obtained another person's property;

(2) Defendant made an expressed or implied representation, that Defendant or a third person would do something in exchange for the property;

(3) Defendant or the third person did not do what was promised;

(4) Defendant meant to appropriate the property for Defendant's own use; and

(5) Defendant acted intentionally.

[The State contends that the value of the property is $1,500 or more. Therefore, in order to find Defendant guilty, you must find beyond a reasonable doubt the value of the property is $1,500 or more.

"Value" means the market value of the property at the time and place of the crime, or if that cannot be easily determined, the cost of replacing the property within a reasonable time after the crime occurred.]

"Intentionally" means it was Defendant's conscious objective or purpose at the time the promise was made that Defendant or a third person would not to fulfill the promise.

"Appropriate" means to exercise control over someone else's property

permanently or for such an extended period of time so as to obtain a major part of its economic value.

"Property of another" means property that belongs to someone other than Defendant and that Defendant does not have permission to take.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 224(1), 231(b), and 857(1, 7).

THEFT OF SERVICES

In order to find Defendant guilty of Theft of Services, you must find the State has proved the following four (4) elements beyond a reasonable doubt:

(1) Defendant obtained services provided by another;

(2) Defendant knew the services must be paid for;

(3) Defendant made a false representation, or installed or tampered with any facility or equipment, in order to avoid payment; and

(4) Defendant intended to appropriate the services for Defendant's own benefit.

[The State contends that the value of the services is $1,500 or more. Therefore, in order to find Defendant guilty, you must find beyond a reasonable doubt the value of the serivces is $1,500 or more.

"Value" means the market value of the services at the time and place of the crime, or if that cannot be easily determined, the cost of duplicating the services within a reasonable time after the crime occurred.]

[It is a rebuttable presumption that Defendant intended to engage in theft of services by installing or tampering with any facility or equipment owned by the service provider.]

[It is a rebuttable presumption that Defendant obtained the services with the

intent to avoid payment, or to enable others to avoid payment for the services.**]**

[Comment: The rebuttable presumptions do not apply if services were provided to Defendant for less than 31 days or until there has been at least one meter reading.]

"Intentionally" means Defendant intended to appropriate the services for Defendant's own benefit.

"Services" means labor or professional service; transportation, telephone, gas, electricity, or other public service; accommodation in hotels, restaurants or elsewhere; admission to exhibitions; and the use of vehicles or other moveable property.

"Appropriate" means to exercise control over someone else's services permanently, or for such an extended period of time so as to obtain a major part of the service's economic value.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 224(1), 231(b), 787(a)(7), 845(b, c) and 857(1); *Wright v. State*, 405 A.2d 685, 689-90 (Del. 1979).

Extortion [Physical Injury] . . . . . 11.846(1)

EXTORTION

In order to find Defendant guilty of Extortion, you must find the State has proved the following three (3) elements beyond a reasonable doubt:

(1) Defendant compelled or induced another person to give property to Defendant, or to a third person;

(2) Defendant instilled fear in the other person that if the person did not give up the property, Defendant or someone else would cause physical injury to the person; and

(3) Defendant acted intentionally.

"Physical injury" means any impairment of physical condition or substantial pain.

“Intentionally” means it was Defendant's conscious objective or purpose to appropriate the property.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 222(24) and 231(b); *Bilinski v. State*, 462 A.2d 409, 413 (Del. 1983) (Terroristic Threatening is a lesser-included offense of Attempted Extortion); *Zimmerman v. State*, 628 A.2d 62, 68 (Del. 1993) (stating requirements for instruction on affirmative defense to extortion).

Extortion [Property Damage} . . . . . 11.846(2)

EXTORTION

In order to find Defendant guilty of Extortion, you must find the State has proved the following three (3) elements beyond a reasonable doubt:

(1) Defendant compelled or induced another person to give property to Defendant, or to a third person;

(2) Defendant instilled fear in the other person that if the person did not give up the property, Defendant or someone else would cause damage to property; and

(3) Defendant acted intentionally.

"Intentionally" means it was Defendant's conscious objective or purpose to appropriate the property.

"Property" means anything except land, and includes things growing on, affixed to or found in land, such as topsoil, sand, minerals, gravel, and the like, documents, contract rights, trade secrets, admission or transportation tickets, captured or domestic animals, food, drink and electric or other power.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 231(b) and 857(6); *Bilinski v. State*, 462 A.2d 409, 413 (Del. 1983) (Terroristic Threatening is a lesser-included offense of Attempted Extortion); *Zimmerman v. State*, 628 A.2d 62, 68 (Del. 1993) (stating requirements for

instruction on affirmative defense to extortion).

Extortion [Threat to Engage in Criminal Conduct] . . . . . 11.846(3)

EXTORTION

In order to find Defendant guilty of Extortion, you must find the State has proved the following three (3) elements beyond a reasonable doubt:

(1) Defendant compelled or induced another person to give property to Defendant, or to a third person;

(2) Defendant instilled fear in the other person that if the person did not give up the property, Defendant or someone else would engage in conduct constituting a crime; and

(3) Defendant acted intentionally.

"Intentionally" means it was Defendant's conscious objective or purpose to appropriate the property.

Applicable Code Sections and Case Law:

11 *Del. C.* § 231(b); *Bilinski v. State*, 462 A.2d 409, 413 (Del. 1983) (Terroristic Threatening is a lesser-included offense of Attempted Extortion); *Zimmerman v. State*, 628 A.2d 62, 68 (Del. 1993) (stating requirements for instruction on affirmative defense to extortion).

Extortion [Accuse Another of a Crime] . . . . . 11.846(4)

EXTORTION

In order to find Defendant guilty of Extortion, you must find the State has proved the following three (3) elements beyond a reasonable doubt:

(1) Defendant compelled or induced another person to give property to Defendant, or to a third person;

(2) Defendant instilled fear in the other person that if the person did not give up the property, Defendant or someone else would accuse the person of a crime; and

(3) Defendant acted intentionally.

"Intentionally" means it was Defendant's conscious objective or purpose to appropriate the property.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 222(24) and 231(b); *Bilinski v. State*, 462 A.2d 409, 413 (Del. 1983) (Terroristic Threatening is a lesser-included offense of Attempted Extortion); *Zimmerman v. State*, 628 A.2d 62, 68 (Del. 1993) (stating requirements for instruction on affirmative defense to extortion).

Extortion [Expose a Secret] . . . . . 11.846(5)

EXTORTION

In order to find Defendant guilty of Extortion, you must find the State has proved the following three (3) elements beyond a reasonable doubt:

(1) Defendant compelled or induced another person to give property to Defendant, or to a third person;

(2) Defendant instilled fear in the other person that if the person did not give up the property, Defendant or someone else would expose a secret or publicize a fact, whether true or false, tending to subject the other person to hatred**,** contempt or ridicule; and

(3) Defendant acted intentionally.

"Intentionally" means it was Defendant's conscious objective or purpose to appropriate the property.

Applicable Code Sections and Case Law:

11 *Del. C.* § 231(b); *Bilinski v. State*, 462 A.2d 409, 413 (Del. 1983) (Terroristic Threatening is a lesser-included offense of Attempted Extortion); *Zimmerman v. State*, 628 A.2d 62, 68 (Del. 1993) (stating requirements for instruction on affirmative defense to extortion).

Extortion [False Testimony/Withhold Information] . . . . . 11.846(6)

EXTORTION

In order to find Defendant guilty of Extortion, you must find the State has proved the following three (3) elements beyond a reasonable doubt:

(1) Defendant compelled or induced another person to give property to Defendant, or to a third person;

(2) Defendant instilled fear in the other person that if the person did not give up the property, Defendant or someone else would falsely testify or provide information, or would withhold testimony or information, with respect to the other person's legal claim or defense; and

(3) Defendant acted intentionally.

"Intentionally" means it was Defendant's conscious objective or purpose to appropriate the property.

Applicable Code Sections and Case Law:

11 *Del. C.* § 231(b); *Bilinski v. State*, 462 A.2d 409, 413 (Del. 1983) (Terroristic Threatening is a lesser-included offense of Attempted Extortion); *Zimmerman v. State*, 628 A.2d 62, 68 (Del. 1993) (stating requirements for instruction on affirmative defense to extortion).

Extortion [Improper Use of Public Position] . . . . . 11.846(7)

EXTORTION

In order to find Defendant guilty of Extortion, you must find the State has proved the following three (3) elements beyond a reasonable doubt:

(1) Defendant compelled or induced another person to give property to Defendant, or to a third person;

(2) Defendant instilled fear in the other person that if the person did not give up the property, Defendant would use or abuse Defendant's position as a public servant by performing some act related to Defendant's official duties, or Defendant would refuse or fail to perform an official duty, in a manner that would adversely affect another person; and

(3) Defendant acted intentionally.

"Intentionally" means it was Defendant's conscious objective or purpose to appropriate the property.

Applicable Code Sections and Case Law:

11 *Del. C.* § 231(b); *Bilinski v. State*, 462 A.2d 409, 413 (Del. 1983) (Terroristic Threatening is a lesser-included offense of Attempted Extortion); *Zimmerman v. State*, 628 A.2d 62, 68 (Del. 1993) (stating requirements for instruction on affirmative defense to extortion).

EXTORTION

In order to find Defendant guilty of Extortion, you must find the State has proved the following three (3) elements beyond a reasonable doubt:

(1) Defendant compelled or induced another person to give property to Defendant, or to a third person;

(2) Defendant instilled fear in the other person that if the person did not give up the property, Defendant would perform an act calculated to materially harm the other person's health, safety, business, calling, career, financial condition, reputation or personal relationships; and

(3) Defendant acted intentionally.

"Intentionally" means it was Defendant's conscious objective or purpose to appropriate the property.

Applicable Code Sections and Case Law:

11 *Del. C.* § 231(b); *Bilinski v. State*, 462 A.2d 409, 413 (Del. 1983) (Terroristic Threatening is a lesser-included offense of Attempted Extortion); *Zimmerman v. State*, 628 A.2d 62, 68 (Del. 1993) (stating requirements for instruction on affirmative defense to extortion).

THEFT/EXTORTION
[AFFIRMATIVE DEFENSE - CLAIM OF RIGHT]

In order to establish this affirmative defense, Defendant must prove each of the following three (3) elements by a preponderance of the evidence:

(1) Defendant acted under a claim of right;

(2) Defendant's claim of right was made honestly and in good faith; and

(3) Defendant claimed the right to do substantially what Defendant did in the manner in which it was done.

"Under a claim of right" means Defendant claims Defendant had a right to the property, at the time Defendant came into possession of the property.

If after considering all of the evidence, you find this affirmative defense is established by a preponderance of the evidence, then you must find Defendant not guilty of Extortion. Even if Defendant has not met this burden of proof for this particular affirmative defense, you must find Defendant not guilty of Extortion if you find the State has not met its burden of proving its case beyond a reasonable doubt.

Proof by a preponderance of the evidence means proof something is more likely than not. It means certain evidence, when compared to the evidence opposed to it, has the more convincing force and makes you believe something is more likely true than not. Preponderance of the evidence does not depend on the number of

witnesses. If the evidence supporting the existence of the defense is evenly balanced, then Defendant has not proved the existence of the defense by a preponderance of the evidence, and you must find against Defendant on that point. The State has no burden to present any evidence on this matter.

Applicable Code Sections and Case Law:

11 *Del.C.* § 304; *Bilinski v. State*, 462 A.2d 409, 413 (Del. 1983) (Terroristic Threatening is a lesser-included offense of Attempted Extortion); *Zimmerman v. State*, 628 A.2d 62, 68 (Del. 1993) (stating requirements for instruction on affirmative defense to extortion); *Wright v. State*, 405 A.2d 685, 689-90 (Del. 1979).

EXTORTION
[ACCUSATION OF CRIMINAL CONDUCT-AFFIRMATIVE DEFENSE]

In order to establish this affirmative defense, Defendant must prove each of the following two (2) elements by a preponderance of the evidence:

(1) Defendant believed the threatened criminal charge to be true; and

(2) Defendant's sole purpose was to compel or induce the other person to take reasonable action to make good the wrong that was the subject of the threatened criminal charge.

If after considering all of the evidence, you find this affirmative defense is established by a preponderance of the evidence, then you must find Defendant not guilty of Extortion. Even if Defendant has not met this burden of proof for this particular affirmative defense, you must find Defendant not guilty of Extortion if you find the State has not met its burden of proving its case beyond a reasonable doubt.

Proof by a preponderance of the evidence means proof something is more likely than not. It means certain evidence, when compared to the evidence opposed to it, has the more convincing force and makes you believe something is more likely true than not. Preponderance of the evidence does not depend on the number of witnesses. If the evidence supporting the existence of the defense is evenly balanced, then Defendant has not proved the existence of the defense by a preponderance of the

evidence, and you must find against Defendant on that point. The State has no burden to present any evidence on this matter.

{*Comment: This affirmative defense is available only to charges of extortion under § 846(4).* }

Applicable Code Sections and Case Law:

MISAPPLICATION OF PROPERTY

In order to find Defendant guilty of Misapplication of Property, you must find the State has proved the following five (5) elements beyond a reasonable doubt:

(1) Defendant was in possession of the personal property of another person;

(2) Possession was the result of an agreement that the property would be returned to the other person at a future time;

(3) Defendant sold, leased, loaned, pledged, pawned or encumbered the property without the other person's consent;

(4) Defendant's action created a risk that the other person would be unable to recover the property, or would suffer a monetary loss; and

(5) Defendant acted knowingly.

[The State contends that the value of the property is $1,500 or more. Therefore, in order to find Defendant guilty, you must find beyond a reasonable doubt the value of the property is $1,500 or more.

"Value" means the market value of the property at the time and place of the crime, or if that cannot be easily determined, the cost of replacing the property within a reasonable time after the crime occurred.]

"Knowingly" means Defendant was aware of the nature of the agreement with the other person; was aware that the other person had not agreed to Defendant's

misapplication of the property; and was aware that it was practically certain that the other person would be unable to recover the property or would suffer a monetary loss.

"Personal property of another" means property, other than land, that belongs to someone other than Defendant and Defendant does not have permission to take.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 224(1), 231(c) and 857(7).

THEFT OF RENTED PROPERTY

In order to find Defendant guilty of Theft of Rented Property, you must find the State has proved the following four (4) elements beyond a reasonable doubt:

(1) Defendant rented property from another person;

(2) Defendant knew that the rent must be paid;

(3) Defendant destroyed or wrongfully withheld the property, or misappropriated the property by fraud, deceit or threat, to avoid payment; and

(4) Defendant acted intentionally.

[The State contends that the value of the property is $1,500 or more. Therefore, in order to find Defendant guilty, you must find beyond a reasonable doubt the value of the property is $1,500 or more.

"Value" means the market value of the property at the time and place of the crime, or if that cannot be easily determined, the cost of replacing the property within a reasonable time after the crime occurred.]

[If you find any of the following facts, you are permitted, but not required, to infer Defendant intended to commit theft:

(1) Defendant failed to return the property (or make arrangements acceptable to the rentor or rentor's agent**)** to return the property within 10 days after proper notice, following the end of the rental contract. "Proper notice" means a written

demand by the rentor made after the end of the rental period and mailed by certified or registered mail to Defendant at the address Defendant gave when rental contract made, or Defendant's last known address provided in writing by Defendant or Defendant's agent.

(2) Defendant returned the property but failed to make payment, at the agreed rental rate, for the full period of the rental contract, unless Defendant had a good faith dispute with the rentor as to whether any payment, or additional payment, was due.

(3) Defendant presented identification to the rentor that was materially false, fictitious or not current with respect to name, address, place of employment or other appropriate items.**]**

"Intentionally" means it was Defendant's conscious objective or purpose to appropriate the rented property.

"Appropriate" means to exercise control over someone else's property permanently or for such an extended period of time so as to obtain a major part of the property's economic value.

"Property of another" means property, other than land, belonging to someone other than Defendant and Defendant does not have permission to take.

{Comment: Affirmative defense is found at § 849(e).}

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 224(1), 231(b), 849(b, c, e), and 857(1, 7).

THEFT OF RENTED PROPERTY [AFFIRMATIVE DEFENSE]

In order to establish this affirmative defense, Defendant must prove each of the following three (3) elements by a preponderance of the evidence:

(1) Defendant provided a correct name, address and other material items of information at the time of rental;

(2) Defendant failed to receive the rector's notice personally, due in no significant part to Defendant's fault; and

(3) Defendant returned the rented property to the rentor within 48 hours of commencement of prosecution with any charges for the overdue period and value of any damages to property.

If after considering all of the evidence, you find this affirmative defense is established by a preponderance of the evidence, then you must find Defendant not guilty of Theft. Even if Defendant has not met this burden of proof for this particular affirmative defense, you must find Defendant not guilty of Theft if you find the State has not met its burden of proving its case beyond a reasonable doubt.

Proof by a preponderance of the evidence means proof something is more likely than not. It means certain evidence, when compared to the evidence opposed to it, has the more convincing force and makes you believe something is more likely true than not. Preponderance of the evidence does not depend on the number of

witnesses. If the evidence supporting the existence of the defense is evenly balanced, then Defendant has not proved the existence of the defense by a preponderance of the evidence, and you must find against Defendant on that point. The State has no burden to present any evidence on this matter.

Applicable Code Sections and Case Law:

Use, possession, manufacture, distribution and sale of unlawful telecommunication and access devices . . . . . 11.850(a)(1)a

USE, POSSESSION, MANUFACTURE, DISTRIBUTION AND SALE OF UNLAWFUL TELECOMMUNICATION AND ACCESS DEVICES

In order to find Defendant guilty of Use, Possession, Manufacture, Distribution and Sale of Unlawful Telecommunication and Access Devices, you must find the State has proved the following three (3) elements beyond a reasonable doubt:

(1) Defendant **[(**manufactured/assembled/distributed/possessed with intent to distribute/ transferred/sold/promoted/offered/advertised**)** for **(**sale/use/distribution**)** any unlawful telecommunication device**)/(**modified/altered/programmed/reprogrammed**)** a telecommunication device**]**;

(2) The unlawful telecommunication device was **[**for the unauthorized **(**acquisition/theft**)/**to **(**receive/disrupt/transmit/decrypt/**{**acquire/facilitate**})** the **(**receipt/disruption/transmission/decryption/ acquisition**)]** of any telecommunication service without the express consent or authorization of the telecommunication service provider; and

(3) Defendant acted knowingly.

"Knowingly" means Defendant was aware Defendant was manufacturing, distributing or selling a unlawful telecommunication device.

"Manufacture or assembly of unlawful telecommunications device" means to make, produce or assemble an unlawful telecommunication device or to modify, alter, program or reprogram a telecommunication device to be capable of acquiring, disrupting, receiving, transmitting, decrypting or facilitating the acquisition, disruption, receipt, transmission or decryption of a telecommunication service without the express consent or express authorization of the telecommunication service provider, or to knowingly assist others in those activities.

"Telecommunication service provider" means a person or entity providing a telecommunication service, whether directly or indirectly as a reseller, including, but not limited to, a cellular, paging or other wireless communications company or other person or entity which, for a fee, supplies the facility, cell site, mobile telephone switching office or other equipment or telecommunication service; any person or entity owning or operating any cable television, satellite, Internet-based, telephone, wireless, microwave, data transmission or radio distribution system, network or facility; and any person or entity providing any telecommunication service directly or indirectly by or through any such distribution systems, networks or facilities.

“Unlawful telecommunication device" means any electronic serial number, mobile identification number, personal identification number or any telecommunication device that is capable of acquiring or facilitating the acquisition of a telecommunication service without the express consent or express authorization

of the telecommunication service provider, or that has been altered, modified, programmed or reprogrammed alone or in conjunction with another telecommunication device or other equipment to so acquire or facilitate the unauthorized acquisition of a telecommunication service. "Unlawful telecommunication device" also means: (a) phones altered to obtain service without the express consent or express authorization of the telecommunication service provider, tumbler phones, counterfeit or clone phones, tumbler microchips, counterfeit or clone microchips, and other instruments capable of disguising their identity or location or of gaining unauthorized access to a telecommunications system, network or facility operated by a telecommunication service provider; and (b) any telecommunication device which is capable of, or has been altered, designed, modified, programmed or reprogrammed, alone or in conjunction with another telecommunication device, so as to be capable of facilitating the disruption, acquisition, receipt, transmission or decryption of a telecommunication service without the express consent or express authorization of the telecommunication service provider, including, but not limited to, any device, technology, product, service, equipment, computer software, or component or part thereof, primarily distributed, sold, designed, assembled, manufactured, modified, programmed, reprogrammed or used for the purpose of providing the unauthorized receipt of, transmission of, disruption of, decryption of, access to, or acquisition of any

telecommunication service provided by any telecommunication service provider.

Applicable Code Sections and Case Law:

11 *Del.C.* §§ 231(c) and 850(e)(2, 5, 7).

Use, possession, manufacture, distributions and sale of unlawful telecommunication and access devices . . . . . 11.850(a)(1)b

USE, POSSESSION, MANUFACTURE, DISTRIBUTION AND SALE OF UNLAWFUL TELECOMMUNICATION AND ACCESS DEVICES

In order to find Defendant guilty of Use, Possession, Manufacture, Distribution and Sale of Unlawful Telecommunication and Access Devices, you must find the State has proved the following three (3) elements beyond a reasonable doubt:

(1) Defendant **[(**manufactured/assembled/distributed/possessed with intent to distribute/ transferred/sold/promoted/offered/advertised**)** for **(**sale/use/distribution**)** any unlawful telecommunication device**)/(**modified/altered/programmed/reprogrammed**)** a telecommunication device**]**;

(2) The unlawful telecommunication device was to **[(**conceal/assist another to conceal**)** from any **(**telecommunication service provider/lawful authority**)]** the **[**existence/place of **(**origin/ destination**)**/originating and receiving telephone numbers**]** under circumstances evincing an intent to use the same in the commission of any offense; and

(3) Defendant acted knowingly.

"Knowingly" means Defendant was aware Defendant was manufacturing, distributing or selling a unlawful telecommunication device.

"Telecommunication service provider" means a person or entity providing a telecommunication service, whether directly or indirectly as a reseller, including, but not limited to, a cellular, paging or other wireless communications company or other person or entity which, for a fee, supplies the facility, cell site, mobile telephone switching office or other equipment or telecommunication service; any person or entity owning or operating any cable television, satellite, Internet-based, telephone, wireless, microwave, data transmission or radio distribution system, network or facility; and any person or entity providing any telecommunication service directly or indirectly by or through any such distribution systems, networks or facilities.

“Unlawful telecommunication device" means any electronic serial number, mobile identification number, personal identification number or any telecommunication device that is capable of acquiring or facilitating the acquisition of a telecommunication service without the express consent or express authorization of the telecommunication service provider, or that has been altered, modified, programmed or reprogrammed alone or in conjunction with another telecommunication device or other equipment to so acquire or facilitate the unauthorized acquisition of a telecommunication service. "Unlawful telecommunication device" also means: a. phones altered to obtain service without the express consent or express authorization of the telecommunication service provider, tumbler phones, counterfeit or clone phones, tumbler microchips,

counterfeit or clone microchips, and other instruments capable of disguising their identity or location or of gaining unauthorized access to a telecommunications system, network or facility operated by a telecommunication service provider; and b. any telecommunication device which is capable of, or has been altered, designed, modified, programmed or reprogrammed, alone or in conjunction with another telecommunication device, so as to be capable of facilitating the disruption, acquisition, receipt, transmission or decryption of a telecommunication service without the express consent or express authorization of the telecommunication service provider, including, but not limited to, any device, technology, product, service, equipment, computer software, or component or part thereof, primarily distributed, sold, designed, assembled, manufactured, modified, programmed, reprogrammed or used for the purpose of providing the unauthorized receipt of, transmission of, disruption of, decryption of, access to, or acquisition of any telecommunication service provided by any telecommunication service provider.

Applicable Code Sections and Case Law:

11 *Del.C.* §§ 231(c) and 850(e)(5, 7).

Use, possession, manufacture, distributions and sale of unlawful telecommunication and access devices . . . . . 11.820(a)(2)

USE, POSSESSION, MANUFACTURE, DISTRIBUTION AND SALE OF UNLAWFUL TELECOMMUNICATION AND ACCESS DEVICES

In order to find Defendant guilty of Use, Possession, Manufacture, Distribution and Sale of Unlawful Telecommunication and Access Devices, you must find the State has proved the following two (2) elements beyond a reasonable doubt:

(1) Defendant **[(**manufactured/assembled/distributed/possessed with intent to distribute/ transferred/sold/promoted/offered/advertised**)** for **(**sale/use/distribution**)** any unlawful telecommunication device**)/(**modified/altered/programmed/reprogrammed**)** a telecommunication device**]**; and

(2) Defendant acted knowingly.

"Knowingly" means Defendant was aware Defendant was manufacturing, distributing or selling a unlawful telecommunication device.

"Manufacture or assembly of any unlawful access device" -- To make, produce or assemble an unlawful access device or modify, alter, program or reprogram any instrument, device, machine, equipment, technology or software so that it is capable of defeating or circumventing any technology, device or software used by the

provider, owner or licensee of a telecommunication service, or of any data, audio or video programs or transmissions, to protect any such telecommunication, data, audio or video services, programs or transmissions from unauthorized receipt, acquisition, access, decryption, disclosure, communication, transmission or retransmission, or to knowingly assist others in those activities.

Applicable Code Sections and Case Law:

11 *Del.C.* §§ 231(c) and 850(e).

Use, possession, manufacture, distributions and sale of unlawful telecommunication and access devices . . . . . 11.850(a)(3)a

USE, POSSESSION, MANUFACTURE, DISTRIBUTION AND SALE OF UNLAWFUL TELECOMMUNICATION AND ACCESS DEVICES

In order to find Defendant guilty of Use, Possession, Manufacture, Distribution and Sale of Unlawful Telecommunication and Access Devices, you must find the State has proved the following two (2) elements beyond a reasonable doubt:

(1) Defendant **[(**prepared/distributed/possessed**)** with intent to **(**distribute/sold/gave/ transferred/advertised**)** for **(**sale/use/distribution**)** any **(**plans/instructions**)** for the **(**manufacture/ assembly**)** of an unlawful **(**telecommunication/access**)** device with the intent to **(**use/employ/allow**)** the unlawful **(**telecommunication/access**)** device to be used/**(**knowing/having reason to believe**)** the unlawful **(**telecommunication/access**)**device was intended to be used/**(**plan/instruction**)** was intended to be used for the **(**manufacture/assembly**)** of the unlawful **(**telecommunication/access**)** device**]**;

(2) Defendant acted knowingly.

"Knowingly" means Defendant was aware Defendant was manufacturing, distributing or selling a unlawful telecommunication device.

"Manufacture or assembly of any unlawful access device" means to make,

produce or assemble an unlawful access device or modify, alter, program or reprogram any instrument, device, machine, equipment, technology or software so that it is capable of defeating or circumventing any technology, device or software used by the provider, owner or licensee of a telecommunication service, or of any data, audio or video programs or transmissions, to protect any such telecommunication, data, audio or video services, programs or transmissions from unauthorized receipt, acquisition, access, decryption, disclosure, communication, transmission or retransmission, or to knowingly assist others in those activities.

"Manufacture or assembly of unlawful telecommunications device" means to make, produce or assemble an unlawful telecommunication device or to modify, alter, program or reprogram a telecommunication device to be capable of acquiring, disrupting, receiving, transmitting, decrypting or facilitating the acquisition, disruption, receipt, transmission or decryption of a telecommunication service without the express consent or express authorization of the telecommunication service provider, or to knowingly assist others in those activities.

Applicable Code Sections and Case Law:

11 *Del.C.* § 231(c) and 850(e)(1, 2).

Use, possession, manufacture, distributions and sale of unlawful telecommunication and access devices . . . . . 11.850(a)(3)b

USE, POSSESSION, MANUFACTURE, DISTRIBUTION AND SALE OF UNLAWFUL TELECOMMUNICATION AND ACCESS DEVICES

In order to find Defendant guilty of Use, Possession, Manufacture, Distribution and Sale of Unlawful Telecommunication and Access Devices, you must find the State has proved the following two (2) elements beyond a reasonable doubt:

(1) Defendant **[(**prepared/distributed/possessed**)** with intent to **(**distribute/sold/gave/ transferred/advertised**)** for **(**sale/use/distribution**)** material, including hardware, cables, tools, data, computer software or other information or equipment; and

(2) Defendant knew the **[**purchaser/third person**]** intended to use the material in the manufacture of an unlawful **[**telecommunication/access device**]**.

"Knowingly" means Defendant was aware Defendant was manufacturing, distributing or selling a unlawful telecommunication device.

"Manufacture or assembly of any unlawful access device" means to make, produce or assemble an unlawful access device or modify, alter, program or reprogram any instrument, device, machine, equipment, technology or software so that it is capable of defeating or circumventing any technology, device or software

used by the provider, owner or licensee of a telecommunication service, or of any data, audio or video programs or transmissions, to protect any such telecommunication, data, audio or video services, programs or transmissions from unauthorized receipt, acquisition, access, decryption, disclosure, communication, transmission or retransmission, or to knowingly assist others in those activities.

"Manufacture or assembly of unlawful telecommunications device" means to make, produce or assemble an unlawful telecommunication device or to modify, alter, program or reprogram a telecommunication device to be capable of acquiring, disrupting, receiving, transmitting, decrypting or facilitating the acquisition, disruption, receipt, transmission or decryption of a telecommunication service without the express consent or express authorization of the telecommunication service provider, or to knowingly assist others in those activities.

Applicable Code Sections and Case Law:

11 *Del.C.* § 231(c) and 850(e)(1, 2).

RECEIVING STOLEN PROPERTY

In order to find Defendant guilty of Receiving Stolen Property, you must find the State has proved the following four (4) elements beyond a reasonable doubt:

(1) Defendant received, retained, or disposed of property of another person;

(2) Defendant deprived the person of the property;

(3) Defendant knew or believed that the property had been acquired under circumstances amounting to theft; and

(4) Defendant acted intentionally.

[The State contends that the value of the property is $1,500 or more. Therefore, in order to find Defendant guilty, you must find beyond a reasonable doubt the value of the property is $1,500 or more.

"Value" means the market value of the property at the time and place of the crime, or if that cannot be easily determined, the cost of replacing the property within a reasonable time after the crime occurred.]

"Intentionally" means it was Defendant's conscious objective or purpose to receive, retain, or dispose of another person's property.

"Knew" means Defendant was aware the property was acquired by theft or Defendant believed it was practically certain the property was acquired by theft.

You may presume that the Defendant had knowledge that the property had been

acquired by theft, if Defendant bought property at a price Defendant knew was substantially below its reasonable value, or if Defendant possessed property where the affixed identification or serial number was altered, removed, defaced or falsified.

"Deprive" means to exercise control over property, or to withhold someone else's property, permanently or for such an extended period of time so as to withhold a major part of the property's economic value.

"Theft" means a person takes, exercises control over, or obtains property of another person intending to deprive that person of the property.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 224(1), 231(b, c), 852, and 857(1, 3); *Guyer v. State*, 453 A.2d 462, 464 (Del. 1982); *State v. Shahan*, 335 A.2d 277, 283 (Del. Super. 1973). *See also Sexton v. State*, 397 A.2d 540, 544 (Del. 1979), *overruled on other grounds.*

Selling stolen property 11.852A

SELLING STOLEN PROPERTY

In order to find Defendant guilty of Selling Stolen Property, you must find the State has proved the following two (2) elements beyond a reasonable doubt:

(1) Defendant received stolen property; and

(2) Defendant sold some or all of the stolen property received.

[The State contends that the value of the property is $1,500 or more. Therefore, in order to find Defendant guilty, you must find beyond a reasonable doubt the value of the property is $1,500 or more.

"Value" means the market value of the property at the time and place of the crime, or if that cannot be easily determined, the cost of replacing the property within a reasonable time after the crime occurred.]

Applicable Code Sections and Case Law:

Unauthorized Use of a Vehicle . . . . . 11.853(1)

UNAUTHORIZED USE OF A VEHICLE

In order to find Defendant guilty of Unauthorized Use of a Vehicle, you must find the State has proved the following three (3) elements beyond a reasonable doubt:

(1) Defendant took or used another person's vehicle;

(2) Defendant did not have the owner's consent to take, operate, use, ride in, or exercise control over the vehicle; and

(3) Defendant acted knowingly.

"Knowingly" means Defendant was aware Defendant did not have the owner's permission to use the vehicle, or Defendant believed it was practically certain Defendant did not have permission to use the vehicle.

Applicable Code Sections and Case Law:

11 *Del. C.* § 231(c).

Unauthorized Use of a Vehicle [During Maintenance] . . . . . 11.853(2)

UNAUTHORIZED USE OF A VEHICLE

In order to find Defendant guilty of Unauthorized Use of a Vehicle, you must find the State has proved the following three (3) elements beyond a reasonable doubt:

(1) Defendant had possession of the vehicle to repair or maintain it, for compensation, under agreement;

(2) Defendant intentionally used the vehicle for Defendant's own purpose without permission; and

(3) Defendant's use of the vehicle was a gross deviation from the purpose of the agreement.

"Intentionally" means it was Defendant's conscious objective or purpose to use the vehicle for Defendant's own purpose.

"Gross deviation" means Defendant consciously did not follow a reasonable standard of conduct, in the light of all the surrounding circumstances.

Applicable Code Sections and Case Law:

11 *Del. C.* § 231(b).

Unauthorized Use of a Vehicle [Failure to Timely Return] . . . . . 11.853(3)

UNAUTHORIZED USE OF A VEHICLE

In order to find Defendant guilty of Unauthorized Use of a Vehicle, you must find the State has proved the following three (3) elements beyond a reasonable doubt:

(1) Defendant had possession of the vehicle under an agreement where the vehicle was to be returned at a specified time;

(2) Defendant intentionally kept possession of the vehicle past the specified time without permission; and

(3) Defendant kept the vehicle for such a length of time so as to constitute a gross deviation from the agreement.

"Intentionally" means it was Defendant's conscious objective or purpose to keep the vehicle without permission.

"Gross deviation" means Defendant consciously did not follow a reasonable standard of conduct, in the light of all the surrounding circumstances.

Applicable Code Sections and Case Law:

11 *Del. C.* § 231(b).

Unauthorized Use of a Vehicle [Vehicle as Security for Debt] . . . . . 11.853(4)

UNAUTHORIZED USE OF A VEHICLE

In order to find Defendant guilty of Unauthorized Use of a Vehicle, you must find the State has proved the following three (3) elements beyond a reasonable doubt:

(1) Defendant took possession of the vehicle knowing it was subject to a debt;

(2) Defendant knew the vehicle was the major or only security the creditor had on the debt; and

(3) Defendant transferred or purported to transfer the vehicle and the responsibility for making payments to a third party.

It is immaterial that the third party continued or resumed payments to the creditor.

Applicable Code Sections and Case Law:

11 *Del. C.* § 251(b), 857.

Identity theft . . . . . 11.854(a)

IDENTITY THEFT

In order to find Defendant guilty of Identity Theft, you must find the State has proved the following three (3) elements beyond a reasonable doubt:

(1) Defendant obtained, produced, possessed, used, sold, gave, or transferred personal identifying information, belonging or pertaining to another person, without consent;

(2) Defendant intended to use the information to commit a crime; and

(3) Defendant acted knowingly or recklessly.

"Knowingly" means Defendant was aware Defendant was using another person's information, without permission, to commit a crime.

"Recklessly" means Defendant was aware of and consciously disregarded a substantial and unjustifiable risk another person's information would be used, without permission, to commit a crime. Defendant's risk was of such a nature and degree that Defendant's disregard of the risk was a gross deviation from the standard of conduct a reasonable person would observe under the same circumstances.

"Personal identifying information" includes name, address, birth date, Social Security number, driver's license number, telephone number, financial services account number, savings account number, checking account number, credit card

number, debit card number, identification document or false identification document, electronic identification number, educational record, health care record, financial record, credit record, employment record, e-mail address, computer system password, mother's maiden name or similar personal number, record or information.

Applicable Code Sections and Case Law:

11 *Del.C.* §§ 231(c, e) and 854(c).

Identity theft [Facilitated Use by Third Person] . . . . . 11.854(b)

IDENTITY THEFT

In order to find Defendant guilty of Identity Theft, you must find the State has proved the following three (3) elements beyond a reasonable doubt:

(1) Defendant obtained, produced, possessed, used, sold, gave, or transferred personal identifying information, belonging or pertaining to another person, without consent;

(2) Defendant facilitated the use by a third person of the information to commit a crime; and

(3) Defendant acted knowingly or recklessly.

"Knowingly" means Defendant was aware Defendant was facilitating the use by a third person of the information, without permission, to commit a crime.

"Recklessly" means Defendant was aware of and consciously disregarded a substantial and unjustifiable risk another person's information would be used by a third party, without permission, to commit a crime. Defendant's risk was of such a nature and degree that Defendant's disregard of the risk was a gross deviation from the standard of conduct a reasonable person would observe under the same circumstances.

"Personal identifying information" includes name, address, birth date, Social

Security number, driver's license number, telephone number, financial services account number, savings account number, checking account number, credit card number, debit card number, identification document or false identification document, electronic identification number, educational record, health care record, financial record, credit record, employment record, e-mail address, computer system password, mother's maiden name or similar personal number, record or information.

Applicable Code Sections and Case Law:

11 *Del.C.* §§ 231(c, e) and 854(c).

Unlawful operation of a recording device [Pornographic Image] . . . 11.858(a)(1)

UNLAWFUL OPERATION OF A RECORDING DEVICE

In order to find Defendant guilty of Unlawful Operation of a Recording Device, you must find the State has proved the following four (4) elements beyond a reasonable doubt:

(1) Defendant operated the audiovisual function of any device in a motion picture theater while the motion picture was exhibited;

(2) Defendant operated the device for the purpose of distributing or transmitting a still photographic image of the motion picture;

(3) Defendant acted without the permission of the motion picture theater owner; and

(4) Defendant acted knowingly.

"Knowingly" means Defendant was aware Defendant was operating the audiovisual function of the device to make a still photograph of the motion picture.

"Audiovisual recording function" means the capability of a device to record or transmit a motion picture, or any part thereof, by means of any technology.

"Motion picture theater" means a movie theater, screening room, or other public venue that was being utilized primarily for the exhibition of a motion picture at the time of the offense.

Applicable Code Sections and Case Law:

*Unlawful operation of a recording device [Recording Motion Picture]*11.858(a)(2)

UNLAWFUL OPERATION OF A RECORDING DEVICE

In order to find Defendant guilty of Unlawful Operation of a Recording Device, you must find the State has proved the following four (4) elements beyond a reasonable doubt:

(1) Defendant operated the audiovisual function of any device in a motion picture theater while the motion picture was exhibited;

(2) Defendant operated the device for the purpose of recording the motion picture;

(3) Defendant acted without the permission of the motion picture theater owner; and

(4) Defendant acted knowingly.

"Knowingly" means Defendant was aware Defendant was operating the audiovisual function of the device to record the motion picture.

"Audiovisual recording function" means the capability of a device to record or transmit a motion picture, or any part thereof, by means of any technology.

"Motion picture theater" means a movie theater, screening room, or other public venue that was being utilized primarily for the exhibition of a motion picture at the time of the offense.

Applicable Code Sections and Case Law:

Larceny of Livestock 11.859

LARCENY OF LIVESTOCK

In order to find Defendant guilty of Larceny of Livestock, you must find the State proved the following two (2) elements beyond a reasonable doubt:

(1) Defendant unlawfully took control of another person's livestock permanently, or for such an extended period of time so as to obtain a major part of its economic value; and

(2) Defendant acted feloniously.

"Intentionally" means it was Defendant's conscious objective or purpose to unlawfully take the livestock.

"Feloniously" means proceeding with the deliberate intention of committing the theft.

Applicable Code Sections and Case Law:

11 *Del. C.* § 231(b); *State v. Cooper*, 575 A.2d 1074, 1076 (Del. 1990).

Possession of shoplifter's tools or instruments facilitating theft . . . . . 11.860(a)(1)

POSSESSION OF SHOPLIFTER'S TOOLS OR INSTRUMENTS FACILITATING THEFT

In order to find Defendant guilty of Possession of Shoplifter's Tools or Instruments Facilitating Theft, you must find the State has proved the following two (2) elements beyond a reasonable doubt:

(1) Defendant possessed any tool or instrument adapted, designed, or commonly used for committing offenses involving shoplifting; and

(2) Defendant acted knowingly.

"Knowingly" means that Defendant was aware that Defendant possessed the tool for the purpose of committing offenses involving shoplifting.

"Possession" means the tool was in the immediate personal possession of, or under the immediate control of, Defendant, so that it was physically available or accessible.

Applicable Code Sections and Case Law:

11 *Del.C.* §§ 231(c) and 251(b)

Possession of shoplifter's tools or instrument facilitating theft [disabling a security device] . . . . . 11.60(a)(2)

POSSESSION OF SHOPLIFTER'S TOOLS OR INSTRUMENTS FACILITATING THEFT

In order to find Defendant guilty of Possession of Shoplifter's Tools or Instruments Facilitating Theft, you must find the State has proved the following three (3) elements beyond a reasonable doubt:

(1) Defendant possessed a tool or instrument;

(2) The tool or instrument was adapted, designed, or commonly used for committing offenses involving overriding**,** disabling, or evading a security device without authorization; and

(3) Defendant acted knowingly.

"Knowingly" means that Defendant was aware that Defendant possessed tool for the purpose of overriding**,** disabling, or evading a security device, without authorization.

"Security device" includes any lock, whether mechanical or electronic, or any warning device designed to alert a person or the general public of a possible attempt to shoplift any goods, wares or merchandise that are displayed for sale. "Security device" specifically includes, but is not limited to, any electronic or other device that is attached or affixed to any goods, wares or merchandise on display for sale in a

mercantile establishment.

"Possession" means that the tool was in the immediate personal possession of, or under the immediate control of, Defendant so that it was physically available or accessible.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 231(c) and 860(b).

Forgery in the Third Degree [Alter Written Instrument] . . . . . 11.861(a)(1)

FORGERY

In order to find Defendant guilty of Forgery, you must find the State has proved the following three (3) elements beyond a reasonable doubt:

(1) Defendant meant to defraud, deceive, or injure another person;

(2) Defendant altered another person's written instrument without that person's authority; and

(3) Defendant acted intentionally.

"Defraud" means to acquire a gain or advantage by fraud.

"Fraud" means an intentional perversion, misrepresentation or concealment of truth.

"Intentionally" means Defendant consciously engaged in altering the written instrument.

"Written instrument" means any document or article containing written or printed matter or the equivalent thereof, used for the purpose of setting forth, reciting, embodying, conveying, or recording information, or constituting a symbol or evidence of value, right, privilege or identification.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 222(7, 13), 231(b), and 863.

Forgery in the Third Degree [Execute Written Instrument] . . . . . 11.861(a)(2)

FORGERY

In order to find Defendant guilty of Forgery, you must find the State has proved the following three (3) elements beyond a reasonable doubt:

(1) Defendant meant to defraud, deceive, or injure another person;

(2) Defendant completed, executed, authenticated, issued, or transferred a written instrument purporting to be the act of another person, whether real or fictitious, who did not authorize that act; and

(3) Defendant acted intentionally.

"Defraud" means to acquire a gain or advantage by fraud.

"Fraud" means an intentional perversion, misrepresentation or concealment of truth.

"Intentionally" means Defendant consciously engaged in completing, executing, authenticating, issuing, or transferring the written instrument.

"Written instrument" means any document or article containing written or printed matter or the equivalent thereof, used for the purpose of setting forth, reciting, embodying, conveying, or recording information, or constituting a symbol or evidence of value, right, privilege or identification.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 222(7, 13), 231(b), and 863.

Forgery in the Third Degree [Possession of Forged Instrument] . . . . 11.861(a)(3)

FORGERY

In order to find Defendant guilty of Forgery, you must find the State has proved the following three (3) elements beyond a reasonable doubt:

(1) Defendant meant to defraud, deceive, or injure another person;

(2) Defendant possessed a written instrument, knowing it was made, completed, or altered under circumstances constituting forgery; and

(3) Defendant acted intentionally.

"Defraud" means to acquire a gain or advantage by fraud.

"Fraud" means an intentional perversion, misrepresentation or concealment of truth.

"Intentionally" means Defendant consciously possessed a written instrument, knowing it was made, completed, or altered under circumstances constituting forgery.

"Written instrument" means any document or article containing written or printed matter or the equivalent thereof, used for the purpose of setting forth, reciting, embodying, conveying, or recording information, or constituting a symbol or evidence of value, right, privilege or identification.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 222(7, 13), 231(b), and 863; *Bailey v. State*, 450 A.2d 400, 402-403 (Del. 1982).

Forgery in the Second Degree [Commercial Instrument] . . . . . 11.861(b)(2)a

FORGERY IN THE SECOND DEGREE

In order to find Defendant guilty of Forgery in the Second Degree, you must find the State has proved the following four (4) elements beyond a reasonable doubt:

(1) Defendant meant to defraud, deceive, or injure another person;

(2) Defendant altered ,completed, executed, authenticated, issued or transferred another person's written instrument without that other person's authority;

(3) The written instrument was, or purported to be, a deed, will, codicil, contract, release, assignment, commercial instrument, or check, which may create or otherwise affect a legal right, interest, or obligation; and

(4) Defendant acted intentionally.

"Defraud" means to acquire a gain or advantage by fraud.

"Fraud" means an intentional perversion, misrepresentation or concealment of truth.

"Intentionally" means Defendant consciously altered, completed, executed, authenticated, issued or transferred another person's written instrument without that other person's authority.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 222(7, 13), 231(b), and 863; *Bailey v. State*, 450 A.2d 400, 402-403 (Del. 1982).

Forgery in the Second Degree [Filed with Public Office] . . . . . 11.861(b)(2)b

FORGERY IN THE SECOND DEGREE

In order to find Defendant guilty of Forgery in the Second Degree, you must find the State has proved the following four (4) elements beyond a reasonable doubt:

(1) Defendant meant to defraud, deceive, or injure another person;

(2) Defendant altered ,completed, executed, authenticated, issued or transferred another person's written instrument without that other person's authority;

(3) The written instrument was, or purported to be, a public record**,** or an instrument filed (or required to be filed) with a public office or public servant; and

(4) Defendant acted intentionally.

"Defraud" means to acquire a gain or advantage by fraud.

"Fraud" means an intentional perversion, misrepresentation or concealment of truth.

"Intentionally" means Defendant consciously altered, completed, executed, authenticated, issued or transferred another person's written instrument without that other person's authority.

"Public servant" means any officer or employee of the State or any political subdivision thereof, including legislators and judges, and any person participating as juror, advisor or consultant in performing a governmental function. The term does

not include witnesses. This definition includes persons who are candidates for office or who have been elected to office, but who have not yet assumed office.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 222(7, 13), 231(b), 863, and 1209(4); *Bailey v. State*, 450 A.2d 400, 402-403 (Del. 1982).

Forgery in the Second Degree [Issued by Public Office] . . . . . 11.861.(b)(2)c

FORGERY IN THE SECOND DEGREE

In order to find Defendant guilty of Forgery in the Second Degree, you must find the State has proved the following four (4) elements beyond a reasonable doubt:

(1) Defendant meant to defraud, deceive, or injure another person;

(2) Defendant altered ,completed, executed, authenticated, issued or transferred a written instrument without authority;

(3) The written instrument was, or purported to be, officially issued or created by a public office, public servant, or governmental instrumentality; and

(4) Defendant acted intentionally.

"Defraud" means to acquire a gain or advantage by fraud.

"Fraud" means an intentional perversion, misrepresentation or concealment of truth.

"Intentionally" means Defendant consciously altered, completed, executed, authenticated, issued or transferred the written instrument without authority.

"Public servant" means any officer or employee of the State or any political subdivision thereof, including legislators and judges, and any person participating as juror, advisor or consultant in performing a governmental function. The term does

not include witnesses. This definition includes persons who are candidates for office or who have been elected to office, but who have not yet assumed office.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 222(7, 13), 231(b), 857(4), 863, and 1209(4).

Forgery in the Second Degree [Tokens/Tickets] . . . . . 11.861(b)(2)d

FORGERY IN THE SECOND DEGREE

In order to find Defendant guilty of Forgery in the Second Degree, you must find the State has proved the following four (4) elements beyond a reasonable doubt:

(1) Defendant meant to defraud, deceive, or injure another person;

(2) Defendant altered ,completed, executed, authenticated, issued or transferred a written instrument without authority;

(3) The written instrument was, or purported to be, part of an issue of tokens, tickets, public transportation transfers, certificates, or other articles manufactured and designed for use as symbols of value usable in place of money for the purchase of property or services; and

(4) Defendant acted intentionally.

"Defraud" means to acquire a gain or advantage by fraud.

"Fraud" means an intentional perversion, misrepresentation or concealment of truth.

"Intentionally" means Defendant consciously altered, completed, executed, authenticated, issued or transferred the written instrument without authority.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 222(7, 13), 231(b), 857(4), and 863.

Forgery in the Second Degree [Prescription] . . . . . 11.861(b)(2)e

FORGERY IN THE SECOND DEGREE

In order to find Defendant guilty of Forgery in the Second Degree, you must find the State has proved the following four (4) elements beyond a reasonable doubt:

(1) Defendant meant to defraud, deceive, or injure another person;

(2) Defendant altered ,completed, executed, authenticated, issued or transferred a written instrument without authority;

(3) The written instrument was, or purported to be, a prescription of a licensed physician**,** or other person authorized by law to issue a prescription, for any drug, instrument, or device; and

(4) Defendant acted intentionally.

"Defraud" means to acquire a gain or advantage by fraud.

"Fraud" means an intentional perversion, misrepresentation or concealment of truth.

"Intentionally" means Defendant consciously altered, completed, executed, authenticated, issued or transferred the written instrument without authority.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 222(7, 13), 231(b), 857(4), and 863.

Forgery in the First Degree [Government Instruments] . . . . . 11.861(b)(1)a

FORGERY IN THE FIRST DEGREE

In order to find Defendant guilty of Forgery in the Second Degree, you must find the State has proved the following four (4) elements beyond a reasonable doubt:

(1) Defendant meant to defraud, deceive, or injure another person;

(2) Defendant altered ,completed, executed, authenticated, issued or transferred a written instrument without authority;

(3) The written instrument was, or purported to be, part of an issue of money, stamps, securities, or other valuable instruments issued by a government or a governmental instrumentality; and

(4) Defendant acted intentionally.

"Defraud" means to acquire a gain or advantage by fraud.

"Fraud" means an intentional perversion, misrepresentation or concealment of truth.

"Intentionally" means Defendant consciously altered, completed, executed, authenticated, issued or transferred the written instrument without authority.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 222(7, 13), 231(b), 857(4), and 863.

FORGERY IN THE FIRST DEGREE

In order to find Defendant guilty of Forgery in the Second Degree, you must find the State has proved the following four (4) elements beyond a reasonable doubt:

(1) Defendant meant to defraud, deceive, or injure another person;

(2) Defendant altered ,completed, executed, authenticated, issued or transferred a written instrument without authority;

(3) The written instrument was, or purported to be, part of an issue of stock, bonds, or other instruments representing interests in or claims against a corporation, business enterprise, or other organization or its property; and

(4) Defendant acted intentionally.

"Defraud" means to acquire a gain or advantage by fraud.

"Fraud" means an intentional perversion, misrepresentation or concealment of truth.

"Intentionally" means Defendant consciously altered, completed, executed, authenticated, issued or transferred the written instrument without authority.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 222(7, 13), 231(b), 857(4), and 863.

Possession of Forgery Devices [Specifically Designed] . . . . . 11.862(1)

POSSESSION OF FORGERY DEVICES

In order to find Defendant guilty of Possession of Forgery Devices, you must find the State has proved the following four (4) elements beyond a reasonable doubt:

(1) Defendant made or possessed a device, equipment or article, specifically designed for purposes of counterfeiting or forgery;

(2) Defendant knew the character of the device;

(3) Defendant meant to use the device for an unlawful purpose; and

(4) Defendant acted intentionally.

"Intentionally" means Defendant consciously engaged in making or using the device specifically for purposes of forgery.

Applicable Code Sections and Case Law:

11 *Del. C.* § 231(b).

Possession of Forgery Devices [Adaptable for Use] . . . . . 11.862(2)

POSSESSION OF FORGERY DEVICES

In order to find Defendant guilty of Possession of Forgery Devices, you must find the State has proved the following three (3) elements beyond a reasonable doubt:

(1) Defendant made or possessed a device, equipment or article, capable of, or adaptable to use for purposes of, counterfeiting or forgery;

(2) Defendant meant to use the device, equipment, or article for an unlawful purpose; and

(3) Defendant acted intentionally.

"Intentionally" means Defendant consciously made or possessed the device, equipment or article specifically for purposes of forgery.

Applicable Code Sections and Case Law:

11 *Del. C.* § 231(b).

Falsifying Business Records . . . . . 11.871(1)

FALSIFYING BUSINESS RECORDS

In order to find Defendant guilty of Falsifying Business Records, you must find the State has proved the following three (3) elements beyond a reasonable doubt:

(1) Defendant made or caused a false entry in an enterprise's business records;

(2) Defendant meant to defraud the enterprise; and

(3) Defendant acted intentionally.

"Defraud" means to acquire a gain or advantage by fraud.

"Fraud" means an intentional perversion, misrepresentation or concealment of truth.

"Intentionally" means it was Defendant's conscious objective or purpose to cause monetary injury or loss to the enterprise by means of deceit.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 222(7, 13) and 231(b).

Falsifying Business Records . . . . . 11.871(2)

FALSIFYING BUSINESS RECORDS

In order to find Defendant guilty of Falsifying Business Records, you must find the State has proved the following two (2) elements beyond a reasonable doubt:

(1) Defendant altered, erased, obliterated, removed, deleted or destroyed a true entry in an enterprise's business records;

(2) Defendant meant to defraud the enterprise; and

(3) Defendant acted intentionally.

"Defraud" means to acquire a gain or advantage by fraud.

"Fraud" means an intentional perversion, misrepresentation or concealment of truth.

"Intentionally" means it was Defendant's conscious objective or purpose to cause monetary injury or loss to the enterprise by means of deceit.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 222(7, 13) and 231(b).

Falsifying Business Records . . . . . 11.871(3)

FALSIFYING BUSINESS RECORDS

In order to find Defendant guilty of Falsifying Business Records, you must find the State has proved the following four (4) elements beyond a reasonable doubt:

(1) Defendant failed to make a true entry in an enterprise's business records in violation of a duty to do so;

(2) Defendant knew the duty was imposed by law or the Defendant's position;

(3) Defendant meant to defraud the enterprise; and

(4) Defendant acted intentionally.

"Defraud" means to acquire a gain or advantage by fraud.

"Fraud" means an intentional perversion, misrepresentation or concealment of truth.

"Intentionally" means it was Defendant's conscious objective or purpose to cause monetary injury or loss to the enterprise by means of deceit.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 222(7, 13) and 231(b).

Falsifying Business Records . . . . . 11.871(4)

FALSIFYING BUSINESS RECORDS

In order to find Defendant guilty of Falsifying Business Records, you must find the State has proved the following three (3) elements beyond a reasonable doubt:

(1) Defendant prevented the making, or caused the omission, of a true entry in an enterprise's business records;

(2) Defendant meant to defraud the enterprise; and

(3) Defendant acted intentionally.

"Defraud" means to acquire a gain or advantage by fraud.

"Fraud" means an intentional perversion, misrepresentation or concealment of truth.

"Intentionally" means it was Defendant's conscious objective or purpose to cause monetary injury or loss to the enterprise by means of deceit.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 222(7, 13) and 231(b).

FALSIFYING BUSINESS RECORDS [AFFIRMATIVE DEFENSE]

In this case, Defendant has asserted an affirmative defense to the charge of Falsifying Business Records. In order to establish this affirmative defense, Defendant must prove each of the following three (3) elements by a preponderance of the evidence:

(1) Defendant was a clerk, bookkeeper, or employee of the enterprise at the time of the charged falsification;

(2) Defendant merely executed the orders of an employer or supervisor; and

(3) Defendant received no personal benefit from the falsification.

Proof by a preponderance of the evidence means proof something is more likely than not. It means certain evidence, when compared to the evidence opposed to it, is more convincing. Preponderance of the evidence does not depend on the number of witnesses. If the evidence supporting the defense is evenly balanced, then Defendant has not proved the defense by a preponderance of the evidence, and you must find against Defendant on that point. The state has no burden to present any evidence on this matter.

If after considering all of the evidence, you find this affirmative defense is established by a preponderance of the evidence, then you must find Defendant not

guilty of Falsifying Business Records. Even if Defendant has not proved this affirmative defense, you must find Defendant not guilty of Falsifying Business Records if you find the State has not proved its case beyond a reasonable doubt.

Applicable Code Sections and Case Law:

11 *Del. C.* § 304.

Tampering with Public Records in the Second Degree 11.873

TAMPERING WITH PUBLIC RECORDS IN THE SECOND DEGREE

In order to find Defendant guilty of Tampering with Public Records in the Second Degree, you must find the State has proved the following three (3) elements beyond a reasonable doubt:

(1) Defendant made a false entry in, or falsely altered, any public record;

(2) Defendant acted without authority; and

(3) Defendant acted knowingly

"Knowingly" means Defendant was aware the conduct would alter the public record and, at the time of the tampering, Defendant was aware the conduct was unauthorized.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 231(c), 863, and 1209(4).

Tampering with Public Records in the First Degree 11.876

TAMPERING WITH PUBLIC RECORDS IN THE FIRST DEGREE

In order to find Defendant guilty of Tampering with Public Records in the First Degree, you must find the State has proved the following four (4) elements beyond a reasonable doubt:

(1) Defendant made a false entry in, or falsely altered, any public record;

(2) Defendant acted without authority;

(3) Defendant acted with the intent to defraud; and

(3) Defendant acted knowingly

"Defraud" means to acquire a gain or advantage by fraud.

"Fraud" means an intentional perversion, misrepresentation or concealment of truth.

"Knowingly" means Defendant was aware the conduct would alter the public record and, at the time of the tampering, Defendant was aware the conduct was unauthorized.

"Intentionally" means it was Defendant's conscious objective or purpose to cause monetary harm or injury to another.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 222(7, 13), 231(b, c), 863, and 1209(4).

OFFERING A FALSE INSTRUMENT FOR FILING

In order to find Defendant guilty of Offering a False Instrument for Filing, you must find the State has proved the following four (4) elements beyond a reasonable doubt:

(1) Defendant offered a written instrument to a public servant with the knowledge or belief the instrument would become a part of the public records;

(2) Defendant knew or believed the written instrument contained a false statement;

(3) Defendant acted with the intent to defraud; and

(4) Defendant acted intentionally.

"Defraud" means to acquire a gain or advantage by fraud.

"Fraud" means an intentional perversion, misrepresentation or concealment of truth.

"Intentionally" means it was Defendant's conscious objective or purpose to cause monetary harm or injury to another.

"Knowingly" means Defendant was aware that the written instrument contained a false statement and it would become part of a public record.

"Written instrument" means any document or article containing written or

printed matter, used for the purpose of conveying or recording information, or constituting a symbol or evidence of value, right, privilege or identification.

"Public servant" means any officer or employee of the State or any political subdivision thereof, including legislators and judges, and any person participating as juror, advisor or consultant in performing a governmental function, The term does not include witnesses. This definition includes persons who are candidates for office or who have been elected to office but who have not yet assumed office.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 222(7, 13), 231(b, c), 863, and 1209(4).

Issuing a False Certificate 11.878

ISSUING A FALSE CERTIFICATE

In order to find Defendant guilty of Issuing a False Certificate, you must find the State has proved the following four (4) elements beyond a reasonable doubt:

(1) At the time the offense occurred, Defendant was a public servant authorized by law to issue official certificates;

(2) Defendant issued or made the false certificate to defraud, deceive, or financially injure another person;

(3) Defendant knew the certificate contained a false statement; and

(4) Defendant acted intentionally.

"Defraud" means to acquire a gain or advantage by fraud.

"Fraud" means an intentional perversion, misrepresentation or concealment of truth.

"Written instrument" means any document or article containing written or printed matter, used for the purpose of conveying or recording information, or constituting a symbol or evidence of value, right, privilege or identification.

"Knowingly" means Defendant was aware the written instrument contained a false statement.

"Intentionally" means it was Defendant's conscious objective or purpose to

cause monetary harm or injury to another.

"Public servant" means any officer or employee of the State or any political subdivision thereof, including legislators and judges, and any person participating as juror, advisor or consultant in performing a governmental function. The term does not include witnesses. This definition includes persons who are candidates for office or who have been elected to office but who have not yet assumed office.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 222(7, 13), 231(b, c), 863, and 1209(4).

Bribery ***[****Employee/Agent****]*** . . . . . .11.881(1)

BRIBERY - EMPLOYEE/AGENT

In order to find Defendant guilty of Bribery, you must find the State has proved the following five (5) elements beyond a reasonable doubt:

(1) Defendant offered to give a benefit to an employee or agent;

(2) Defendant acted without the employer's consent;

(3) Defendant meant to influence the employee or agent to take action regarding the employer's affairs;

(4) Such action was not reasonable in light of factors Defendant should have taken into account; and

(5) Defendant acted intentionally.

"Without consent" means Defendant did not have permission to take the action in question.

"Intentionally" means it was Defendant's conscious objective or purpose to influence how the employee or agent performed his or her duties.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 231(b) and 881.

Bribery [Union Official] . . . . . .11.881(2)

BRIBERY - UNION OFFICIAL

In order to find Defendant guilty of Bribery, you must find the State has proved the following three (3) elements beyond a reasonable doubt:

(1) Defendant offered to give a benefit to a duly appointed representative of a labor organization;

(2) Defendant meant to influence the representative's acts, decisions or duties as a labor representative; and

(3) Defendant acted intentionally.

"Intentionally" means it was Defendant's conscious objective or purpose to influence how the representative performed his or her duties.

Applicable Code Sections and Case Law:

11 *Del. C.* § 231(b).

Bribery [Participant in Sporting Event] . . . . . .11.881(3)

BRIBERY - PARTICIPANT IN SPORTING EVENT

In order to find Defendant guilty of Bribery, you must find the State has proved the following three (3) elements beyond a reasonable doubt:

(1) Defendant offered to give a benefit to a participant in a sporting event;

(2) Defendant meant to influence the participant to make less than best efforts in the sporting event; and

(3) Defendant acted intentionally.

"Intentionally" means it was Defendant's conscious objective or purpose to influence how the participant performed in the sporting event.

Applicable Code Sections and Case Law:

11 *Del. C.* § 231(b).

Bribery [Official in Sporting Event] . . . . . .11.881(4)

BRIBERY - OFFICIAL IN SPORTING EVENT

In order to find Defendant guilty of Bribery, you must find the State has proved the following three (3) elements beyond a reasonable doubt:

(1) Defendant offered to give a benefit to an official in a sporting event;

(2) Defendant meant to influence the official to perform his or her duties improperly; and

(3) Defendant acted intentionally.

"Intentionally" means it was Defendant's conscious objective or purpose to influence how the official performed his or her duties.

Applicable Code Sections and Case Law:

11 *Del. C.* § 231(b).

Receiving a Bribe [Employee/Agent] . . . . . .11.882(1)

RECEIVING A BRIBE - EMPLOYEE/AGENT

In order to find Defendant guilty of Receiving a Bribe, you must find the State proved the following five (5) elements beyond a reasonable doubt:

(1) Defendant solicited, accepted, or agreed to accept a benefit;

(2) Defendant accepted the benefit under an agreement to take some action regarding Defendant's employer's affairs;

(3) Defendant was an employee or agent of the employer or principal at the time;

(4) Defendant acted without the employer's or principal's consent; and

(5) Such action was not reasonable in light of factors Defendant should have taken into account.

"Without consent" means Defendant did not have the employer's opr principal's permission to take the action in question.

Applicable Code Sections and Case Law:

11 *Del. C.* § 761(j).

Receiving a Bribe [Union Official] . . . . . .11.882(2)

RECEIVING A BRIBE - UNION OFFICIAL

In order to find Defendant guilty of Receiving a Bribe, you must find the State has proved the following three (3) elements beyond a reasonable doubt:

(1) Defendant solicited, accepted, or agreed to accept a benefit;

(2) Defendant accepted the benefit under an agreement that the benefit would influence Defendant's acts, decisions or duties as labor organization representative; and

(3) Defendant was a duly appointed representative of labor organization at the time.

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Applicable Code Sections and Case Law:

Receiving a Bribe ***[****Participant in Sporting Event****]*** . . . . . .11.882(3)

RECEIVING A BRIBE - PARTICIPANT IN SPORTING EVENT

In order to find Defendant guilty of Receiving a Bribe, you must find the State has proved the following three (3) elements beyond a reasonable doubt:

(1) Defendant solicited, accepted or agreed to accept a benefit;

(2) Defendant accepted the benefit under an agreement that the benefit would influence Defendant to make less than his or her best effort in a sporting event; and

(3) Defendant was a participant in the sporting event at the time.

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Applicable Code Sections and Case Law:

Receiving a Bribe [Official in Sporting Event] . . . . . .11.882(4)

RECEIVING A BRIBE - OFFICIAL IN SPORTING EVENT

In order to find Defendant guilty of Receiving a Bribe, you must find the State has proved the following three (3) elements beyond a reasonable doubt:

(1) Defendant solicited, accepted or agreed to accept a benefit;

(2) Defendant accepted the benefit under an agreement that the benefit would influence Defendant to perform Defendant's duties improperly; and

(3) Defendant was an official in a sporting event at the time.

Applicable Code Sections and Case Law:

Defrauding Secured Creditors 11.891

DEFRAUDING SECURED CREDITORS

In order to find Defendant guilty of Defrauding Secured Creditors, you must find the State has proved the following three (3) elements beyond a reasonable doubt:

(1) Defendant **[**destroyed/removed/concealed/encumbered/transferred/otherwise dealt with**]** property subject to a security interest;

(2) Defendant meant to defeat the enforcement of that security interest; and

(3) Defendant acted intentionally.

"Security interest" means any right to personal property a debtor promises to give to a creditor, if the debtor fails to make payment or to perform an obligation.

"Intentionally" means it was Defendant's conscious objective or purpose to avoid enforcement of the security interest.

Applicable Code Sections and Case Law:

6 *Del.C.* 1-201(35) and 11 *Del. C.* § 231(b).

FRAUD IN INSOLVENCY

In order to find Defendant guilty of Fraud in Insolvency, you must find the State has proved the following four (4) elements beyond a reasonable doubt:

(1) Defendant meant to defraud a creditor;

(2) Defendant knew a [receiver/administrator/other arrangement for liquidation**]** had been appointed for the benefit of creditors;

(3) Defendant **[**conveyed/transferred/removed/concealed/destroyed /encumbered/otherwise disposed of**]** any part of or any interest in the debtor's estate; and

(4) Defendant acted **[**intentionally/knowingly**]**.

"Defraud" means to acquire a gain or advantage by fraud.

"Fraud" means an intentional perversion, misrepresentation or concealment of truth.

"Intentionally" means it was Defendant's conscious objective or purpose to cause monetary harm or injury to the creditor.

"Knowingly" means Defendant was aware a **[**receiver/administrator/other arrangement for liquidation**]** had been appointed for the benefit of creditors.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 222(7, 13) and 231(b, c).

Fraud in Insolvency . . . . . 11.892(2)

FRAUD IN INSOLVENCY

In order to find Defendant guilty of Fraud in Insolvency, you must find the State has proved the following four (4) elements beyond a reasonable doubt:

(1) Defendant meant to defraud a creditor;

(2) Defendant knew a **[**receiver/administrator/other arrangement for liquidation**]** had been appointed for the benefit of creditors;

(3) Defendant obtained any substantial part of or interest in the debtor's estate; and

(4) Defendant acted **[**intentionally/knowingly**]**.

"Defraud" means to acquire a gain or advantage by fraud.

"Fraud" means an intentional perversion, misrepresentation or concealment of truth.

"Intentionally" means it was Defendant's conscious objective or purpose to cause monetary harm or injury to the creditor.

"Knowingly" means Defendant was aware a **[**receiver/administrator/other arrangement for liquidation**]** had been appointed for the benefit of creditors.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 222(7, 13) and 231(b, c).

Fraud in Insolvency . . . . . 11.892(3)

FRAUD IN INSOLVENCY

In order to find Defendant guilty of Fraud in Insolvency, you must find the State has proved the following four (4) elements beyond a reasonable doubt:

(1) Defendant meant to defraud a creditor;

(2) Defendant knew a **[**receiver/administrator/other arrangement for liquidation**]** had been appointed for the benefit of creditors;

(3) Defendant presented to any **[**creditor/receiver/administrator**]** any **[**writing/ record**]** relating to the debtor's estate knowing it contained a false material statement; and

(4) Defendant acted **[**intentionally/knowingly**]**.

"Defraud" means to acquire a gain or advantage by fraud.

"Fraud" means an intentional perversion, misrepresentation or concealment of truth.

"Intentionally" means it was Defendant's conscious objective or purpose to cause monetary harm or injury to the creditor.

"Knowingly" means Defendant was aware a **[**receiver/administrator/other arrangement for liquidation**]** had been appointed for the benefit of creditors.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 222(7, 13) and 231(b, c).

FRAUD IN INSOLVENCY

In order to find Defendant guilty of Fraud in Insolvency, you must find the State has proved the following four (4) elements beyond a reasonable doubt:

(1) Defendant meant to defraud a creditor;

(2) Defendant knew a **[**receiver/administrator/other arrangement for liquidation**]** had been appointed for the benefit of creditors;

(3) Defendant **[**misrepresented/**(**failed/refused**)** to disclose**]** to the **[**receiver/administrator**]** the **[**existence/amount/location/other necessary information**]** of any **[**part/interest**]** in the debtor's estate Defendant was legally required to furnish; and

(4) Defendant acted **[**intentionally/knowingly**]**.

"Defraud" means to acquire a gain or advantage by fraud.

"Fraud" means an intentional perversion, misrepresentation or concealment of truth.

"Intentionally" means it was Defendant's conscious objective or purpose to cause monetary harm or injury to the creditor.

"Knowingly" means Defendant was aware a **[**receiver/administrator/other arrangement for liquidation**]** had been appointed for the benefit of creditors.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 222(7, 13) and 231(b, c).

Interference with Levied-Upon Property 11.893

INTERFERENCE WITH LEVIED-UPON PROPERTY

In order to find Defendant guilty of Interference with Levied-Upon Property, you must find the State has proved the following three (3) elements beyond a reasonable doubt:

(1) Defendant **[**hid/destroyed/removed**]** property from the county in which the property was levied upon;

(2) Defendant knew the property had been **[**levied upon/seized under **(**execution/attachment process/distress for rent**]**; and

(3) Defendant acted knowingly.

"Knowingly" means Defendant was aware the property was subject to **[**levy/seizure**]**.

Applicable Code Sections and Case Law:

11 *Del. C.* § 231(c).

Issuing a Bad Check . . . . . 11.900(a)(1)

ISSUING A BAD CHECK

In order to find Defendant guilty of Issuing a Bad Check, you must find the State has proved the following four (4) elements beyond a reasonable doubt:

(1) Defendant made or signed a check;

(2) Defendant delivered the check, or caused it to be delivered, to another person or to a bank;

(3) Defendant knew Defendant had no account with the bank listed on the check at the time at the time the check was issued; and

(4) Defendant knew the check would not be honored by the bank.

You must presume Defendant knew a check would not be honored when Defendant had no account with the bank at the time the check was issued.

[Issuing a Bad Check is a misdemeanor, unless the amount of the check is $1,500 or more, in which case it is a felony.]

Applicable Code Sections and Case Law:

6 *Del.C.* § 3-101(2, 3), 11 *Del. C.* §§ 231(c) and 901.

Issuing a Bad Check . . . . . 11.900(a)(2)

ISSUING A BAD CHECK

In order to find Defendant guilty of Issuing a Bad Check, you must find the State proved the following four (4) elements beyond a reasonable doubt:

(1) Defendant made or signed a check;

(2) Defendant delivered the check, or caused it to be delivered, to another person or to a bank;

(3) Defendant knew the check would not be honored by the bank because Defendant had insufficient funds at the time the check was issued; and

(4) Defendant failed to make the check good within 10 days after receiving notice of refusal.

You must presume Defendant knew a check would not be honored when Defendant had no account with the bank at the time the check was issued. You also must presume Defendant knew a check would not be honored when payment was refused by the bank**,** because of insufficient funds or credit, and Defendant failed to make the check good within ten days after receiving notice of refusal.

Issuing a Bad Check is a misdemeanor, unless the amount of the check is $1,500 or more, in which case it is a felony.

Applicable Code Sections and Case Law:

6 *Del.C.* § 3-101(2, 3), 11 *Del. C.* §§ 231(c) and 901.

ISSUING A BAD CHECK BY EMPLOYEE [AFFIRMATIVE DEFENSE]

In this case, Defendant has asserted the affirmative defense of acting in a representative capacity to the charge of [charge].

In order to establish this affirmative defense, Defendant must prove each of the following three (3) elements by a preponderance of the evidence:

(1) Defendant made or signed the check in Defendant's capacity as a representative, agent, or employee;

(2) Defendant acted without personal benefit to Defendant; and

(3) Defendant merely executed the orders of a superior officer or employee generally authorized to direct Defendant's activities.

Proof by a preponderance of the evidence means proof something is more likely true than not. It means certain evidence, when compared to the evidence opposed to it, is more convincing. Preponderance of the evidence does not depend on the number of witnesses. If the evidence is evenly balanced, then Defendant has not proved the defense by a preponderance of the evidence, and you must find against Defendant on that point. The state has no burden to present any evidence on this matter.

If after considering all of the evidence, you find this affirmative defense is

established by a preponderance of the evidence, then you must find Defendant not guilty. Even if Defendant has not met this burden of proof for this particular affirmative defense, you must find Defendant not guilty if you find the State has not met its burden of proving its case beyond a reasonable doubt.

Applicable Code Sections and Case Law:

6 *Del.C.* § 1-101(2), 11 *Del. C.* § 304.

Unlawful Use of Credit Card ***[****Stolen, Forged, Fictitious****]*** . . . . . .11.903(a)(1)

UNLAWFUL USE OF CREDIT CARD [IMPROPER USE OF A CARD]

In order to find Defendant guilty of Unlawful Use of a Credit Card, you must find the State has proved the following three (3) elements beyond a reasonable doubt:

(1) Defendant used, or permitted another to use, a credit card for the purpose of obtaining property or services;

(2) Defendant was aware the card was stolen, forged, or fictitious; and

(3) Defendant acted knowingly.

[Felony: value of the property or services was $1,500 or more]

["Value" means the market value of the property or services at the time and place of the offense, or if cannot be easily determined, the cost of replacing the property or services within a reasonable time after the crime occurred.]

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 224(1), 231(c), and 904.

Unlawful Use of Credit Card ***[****Belonging to Another Person****]*** . . . . . .11.903(a)(2)

UNLAWFUL USE OF CREDIT CARD [IMPROPER USE OF A CARD]

In order to find Defendant guilty of Unlawful Use of a Credit Card, you must find the State has proved the following three (3) elements beyond a reasonable doubt:

(1) Defendant used, or permitted another to use, a credit card for the purpose of obtaining property or services;

(2) Defendant was aware the card belonged to another person who had not authorized its use; and

(3) Defendant acted knowingly.

[Felony: value of the property or services was $1,500 or more]

[“Value” means the market value of the property or services at the time and place of the offense, or if cannot be easily determined, the cost of replacing the property or services within a reasonable time after the crime occurred.]

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 224(1), 231(c), and 904.

Unlawful Use of Credit Card ***[****Revoked/Cancelled****]*** . . . . . .11.903(a)(3)

UNLAWFUL USE OF CREDIT CARD [IMPROPER USE OF A CARD]

In order to find Defendant guilty of Unlawful Use of a Credit Card, you must find the State has proved the following two (2) elements beyond a reasonable doubt:

(1) Defendant used, or permitted another to use, a credit card for the purpose of obtaining property or services; and

(2) Defendant knew the card had been revoked or canceled.

[Felony: value of the property or services was $1,500 or more]

[“Value” means the market value of the property or services at the time and place of the offense, or if cannot be easily determined, the cost of replacing the property or services within a reasonable time after the crime occurred.]

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Applicable Code Sections and Case Law:

11 *Del. C.* §§ 224(1), 231(c), and 904.

Unlawful Use of Credit Card ***[****Unauthorized by Issuer****]*** . . . . . .11.903(4)

UNLAWFUL USE OF CREDIT CARD [IMPROPER USE OF A CARD]

In order to find Defendant guilty of Unlawful Use of a Credit Card, you must find the State proved the following two (2) elements beyond a reasonable doubt:

(1) Defendant used, or permitted another to use, a credit card for the purpose of obtaining property or services; and

(2) Defendant knew use of the card was unauthorized by the issuer.

[Felony: value of the property or services was $1,500 or more]

["Value" means the market value of the property or services at the time and place of the offense, or if cannot be easily determined, the cost of replacing the property or services within a reasonable time after the crime occurred.]

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 224(1), 231(c), and 904.

UNLAWFUL USE OF CREDIT CARD
[UNLAWFUL SALE OR TRANSFER OF A CREDIT CARD]

In order to find Defendant guilty of Unlawful Use of a Credit Card, you must find the State has proved the following three (3) elements beyond a reasonable doubt:

(1) Defendant sold or transferred a credit card to another;

(2) Defendant intended that the card would be used to obtain property or services without payment for the lawful charges; and

(3) Defendant acted intentionally or knowingly.

[Felony: value of the property or services was $1,500 or more]

["Value" means the market value of the property or services at the time and place of the offense, or if cannot be easily determined, the cost of replacing the property or services within a reasonable time after the crime occurred.]

"Intentionally" means it was Defendant's conscious objective or purpose that the user of the card would not pay for the items or services charged to the card.

"Knowingly" means Defendant was aware the card's user would not pay for the items or services charged to the card.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 224(1), 231(b, c), 903(b)(2), and 904; BLACK'S LAW DICTIONARY (8th ed. 2004).

UNLAWFUL USE OF CREDIT CARD
[UNLAWFUL SALE OR TRANSFER OF A CREDIT CARD]

In order to find Defendant guilty of Unlawful Use of a Credit Card, you must find the State has proved the following three (3) elements beyond a reasonable doubt:

(1) Defendant published or made known to another person the coding of an existing, canceled, revoked, expired, or nonexistent credit card;

(2) Defendant knew or believed that the card coding or numbering**]** would be used to avoid the payment of any property or service; and

(3) Defendant acted intentionally or knowingly.

[Felony: value of the property or services was $1,500 or more]

[“Value” means the market value of the property or services at the time and place of the offense, or if cannot be easily determined, the cost of replacing the property or services within a reasonable time after the crime occurred.]

“Intentionally” means it was Defendant’s conscious objective or purpose that the user of the card would not pay for the items or services charged to the card.

“Knowingly” means Defendant was aware the card’s user would not pay for the items or services charged to the card.

"Published" means information was communicated to one or more persons orally, in person, or broadcast over the air waves, or in writing or print.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 224(1), 231(b, c), 903(b)(2), and 904; BLACK'S LAW DICTIONARY (8th ed. 2004).

REENCODER AND SCANNING DEVICES

In order to find Defendant guilty of Unlawful Use of a Scanning Device, you must find the State has proved the following three (3) elements beyond a reasonable doubt:

(1) Defendant possessed or used a scanning device to access information encoded on the computer chip or magnetic strip of a payment card without permission; and

(2) Defendant intended to defraud**;** and

(3) Defendant acted intentionally or knowingly.

"Defraud" means to acquire a gain or advantage by fraud.

"Fraud" means an intentional perversion, misrepresentation or concealment of truth.

"Intentionally" means it was Defendant's conscious objective or purpose to possess or use the scanning device

"Knowingly" means Defendant was aware Defendant possessed or used the scanning device.

"Scanning device" means a scanner, reader, or any other electronic device that is used to access, read, scan, obtain, memorize or store, temporarily or permanently,

information encoded on the computer chip or magnetic strip or stripe of a payment card.

"Payment Card" means a credit card, debit card, or any other card that is issued to an authorized user and that allows the user to obtain, purchase, or receive goods, services, money, or anything else of value.

Applicable Code Sections and Case Law:

11 *Del.C.* §§ 222(7, 13), 231(b, c), and 903(e)(1, 2, 3).

Reencoder and Scanning Devices[Reencoder] . . . . . 11.903A(b)

REENCODER AND SCANNING DEVICES

In order to find Defendant guilty of Unlawful Use of a Reencoder or Scanning Device, you must find the State has proved the following three (3) elements beyond a reasonable doubt:

(1) Defendant possessed or used a reencoder to place encoded information on the computer chip or magnetic strip of a payment card without permission; and

(2) Defendant intended to defraud**;** and

(3) Defendant acted intentionally or knowingly.

"Defraud" means to acquire a gain or advantage by fraud.

"Fraud" means an intentional perversion, misrepresentation or concealment of truth.

"Intentionally" means it was Defendant's conscious objective or purpose to possess or use the scanning device

"Knowingly" means Defendant was aware Defendant possessed or used the scanning device.

"Reencoder" means n electronic device that placed encoded information from the computer chip or magnetic strip or stripe of a payment card onto the computer chip or magnetic strip or stripe of a different payment card or electronic medium that

allows an authorized transaction to occur.

"Payment Card" means a credit card, debit card, or any other card that is issued to an authorized user and that allows the user to obtain, purchase, or receive goods, services, money, or anything else of value.

Applicable Code Sections and Case Law:

11 *Del.C.* §§ 222(7, 13), 231(b, c) and 903(e)(1, 2, 3).

INTENTION AND ABILITY TO MEET OBLIGATIONS [AFFIRMATIVE DEFENSE]

In this case, Defendant has asserted an affirmative defense to the charge of Unlawful Use of a Credit Card. The affirmative defense is that Defendant intended and had the ability to meet Defendant's obligations.

In order to establish this affirmative defense, Defendant must prove each of the following two (2) elements by a preponderance of the evidence:

(1) Defendant intended to meet all obligations to the issuer of the credit card arising out of Defendant's use of the card; and

(2) Defendant had the ability to meet the issuer's obligations.

Proof by a preponderance of the evidence means proof something is more likely true than not. It means certain evidence, when compared to the evidence opposed to it, is more convincing. Preponderance of the evidence does not depend on the number of witnesses. If the evidence is evenly balanced, then Defendant has not proved the defense by a preponderance of the evidence, and you must find against Defendant on that point. The state has no burden to present any evidence on this matter.

If after considering all of the evidence, you find this affirmative defense is established by a preponderance of the evidence, then you must find Defendant not

guilty. Even if Defendant has not met this burden of proof for this particular affirmative defense, you must find Defendant not guilty if you find the State has not met its burden of proving its case beyond a reasonable doubt.

[*Comment: This affirmative defense is applicable only to a prosecution under § 903(a)(4), for use that is "unauthorized" by issuer for reasons other than revocation, cancellation, forgery, or stolen card.***]**

"Intentionally" means it was Defendant's conscious objective or purpose to satisfy Defendant's obligations to the credit card issuer.

Applicable Code Sections and Case Law:

11 *Del. C.* § 231(b).

Deceptive Business Practices[False Weight/Measure] . . . . . 11.906(1)

DECEPTIVE BUSINESS PRACTICES

In order to find Defendant guilty of Deceptive Business Practices, you must find the State has proved the following two (2) elements beyond a reasonable doubt:

(1) Defendant used, or possessed for use, a false weight or measuring device for falsely determining or recording any quality or quantity; and

(2) Defendant acted knowingly or recklessly.

"Knowingly" means Defendant was aware of the nature of Defendant's conduct.

"Recklessly" means Defendant was aware of and consciously disregarded a substantial and unjustifiable risk that false data would result from Defendant's conduct. The State must demonstrate the risk was of such a nature and degree Defendant's disregard of it was a gross deviation from the standard of conduct a reasonable person would observe under the same circumstances.

Applicable Code Sections and Case Law:

11 *Del. C.* § 231(c, e).

Deceptive Business Practices[False Quantity] . . . . . 11.906(2)

DECEPTIVE BUSINESS PRACTICES

In order to find Defendant guilty of Deceptive Business Practices, you must find the State has proved the following two (2) elements beyond a reasonable doubt:

(1) Defendant sold, offered for sale, or delivered less than the represented quantity of any commodity or service; and

(2) Defendant acted knowingly or recklessly.

"Knowingly" means Defendant was aware of the nature of Defendant's conduct.

"Recklessly" means Defendant was aware of and consciously disregarded a substantial and unjustifiable risk that a false quantity would result from Defendant's conduct. The State must demonstrate the risk was of such a nature and degree Defendant's disregard of it was a gross deviation from the standard of conduct a reasonable person would observe under the same circumstances.

Applicable Code Sections and Case Law:

11 *Del. C.* § 231(c, e).

DECEPTIVE BUSINESS PRACTICES

In order to find Defendant guilty of Deceptive Business Practices, you must find the State has proved the following two (2) elements beyond a reasonable doubt:

(1) Defendant took, or attempted to take, more than the represented quantity of any commodity or service; and

(2) Defendant acted knowingly or recklessly.

"Knowingly" means Defendant was aware of the nature of Defendant's conduct.

"Recklessly" means Defendant was aware of and consciously disregarded a substantial and unjustifiable risk that an improper taking would result from Defendant's conduct. The State must demonstrate the risk was of such a nature and degree Defendant's disregard of it was a gross deviation from the standard of conduct a reasonable person would observe under the same circumstances.

Applicable Code Sections and Case Law:

11 *Del. C.* § 231(c, e).

DECEPTIVE BUSINESS PRACTICES

In order to find Defendant guilty of Deceptive Business Practices, you must find the State has proved the following two (2) elements beyond a reasonable doubt:

(1) Defendant sold, or offered for sale, adulterated or mislabeled commodities; and

(2) Defendant acted knowingly or recklessly.

"Knowingly" means Defendant was aware of the nature of Defendant's conduct.

"Recklessly" means Defendant was aware of and consciously disregarded a substantial and unjustifiable risk that adulterated or mislabeled goods would be sold. The State must demonstrate the risk was of such a nature and degree Defendant's disregard of it was a gross deviation from the standard of conduct a reasonable person would observe under the same circumstances.

"Adulterated" means varying from the standard of composition or quality prescribed by any statute providing criminal penalties for such variance, or set by established commercial usage.

"Mislabeled" means varying from the standard of truth or disclosure in labeling prescribed by any statute providing criminal penalties for such variance, or set by

established commercial usage

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 231(c, e) and 906(4).

DECEPTIVE BUSINESS PRACTICES

In order to find Defendant guilty of Deceptive Business Practices, you must find the State has proved the following two (2) elements beyond a reasonable doubt:

(1) Defendant made a false or misleading statement in any advertisement addressed to the public to promote the sale or increased consumption of property or services; and

(2) Defendant acted knowingly or recklessly.

"Knowingly" means Defendant was aware of the nature of Defendant's conduct.

"Recklessly" means Defendant was aware of and consciously disregarded a substantial and unjustifiable risk that false advertising would result from Defendant's conduct. The State must demonstrate the risk was of such a nature and degree Defendant's disregard of it was a gross deviation from the standard of conduct a reasonable person would observe under the same circumstances.

Applicable Code Sections and Case Law:

11 *Del. C.* § 231(c, e).

DECEPTIVE BUSINESS PRACTICES

In order to find Defendant guilty of Deceptive Business Practices, you must find the State has proved the following two (2) elements beyond a reasonable doubt:

(1) Defendant made a false or misleading written statement for the purpose of promoting the sale of securities (or omitted information required by law to be disclosed in written documents relating to securities**)**; and

(2) Defendant acted knowingly or recklessly.

"Knowingly" means Defendant was aware of the nature of Defendant's conduct.

"Recklessly" means Defendant was aware of and consciously disregarded a substantial and unjustifiable risk that false information would result from Defendant's conduct. The State must demonstrate the risk was of such a nature and degree Defendant's disregard of it was a gross deviation from the standard of conduct a reasonable person would observe under the same circumstances.

Applicable Code Sections and Case Law:

11 *Del. C.* § 231(b, c).

Deceptive Business Practices[Prize/Award] . . . . . 11.906(7)

DECEPTIVE BUSINESS PRACTICES

In order to find Defendant guilty of Deceptive Business Practices, you must find the State has proved the following three (3) elements beyond a reasonable doubt:

(1) Defendant notified a person that the person had won a prize, received an award, been selected, or was eligible to receive anything of value;

(2) The person was required to respond through the use of a 900 service telephone number or similar service; and

(2) Defendant acted knowingly or recklessly.

"Knowingly" means Defendant was aware of the nature of Defendant's conduct.

"Recklessly" means Defendant was aware of and consciously disregarded a substantial and unjustifiable risk that false information would result from Defendant's conduct. The State must demonstrate the risk was of such a nature and degree Defendant's disregard of it was a gross deviation from the standard of conduct a reasonable person would observe under the same circumstances.

Applicable Code Sections and Case Law:

11 *Del. C.* § 231(b, c).

Criminal Impersonation . . . .11.907(1)

CRIMINAL IMPERSONATION

In order to find Defendant guilty of Criminal Impersonation, you must find the State has proved the following three (3) elements beyond a reasonable doubt:

(1) Defendant impersonated another person;

(2) Defendant intened to obtain a benefit from, injure, or defraud; and

(3) Defendant acted intentionally.

"Defraud" means to acquire a gain or advantage by fraud.

"Fraud" means an intentional perversion, misrepresentation or concealment of truth.

"Intentionally" means it was Defendant's conscious objective or purpose to obtain a benefit from, injure, or defraud another person.

In the context of this offense, "injure" means to cause tangible or intangible monetary harm or loss.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 222(7, 13) and 231(b).

Criminal Impersonation[Representative] . . . .11.907(2)

CRIMINAL IMPERSONATION

In order to find Defendant guilty of Criminal Impersonation, you must find the State has proved the following two (2) elements beyond a reasonable doubt:

(1) Defendant pretended to be a representative of another person or of an organization;

(2) Defendant intended to obtain a benefit from, injure, or defraud; and

(3) Defendant acted intentionally.

"Defraud" means to acquire a gain or advantage by fraud.

"Fraud" means an intentional perversion, misrepresentation or concealment of truth.

"Intentionally" means it was Defendant's conscious objective or purpose to obtain a benefit from, injure, or defraud another person or an organization.

In the context of this offense, "injure" means to cause tangible or intangible monetary harm or loss.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 222(7, 13) and 231(b).

Criminal Impersonation[Public Servant] . . . .11.907(3)

CRIMINAL IMPERSONATION

In order to find Defendant guilty of Criminal Impersonation, you must find the State has proved the following two (2) elements beyond a reasonable doubt:

(1) Defendant pretended to be a public servant;

(2) Defendant wore or displayed, without authority, any identification, uniform, or badge by which a public servant is lawfully identified; and

(3) Defendant acted intentionally.

"Intentionally" means it was Defendant's conscious objective or purpose to pretend to be a public servant.

"Public servant" means any officer or employee of the State or any political subdivision thereof, including legislators and judges, and any person participating as juror, advisor or consultant in performing a governmental function but the term does not include witnesses. This definition includes persons who are candidates for office or who have been elected to office but who have not yet assumed office.

In the context of this offense, "injure" means to cause tangible or intangible monetary harm or loss.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 231(b) and 1209(4).

CRIMINAL IMPERSONATION [VEHICULAR ACCIDENT]

In order to find Defendant guilty of Criminal Impersonation, you must find the State has proved the following three (3) elements beyond a reasonable doubt:

(1) Defendant was in a motor vehicle accident involving serious physical injury or death to any person;

(2) Defendant pretended to have been someone other than the driver of the vehicle Defendant was operating at the time of the accident; and

(3) Defendant acted knowingly.

"Serious physical injury" means any physical injury which creates a substantial risk of death, or which causes serious and prolonged disfigurement, prolonged impairment of health, or prolonged loss or impairment of the function of any bodily organ.

“Knowingly” means Defendant was aware Defendant pretended not to be the driver of the vehicle.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 222(25) and 231(c).

Criminal Impersonation ***[****Vehicular Accident-Driver****]*** . . . . . 11.907A(2)

CRIMINAL IMPERSONATION [VEHICULAR ACCIDENT]

In order to find Defendant guilty of Criminal Impersonation, you must find the State has proved the following three (3) elements beyond a reasonable doubt:

(1) Defendant was in a motor vehicle accident that involved serious physical injury or death to any person;

(2) Defendant pretended to have been the driver of one of the vehicles involved in the accident; and

(3) Defendant acted knowingly.

"Serious physical injury" means any physical injury which creates a substantial risk of death, or which causes serious and prolonged disfigurement, prolonged impairment of health, or prolonged loss or impairment of the function of any bodily organ.

"Knowingly" means Defendant was aware Defendant pretended to be the driver of a vehicle.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 222(25) and 231(c).

CRIMINAL IMPERSONATION OF A POLICE OFFICER, FIREFIGHTER, EMERGENCY MEDICAL TECHNICIAN (EMT), PARAMEDIC OR FIRE POLICE

In order to find Defendant guilty of Criminal Impersonation of a **[**Police Officer/Firefighter/ Emergency Medical Technician **(**EMT**)**/Paramedic/Fire Police**]**, you must find the State has proved the following four (4) elements beyond a reasonable doubt:

(1) Defendant **[**impersonated/pretended to be**]** a**[**n**]** **[**police officer/firefighter/emergency medical technician **(**EMT**)/** paramedic/ fire police**]**;

(2) Defendant undertook such action **[**to facilitate the commission of/while in immediate flight after committing**] [**felony**]**;

(3) Defendant acted without lawful authority; and

(4) Defendant acted intentionally.

"Intentionally" means it was Defendant's conscious objective or purpose to **[(**impersonate/ pretend to be**)/(**create/reinforce**)** a false impression Defendant was**]** a police officer.

"Without lawful authority" means there was no lawful authorization, express

or implied, for Defendant to **[**impersonate/pretend to be/create a false impression Defendant was**]** a police officer.

Applicable Code Sections and Case Law

11 *Del. C.* §§ 222(24), 231(b) and 761(j).

CRIMINAL IMPERSONATION OF A POLICE OFFICER, FIREFIGHTER, EMERGENCY MEDICAL TECHNICIAN (EMT), PARAMEDIC OR FIRE POLICE

In order to find Defendant guilty of Criminal Impersonation of a **[**Police Officer/Firefighter/ Emergency Medical Technician **(**EMT**)**/Paramedic/Fire Police**]**, you must find the State has proved the following four (4) elements beyond a reasonable doubt:

(1) Defendant did any act to **[(**create/reinforce**]** a false impression Defendant was**]** a**[**n**]** **[**police officer/firefighter/emergency medical technician **(**EMT**)/** paramedic/ fire police**]**;

(2) Defendant undertook such action **[**to facilitate the commission of/while in immediate flight after committing**]** **[**felony**]**;

(3) Defendant acted without lawful authority; and

(4) Defendant acted intentionally.

"Physical injury" means any impairment of physical condition or substantial pain. "Intentionally" means it was Defendant's conscious objective or purpose to **[(**impersonate/ pretend to be**)/(**create/reinforce**)** a false impression Defendant was**]** a police officer.

"Without lawful authority" means there was no lawful authorization, express or implied, for Defendant to **[**impersonate/pretend to be/create a false impression Defendant was**]** a police officer.

Applicable Code Sections and Case Law

11 *Del. C.* §§ 222(24), 231(b) and 761(j).

CRIMINAL IMPERSONATION OF A POLICE OFFICER, FIREFIGHTER, EMERGENCY MEDICAL TECHNICIAN (EMT), PARAMEDIC OR FIRE POLICE

In order to find Defendant guilty of Criminal Impersonation of a **[**Police Officer/Firefighter/ Emergency Medical Technician **(**EMT**)**/Paramedic/Fire Police**]**, you must find the State has proved the following five (5) elements beyond a reasonable doubt:

(1) Defendant **[(**impersonated/pretended to be**)/(**created/reinforced**)** a false impression **]** Defendant was a**[**n**]** **[**police officer/firefighter/emergency medical technician **(**EMT**)/** paramedic/ fire police**]**;

(2) Defendant undertook such action **[**during the commission of/while in immediate flight after committing**] [**felony**]**;

(3) **[**Defendant/another participant in the crime**]** caused physical injury to **[**victim**]**, not a participant in the **[**felony**]** **[**during the commission of/while in immediate flight after committing**] [**felony**]**;

(4) Defendant acted without lawful authority; and

(5) Defendant acted intentionally.

"Physical injury" means any impairment of physical condition or substantial

pain. "Intentionally" means it was Defendant's conscious objective or purpose to **[(**impersonate/ pretend to be**)/(**create/reinforce**)** a false impression Defendant was**]** a police officer.

"Without lawful authority" means there was no lawful authorization, express or implied, for Defendant to **[**impersonate/pretend to be/create a false impression Defendant was**]** a police officer.

Applicable Code Sections and Case Law

11 *Del. C.* §§ 222(24), 231(b), 761(j).

CRIMINAL IMPERSONATION OF A POLICE OFFICER, FIREFIGHTER, EMERGENCY MEDICAL TECHNICIAN (EMT), PARAMEDIC OR FIRE POLICE

In order to find Defendant guilty of Criminal Impersonation of a **[**Police Officer/Firefighter/ Emergency Medical Technician **(**EMT**)**/Paramedic/Fire Police**]**, you must find the State has proved the following five (5) elements beyond a reasonable doubt:

(1) Defendant **[(**impersonated/pretended to be**)/(**created/reinforced**)** a false impression Defendant was**]** a**[**n**]** **[**police officer/firefighter/emergency medical technician **(**EMT**)/** paramedic/ fire police**] [**during commission of/while in immediate flight after committing**] [**felony**]**;

(2) Defendant undertook such action **[**during the commission of/while in immediate flight after committing**] [**felony**]**;

(3) **[**Defendant/another participant in the crime**]** committed **[**class **(**A/B**)** felony/sexual offense**]**;

(4) Defendant acted without lawful authority; and

(5) Defendant acted intentionally.

"Intentionally" means it was Defendant's conscious objective or purpose to

[(impersonate/ pretend to be**)/(**create/reinforce**)** a false impression Defendant was**]** a police officer.

"Without lawful authority" means there was no lawful authorization, express or implied, for Defendant to **[**impersonate/pretend to be/create a false impression Defendant was**]** a police officer.

Applicable Code Sections and Case Law

11 *Del. C.* §§ 222(24), 231(b), 761(j).

Unlawfully Concealing a Will 11.908

UNLAWFULLY CONCEALING A WILL

In order to find Defendant guilty of Unlawfully Concealing a Will, you must find the State has proved the following two (2) elements beyond a reasonable doubt:

(1) Defendant concealed, secreted, suppressed, mutilated or destroyed**]** a will, codicil or other testamentary instrument;

(2) Defendant acted to defraud; and

(3) Defendant acted intentionally.

"Defraud" means to acquire a gain or advantage by fraud.

"Fraud" means an intentional perversion, misrepresentation or concealment of truth.

"Intentionally" means it was Defendant's conscious objective or purpose to cause monetary injury or harm to another.

"Testamentary instrument" means a document by which a person directs his or her estate to be distributed upon death.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 222(7, 13) and 231(b); BLACK'S LAW DICTIONARY (8th ed. 2004).

Securing Execution of Documents by Deception 11.909

SECURING EXECUTION OF DOCUMENTS BY DECEPTION

In order to find Defendant guilty of Securing Execution of a Document by Deception, you must find the State has proved the following four (4) elements beyond a reasonable doubt:

(1) Defendant persuaded a person to sign a document;

(2) Defendant misrepresented the nature of the document to the person;

(3) The document affected, purported to affect or was likely to affect the financial or monetary interest of any person; and

(4) Defendant acted knowingly.

"Knowingly" means Defendant was aware Defendant misrepresented the nature of the document.

Applicable Code Sections and Case Law:

11 *Del. C.* § 231(c).

Debt Adjusting 11.910

DEBT ADJUSTING

In order to find Defendant guilty of Adjusting a Debt, you must find the State has proved the following three (3) elements beyond a reasonable doubt:

(1) Defendant was engaged in the debt-adjusting business;

(2) Defendant made an express or implied contract with a debtor, under which the debtor agreed to make periodic monetary payments to Defendant; and

(3) Defendant distributed these payments among certain specified creditors according to agreed upon plan for a fee or other benefit.

[Comment: This sections does not apply to debt adjusting incurred incidentally in the lawful practice of law in Delaware or to any provider licensed under Chapter 24A of Title 6.]

Applicable Code Sections and Case Law:

Fraudulent Conveyance of Public Lands 11.911

FRAUDULENT CONVEYANCE OF PUBLIC LANDS

In order to find Defendant guilty of Fraudulent Conveyance of Public Lands, you must find the State has proved the following two (2) elements beyond a reasonable doubt:

(1) Defendant signed a deed or other written instrument purported to convey an interest in land (part or all of the land was Delaware public land); and

(2) Defendant knew Defendant had no legal or equitable interest in the public land described in the deed or other written instrument, at the time of signing.

"Equitable" means consistent with principles of justice and right.

"Interest" means a legal share in something; all or part of a legal or equitable claim to or right in property.

"Legal" means established, required, or permitted by law.

Applicable Code Sections and Case Law:

11 *Del.C.* § 251(b); BLACK'S LAW DICTIONARY 482, 729, 803 (5th ed. 1979).

Fraudulent Receipt of Public Lands 11.912

FRAUDULENT RECEIPT OF PUBLIC LANDS

In order to find Defendant guilty of Fraudulent Receipt of Public Lands, you must find the State has proved the following two (2) elements beyond a reasonable doubt:

(1) Defendant recorded a deed or other written instrument purporting to transfer to Defendant an interest in land **(**part or all of the land was Delaware public land); and

(2) Defendant knew the person or entity transferring the land had no legal or equitable interest in the land described in the deed or other written instrument, at the time of signing.

"Equitable" means consistent with principles of justice and right.

"Interest" means a legal share in something; all or part of a legal or equitable claim to or right in property.

"Legal" means established, required, or permitted by law.

Applicable Code Sections and Case Law:

11 *Del.C.* § 251(b); BLACK'S LAW DICTIONARY 482, 729, 803 (5th ed. 1979).

Insurance Fraud . . . .11.903(a)(1)

INSURANCE FRAUD

In order to find Defendant guilty of Insurance Fraud, you must find the State has proved the following four (4) elements beyond a reasonable doubt:

(1) Defendant presented, or caused to be presented, any oral or written statement as part of a claim for payment or benefit under an insurance policy;

(2) Defendant knew the statement contained false, incomplete or misleading information concerning any fact or material feature of the claim;

(3) Defendant meant to injure, defraud or deceive; and

(4) Defendant acted intentionally.

[*if applicable****]***

[It is not a defense to the charge of Insurance Fraud that Defendant's insurance claim form did not include the required statement that: "Any person who knowingly, and with intent to injure, defraud or deceive any insurer, files a statement of claim containing any false, incomplete or misleading information is guilty of a felony."**]**

"Defraud" means to acquire a gain or advantage by fraud.

"Fraud" means an intentional perversion, misrepresentation or concealment of truth.

“Intentionally” means it was Defendant's conscious objective or purpose to cause monetary harm to the insurer or to defraud, injure or deceive another person or entity.

“Knowingly” means Defendant was aware that statements were untrue, incomplete or misleading.

“Statement” includes, but is not limited to, a police report, any notice, statement, proof of loss, bill of lading, receipt for payment, invoice, account, estimate of property damages, bill for services, diagnosis, prescription, hospital or doctor records, X rays, test result or other evidence of loss, injury or expense.

"Insurer" shall include, but is not limited to, a health service corporation or health maintenance organization.

"Insurance policy" shall include, but is not limited to, the subscriber and members contracts of health service corporations and health maintenance organizations. “Information material to a claim” means information a reasonable person would consider important when processing an insurance claim.

[Comment: Computer-generated documents are included under written statements.]

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 222(7, 13), 231(b, c) and 913(c).

Insurance Fraud[Conspiracy] . . . .11.913(a)(2)

INSURANCE FRAUD

In order to find Defendant guilty of Insurance Fraud, you must find the State has proved the following four (4) elements beyond a reasonable doubt:

(1) Defendant assisted, solicited, or conspired with another person to prepare or make any oral or written statement, with the intent it be presented to an insurer with or in support of a claim for payment or benefit under an insurance policy;

(2) Defendant knew the statement contained false, incomplete or misleading information concerning any fact or material feature of the claim;

(3) Defendant meant to injure, defraud or deceive the insurer; and

(4) Defendant acted intentionally.

[*if applicable****]***

[It is not a defense to the charge of Insurance Fraud that Defendant's insurance claim form did not include the required statement that: "Any person who knowingly, and with intent to injure, defraud or deceive any insurer, files a statement of claim containing any false, incomplete or misleading information is guilty of a felony."**]**

"Defraud" means to acquire a gain or advantage by fraud.

"Fraud" means an intentional perversion, misrepresentation or concealment of

truth.

“Intentionally” means it was Defendant's conscious objective or purpose to cause monetary harm to an insurer or to defraud, injure or deceive another person or entity.

“Knowingly” means Defendant was aware that statements were untrue, incomplete or misleading.

“Statement” includes, but is not limited to, a police report, any notice, statement, proof of loss, bill of lading, receipt for payment, invoice, account, estimate of property damages, bill for services, diagnosis, prescription, hospital or doctor records, X rays, test result or other evidence of loss, injury or expense.

"Insurer" shall include, but is not limited to, a health service corporation or health maintenance organization.

"Insurance policy" shall include, but is not limited to, the subscriber and members contracts of health service corporations and health maintenance organizations.

“Information material to a claim” means information a reasonable person would consider important when processing an insurance claim.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 222(7, 13), 231(b, c) and 913(c).

HEALTH CARE FRAUD

In order to find Defendant guilty of Health Care Fraud, you must find the State has proved the following three (3) elements beyond a reasonable doubt:

(1) Defendant presented, or caused to be presented, a fraudulent health care claim to any health care benefit program;

(2) [The intended loss to the health care benefit program was **(**more than $50,000 but less than $100,000/$100,000 or more**)**/Defendant was a health care provider at the time of the charged offense/Defendant's conduct constituted a pattern of presenting or causing to be presented fraudulent health care claims/Defendant was a health care provider at the time of the charged offense whose conduct constituted a pattern of presenting or causing to be presented fraudulent health care claims]; and

(3) Defendant acted knowingly.

You can consider a previous act of presenting or causing the presentation of a fraudulent health care claim even if no one was convicted for that act.

"Knowingly" means Defendant knew or was aware Defendant **[(**presented/caused to be presented**)**/engaged in a pattern of **(**presenting/causing to be presented**)]** a fraudulent health care claim to any health care benefit program.

"Fraudulent health care claim" means any statement, whether written, oral or in any other form, which is made by Defendant as part of or in support of a claim or request for payment from any health care benefit program, and Defendant knew the statement contained false, incomplete or misleading information concerning any fact or feature material to the claim.

"Health care benefit program" means any plan or contract, whether public or private, under which any medical benefit, equipment, medication or service is provided to any individual. The term includes any individual or entity that provides a medical benefit, equipment, medication or service for which payment may be made under a plan or contract.

"Pattern of presenting" means three (3) or more acts that constitute presenting fraudulent health care claims.

"Health care provider" means any health care professional, any owner or operator of a health care practice or facility, any person who creates the impression Defendant or Defendant's practice or facility can provide health care services, or any person employed or acting on behalf of any of the aforementioned persons or entities.

"**[**Health care professional/health care practice/health care facility/health care services**]**" include**[**s**]** but is not limited to any **[**person who/entity which**]**, for payment, practices in or employs the procedures of medicine, surgery, chiropractic, podiatry, dentistry, optometry, psychology, social work, pharmacy, nursing, physical therapy or

any other field concerned with the maintenance or restoration of the health of the body or mind.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 231(c) and 913A(b, d).

HEALTH CARE FRAUD

In order to find Defendant guilty of Health Care Fraud, you must find the State has proved the following three (3) elements beyond a reasonable doubt:

(1) Defendant engaged in a pattern of presenting, or causing to be presented, a fraudulent health care claim to any health care benefit program;

(2) **[**The intended loss to the health care benefit program was **(**more than $50,000 but less than $100,000/$100,000 or more**)**/Defendant was a health care provider at the time of the charged offense/Defendant's conduct constituted a pattern of presenting, or causing to be presented, fraudulent health care claims/Defendant was a health care provider at the time of the charged offense whose conduct constituted a pattern of presenting, or causing to be presented fraudulent health care claims]; and

(3) Defendant acted knowingly.

You can consider a previous act of presenting or causing the presentation of a fraudulent health care claim even if no one was convicted for that act.

"Knowingly" means Defendant knew or was aware Defendant **[(**presented/caused to be presented**)**/engaged in a pattern of **(**presenting/causing to be presented**)]** a fraudulent health care claim to any health care benefit program.

"Fraudulent health care claim" means any statement, whether written, oral or in any other form, which is made by Defendant as part of or in support of a claim or request for payment from any health care benefit program, and Defendant knew the statement contained false, incomplete or misleading information concerning any fact or feature material to the claim.

"Health care benefit program" means any plan or contract, whether public or private, under which any medical benefit, equipment, medication or service is provided to any individual. The term includes any individual or entity that provides a medical benefit, equipment, medication or service for which payment may be made under a plan or contract.

"Pattern of presenting" means three (3) or more acts that constitute presenting fraudulent health care claims.

"Health care provider" means any health care professional, any owner or operator of a health care practice or facility, any person who creates the impression Defendant or Defendant's practice or facility can provide health care services, or any person employed or acting on behalf of any of the aforementioned persons or entities.

"**[**Health care professional/health care practice/health care facility/health care services**]**" include**[**s**]** but is not limited to any **[**person who/entity which**]**, for payment, practices in or employs the procedures of medicine, surgery, chiropractic, podiatry, dentistry, optometry, psychology, social work, pharmacy, nursing, physical therapy or

any other field concerned with the maintenance or restoration of the health of the body or mind.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 231(c) and 913A(b, d).

HOME IMPROVEMENT FRAUD

In order to find Defendant guilty of Home Improvement Fraud, you must find the State has proved the following four (4) elements beyond a reasonable doubt:

(1) Defendant entered, or offered to enter, into a contract to provide home improvements;

(2) Defendant used any false pretense or promise;

(3) Defendant meant to take money under the home improvement contract; and

(4) Defendant acted intentionally.

You *may* infer, but you are not required to infer, Defendant intended to take the money paid under the home improvement contract if Defendant **[**has been previously convicted under **(**this section of the Code/any similar federal or state statute**)** within ten years of the contract in question/is currently subject to any administrative judgment, order, or injunction related to home improvements under 6 *Del. C.* ch. 25/failed to comply with 6 *Del. C.* ch. 44 with respect to the home improvement contract in question/used or threatened force against **(**victim**)**, who was 62 years or older at the time of the charged offense**]**.

Home Improvement Fraud is a misdemeanor, unless the **[(**contract price/total amount paid**)** is $1,500 or more/**(**victim**)** was 62 years of age or older at the time of the

charged offense/Defendant was previously convicted under this section of the Code**]**. In any one of these circumstances, Home Improvement Fraud is a felony. In this case, the State is charging Defendant with Home Improvement Fraud **[**Misdemeanor/Felony**]**.

"Intentionally" means it was Defendant's conscious objective or purpose to take the money.

"Home improvement" means any alteration, repair, addition, modification, or improvement to any dwelling or the property on which it is located.

"Home improvement contract" is any agreement, written or oral, in which Defendant offers or agrees to provide home improvements in exchange for payment, whether such payment has been made or not.

"False pretense" means a pretense that intentionally creates or reinforces a false impression about a present or past fact.

"False promise" means a promise or representation, express or implied, that Defendant or a third person will in the future engage in particular conduct when Defendant does not intend to engage in such conduct or when Defendant does not believe the third person intends to engage in such conduct.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 231(c), 841, 843, 844, 857, and 916(a).

HOME IMPROVEMENT FRAUD

In order to find Defendant guilty of Home Improvement Fraud, you must find the State has proved the following four (4) elements beyond a reasonable doubt:

(1) Defendant entered, or offered to enter, into a contract to provide home improvements;

(2) Defendant created or reinforced a false impression or belief concerning the condition of any portion of the dwelling or property;

(3) Defendant meant to take the money under the home improvement contract; and

(4) Defendant acted intentionally.

You *may* infer, but you are not required to infer, Defendant intended to take the money paid under the home improvement contract if Defendant **[**has been previously convicted under **(**this section of the Code/any similar federal or state statute**)** within ten years of the contract in question/is currently subject to any administrative judgment, order, or injunction related to home improvements under 6 *Del. C.* ch. 25/failed to comply with 6 *Del. C.* ch. 44 with respect to the home improvement contract in question/used or threatened force against **(**victim**)**, who was 62 years or older at the time of the charged offense**]**.

Home Improvement Fraud is a misdemeanor, unless the **[(**contract price/total amount paid**)** is $1,500 or more/**(**victim**)** was 62 years of age or older at the time of the charged offense/Defendant was previously convicted under this section of the Code**]**. In any one of these circumstances, Home Improvement Fraud is a felony. In this case, the State is charging Defendant with Home Improvement Fraud **[**Misdemeanor/Felony**]**.

"Intentionally" means it was Defendant's conscious objective or purpose to take the money, and to create a false impression or belief.

"Home improvement" means any alteration, repair, addition, modification, or improvement to any dwelling or the property on which it is located.

"Home improvement contract" is any agreement, written or oral, in which Defendant offers or agrees to provide home improvements in exchange for payment, whether such payment has been made or not.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 231(c), 841, 843, 844, 857, and 916(a).

HOME IMPROVEMENT FRAUD

In order to find Defendant guilty of Home Improvement Fraud, you must find the State has proved the following four (4) elements beyond a reasonable doubt:

(1) Defendant entered, or offered to enter, into a contract to provide home improvements;

(2) Defendant made an untrue statement about, or omitted to state, a material fact relating to the terms of the home improvement contract, or the existing condition of any portion of the property;

(3) Defendant meant to take the money under the home improvement contract; and

(4) Defendant acted intentionally.

You *may* infer, but you are not required to infer, Defendant intended to take the money paid under the home improvement contract if Defendant **[**has been previously convicted under **(**this section of the Code/any similar federal or state statute**)** within ten years of the contract in question/is currently subject to any administrative judgment, order, or injunction related to home improvements under 6 *Del. C.* ch. 25/failed to comply with 6 *Del. C.* ch. 44 with respect to the home improvement contract in question/used or threatened force against **(**victim**)**, who was 62 years or

older at the time of the charged offense**]**.

Home Improvement Fraud is a misdemeanor, unless the **[(**contract price/total amount paid**)** is $1,500 or more/**(**victim**)** was 62 years of age or older at the time of the charged offense/Defendant was previously convicted under this section of the Code**]**. In any one of these circumstances, Home Improvement Fraud is a felony. In this case, the State is charging Defendant with Home Improvement Fraud **[**Misdemeanor/Felony**]**.

"Home improvement" means any alteration, repair, addition, modification, or improvement to any dwelling or the property on which it is located.

"Home improvement contract" is any agreement, written or oral, in which Defendant offers or agrees to provide home improvements in exchange for payment, whether such payment has been made or not.

"Intentionally" means it was Defendant's conscious objective or purpose to take the money.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 231(c), 841, 843, 844, 857, and 916(a).

Home Improvement Fraud[Work Unfinished] . . . . . 11.916(a)(4)a

HOME IMPROVEMENT FRAUD

In order to find Defendant guilty of Home Improvement Fraud, you must find the State has proved the following five (5) elements beyond a reasonable doubt:

(1) Defendant entered, or offered to enter, into a contract to provide home improvements;

(2) Defendant received money for the purpose of obtaining or paying for services, labor, materials or equipment;

(3) Defendant failed to substantially complete the home improvement;

(4) Defendant meant to take the money under the home improvement contract; and

(5) Defendant acted intentionally.

You *may* infer, but you are not required to infer, Defendant intended to take the money paid under the home improvement contract if Defendant **[**has been previously convicted under **(**this section of the Code/any similar federal or state statute**)** within ten years of the contract in question/is currently subject to any administrative judgment, order, or injunction related to home improvements under 6 *Del. C.* ch. 25/failed to comply with 6 *Del. C.* ch. 44 with respect to the home improvement contract in question/used or threatened force against **(**victim**)**, who was 62 years or

older at the time of the charged offense**]**.

Home Improvement Fraud is a misdemeanor, unless the **[(**contract price/total amount paid**)** is $1,500 or more/**(**victim**)** was 62 years of age or older at the time of the charged offense/Defendant was previously convicted under this section of the Code**]**. In any one of these circumstances, Home Improvement Fraud is a felony. In this case, the State is charging Defendant with Home Improvement Fraud **[**Misdemeanor/Felony**]**.

"Home improvement" means any alteration, repair, addition, modification, or improvement to any dwelling or the property on which it is located.

"Home improvement contract" is any agreement, written or oral, in which Defendant offers or agrees to provide home improvements in exchange for payment, whether such payment has been made or not.

“Intentionally” means it was Defendant’s conscious objective or purpose to take the money.

Applicable Code Sections and Case Law:

11 *Del. C.* § § 231(c), 841, 843, 844, 857, and 916(a).

HOME IMPROVEMENT FRAUD

In order to find Defendant guilty of Home Improvement Fraud, you must find the State has proved the following five (5) elements beyond a reasonable doubt:

(1) Defendant entered, or offered to enter into a contract to provide home improvements;

(2) Defendant received money for the purpose of obtaining or paying for services, labor, materials or equipment;

(3) Defendant failed to pay for the services, labor, materials or /equipment provided incident to such home improvement;

(4) Defendant meant to take the money under the home improvement contract; and

(5) Defendant acted intentionally.

You *may* infer, but you are not required to infer, Defendant intended to take the money paid under the home improvement contract if Defendant **[**has been previously convicted under **(**this section of the Code/any similar federal or state statute**)** within ten years of the contract in question/is currently subject to any administrative judgment, order, or injunction related to home improvements under 6 *Del. C.* ch. 25/failed to comply with 6 *Del. C.* ch. 44 with respect to the home improvement

contract in question/used or threatened force against **(**victim**)**, who was 62 years or older at the time of the charged offense**]**.

Home Improvement Fraud is a misdemeanor, unless the **[(**contract price/total amount paid**)** is $1,500 or more/**(**victim**)** was 62 years of age or older at the time of the charged offense/Defendant was previously convicted under this section of the Code**]**. In any one of these circumstances, Home Improvement Fraud is a felony. In this case, the State is charging Defendant with Home Improvement Fraud **[**Misdemeanor/Felony**]**.

"Home improvement" means any alteration, repair, addition, modification, or improvement to any dwelling or the property on which it is located.

"Home improvement contract" is any agreement, written or oral, in which Defendant offers or agrees to provide home improvements in exchange for payment, whether such payment has been made or not.

“Intentionally” means it was Defendant’s conscious objective or purpose to take the money.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 231(c), 841, 843, 844, 857, and 916(a).

HOME IMPROVEMENT FRAUD

In order to find Defendant guilty of Home Improvement Fraud, you must find the State has proved the following five (5) elements beyond a reasonable doubt:

(1) Defendant entered, or offered to enter, into a contract to provide home improvements;

(2) Defendant received money for the purpose of obtaining or paying for services, labor, materials or equipment;

(3) Defendant diverted the funds to a use other than that for which the funds were received;

(4) Defendant meant to take the money under the home improvement contract; and

(5) Defendant acted intentionally.

You *may* infer, but you are not required to infer, Defendant intended to take the money paid under the home improvement contract if Defendant **[**has been previously convicted under **(**this section of the Code/any similar federal or state statute**)** within ten years of the contract in question/is currently subject to any administrative judgment, order, or injunction related to home improvements under 6 *Del. C.* ch. 25/failed to comply with 6 *Del. C.* ch. 44 with respect to the home improvement contract in question/used or threatened force against **(**victim**)**, who was 62 years or

older at the time of the charged offense**]**.

Home Improvement Fraud is a misdemeanor, unless the **[(**contract price/total amount paid**)** is $1,500 or more/**(**victim**)** was 62 years of age or older at the time of the charged offense/Defendant was previously convicted under this section of the Code**]**. In any one of these circumstances, Home Improvement Fraud is a felony. In this case, the State is charging Defendant with Home Improvement Fraud **[**Misdemeanor/Felony**]**.

"Home improvement" means any alteration, repair, addition, modification, or improvement to any dwelling or the property on which it is located.

"Home improvement contract" is any agreement, written or oral, in which Defendant offers or agrees to provide home improvements in exchange for payment, whether such payment has been made or not.

"Intentionally" means it was Defendant's conscious objective or purpose to take the money.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 231(c), 841, 843, 844, 857, and 916(a).

HOME IMPROVEMENT FRAUD

In order to find Defendant guilty of Home Improvement Fraud, you must find the State has proved the following four (4) elements beyond a reasonable doubt:

(1) Defendant entered, or offered to enter, into a contract to provide home improvements;

(2) Defendant failed to provide Defendant's true name (or provided a false name, address or phone number**)** of the business offering home improvements;

(3) Defendant meant to take the money under the home improvement contract; and

(4) Defendant acted intentionally.

You *may* infer, but you are not required to infer, Defendant intended to take the money paid under the home improvement contract if Defendant **[**has been previously convicted under **(**this section of the Code/any similar federal or state statute**)** within ten years of the contract in question/is currently subject to any administrative judgment, order, or injunction related to home improvements under 6 *Del. C.* ch. 25/failed to comply with 6 *Del. C.* ch. 44 with respect to the home improvement contract in question/used or threatened force against **(**victim**)**, who was 62 years or older at the time of the charged offense**]**.

Home Improvement Fraud is a misdemeanor, unless the **[(**contract price/total amount paid**)** is $1,500 or more/**(**victim**)** was 62 years of age or older at the time of the charged offense/Defendant was previously convicted under this section of the Code**]**. In any one of these circumstances, Home Improvement Fraud is a felony. In this case, the State is charging Defendant with Home Improvement Fraud **[**Misdemeanor/Felony**]**.

"Home improvement" means any alteration, repair, addition, modification, or improvement to any dwelling or the property on which it is located.

"Home improvement contract" is any agreement, written or oral, in which Defendant offers or agrees to provide home improvements in exchange for payment, whether such payment has been made or not.

“Intentionally” means it was Defendant’s conscious objective or purpose to take the money.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 231(c), 841, 843, 844, 857, and 916(a).

NEW HOME CONSTRUCTION FRAUD

In order to find Defendant guilty of New Home Construction Fraud, you must find the State has proved the following four (4) elements beyond a reasonable doubt:

(1) Defendant entered into a new home construction contract;

(2) Defendant used any false pretense or promise;

(3) Defendant intended to deprive a person of property **(**or intended to appropriate property); and

(4) Defendant acted intentionally.

New Home Construction Fraud is a misdemeanor, unless the **[(**contract price/total amount paid**)** is $1,500 or more/**(**victim**)** was 62 years of age or older at the time of the charged offense/Defendant was previously convicted under this section of the Code**]**. In any one of these circumstances, New Home Construction Fraud is a felony. In this case, the State is charging Defendant with New Home Construction Fraud **[**Misdemeanor/Felony**]**.

In calculating the amount of the home buyer's loss, the loss is the lesser of the total of all payments actually made by the home buyer; or the cost to the home buyer to complete the new home construction according to the terms of the original new home construction contract, whether or not the new home is actually completed.

"Intentionally" means it was Defendant's conscious objective or purpose to deprive someone of property, or to appropriate property.

"Dwelling" means a building that is usually occupied by a person who lives there at night. For the purposes of this offense, the term does not include a mobile home.

"New home construction" means the erection, installation or construction of a dwelling on a fixed foundation on land owned or purchased by a home buyer. Land is "purchased" when the home buyer acquires it by sale, negotiation, mortgage, pledge, lien, gift or any other transaction creating an interest in the property either *before* the new home construction contract is formed or *as part of* the new home construction contract.

"New home contractor" means any person who offers or provides new home construction services as a general contractor or a sub-contractor and includes an architect, engineer or real estate broker or agent.

"New home construction contract" means any agreement, whether written or oral, between a new home contractor and a home buyer where the new home contractor agrees to provide new home construction services in exchange for payment.

"Deprive" means to withhold someone else's property permanently or for such an extended period of time so as to obtain a major part of the property's economic value.

"Appropriate" means to exercise control over someone else's property permanently or for such an extended period of time so as to obtain a major part of the property's economic value.

"Payment of money" means the tender of money or other valuable benefit by a home buyer, or by a lending institution on behalf of the home buyer, to a new home contractor as part of a new home construction contract.

"False pretense" means a pretense that intentionally creates or reinforces a false impression about a present or past fact.

"False promise" means a promise or representation, express or implied, that Defendant or a third person will in the future engage in particular conduct when Defendant does not intend to engage in such conduct or when Defendant does not believe the third person intends to engage in such conduct.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 231(c), 841, 843, 844, 857, and 917(a).

New Home Construction Fraud[Funds Diverted] . . . . . 11.917(b)(2)

NEW HOME CONSTRUCTION FRAUD

In order to find Defendant guilty of New Home Construction Fraud, you must find the State has proved the following five (5) elements beyond a reasonable doubt:

(1) Defendant entered into a new home construction contract;

(2) Defendant received payment;

(3) Defendant failed to use the payments for purposes identified in the new home sales contract, or diverted payments to uses other than the erection, installation or construction of the dwelling identified in the contract;

(4) Defendant intended to deprive a person of property or intended to appropriate property; and

(5) Defendant acted intentionally.

New Home Construction Fraud is a misdemeanor, unless the **[(**contract price/total amount paid**)** is $1,500 or more/**(**victim**)** was 62 years of age or older at the time of the charged offense/Defendant was previously convicted under this section of the Code**]**. In any one of these circumstances, New Home Construction Fraud is a felony. In this case, the State is charging Defendant with New Home Construction Fraud **[**Misdemeanor/Felony**]**.

In calculating the amount of the home buyer's loss, the loss is the lesser of the

total of all payments actually made by the home buyer; or the cost to the home buyer to complete the new home construction according to the terms of the original new home construction contract, whether or not the new home is actually completed.

"Intentionally" means it was Defendant's conscious objective or purpose to deprive a person of property, or to appropriate property.

"Dwelling" means a building that is usually occupied by a person who lives there at night. For the purposes of this offense, the term does not include a mobile home.

"Home buyer" means a person who intends to enter into a new home construction contract for himself or herself, or on behalf of any person.

"New home construction contract" means any agreement, whether written or oral, between a new home contractor and a home buyer where the new home contractor agrees to provide new home construction services in exchange for payment.

"New home contractor" means any person who offers or provides new home construction services as a general contractor or a sub-contractor and includes an architect, engineer or real estate broker or agent.

"New home construction" means the erection, installation or construction of a dwelling on a fixed foundation on land owned or purchased by a home buyer. Land is "purchased" when the home buyer acquires it by sale, negotiation, mortgage, pledge,

lien, gift or any other transaction creating an interest in the property either *before* the new home construction contract is formed or *as part of* the new home construction contract.

"Deprive" means to withhold someone else's property permanently or for such an extended period of time so as to obtain a major part of the property's economic value.

"Appropriate" means to exercise control over someone else's property permanently or for such an extended period of time so as to obtain a major part of the property's economic value.

"Payment of money" means the tender of money or other valuable benefit by a home buyer, or by a lending institution on behalf of the home buyer, to a new home contractor as part of a new home construction contract.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 231(c), 841, 843, 844, 857, and 917(a).

NEW HOME CONSTRUCTION FRAUD

In order to find Defendant guilty of New Home Construction Fraud, you must find the State has proved the following five (5) elements beyond a reasonable doubt:

(1) Defendant entered into a new home construction contract;

(2) Defendant received payment;

(3) Defendant failed to provide Defendant's own true name, or provided a false name, address or phone number, of the business offering new home construction services;

(4) Defendant intended to deprive a person of property, or to appropriate property; and

(5) Defendant acted intentionally.

New Home Construction Fraud is a misdemeanor, unless the **[(**contract price/total amount paid**)** is $1,500 or more/**(**victim**)** was 62 years of age or older at the time of the charged offense/Defendant was previously convicted under this section of the Code**]**. In any one of these circumstances, New Home Construction Fraud is a felony. In this case, the State is charging Defendant with New Home Construction Fraud **[**Misdemeanor/Felony**]**.

In calculating the amount of the home buyer's loss, the loss is the lesser of the total of all payments actually made by the home buyer; or the cost to the home buyer

to complete the new home construction according to the terms of the original new home construction contract, whether or not the new home is actually completed.

"Intentionally" means it was Defendant's conscious objective or purpose to deprive a person of property, or to appropriate property.

"Dwelling" means a building that is usually occupied by a person who lives there at night. For the purposes of this offense, the term does not include a mobile home.

"Home buyer" means a person who intends to enter into a new home construction contract for himself or herself, or on behalf of any person.

"New home construction contract" means any agreement, whether written or oral, between a new home contractor and a home buyer where the new home contractor agrees to provide new home construction services in exchange for payment.

"New home contractor" means any person who offers or provides new home construction services as a general contractor or a sub-contractor and includes an architect, engineer or real estate broker or agent.

"New home construction" means the erection, installation or construction of a dwelling on a fixed foundation on land owned or purchased by a home buyer. Land is "purchased" when the home buyer acquires it by sale, negotiation, mortgage, pledge, lien, gift or any other transaction creating an interest in the property either *before* the

new home construction contract is formed or *as part of* the new home construction contract.

“Deprive” means to withhold someone else’s property permanently or for such an extended period of time so as to obtain a major part of the property’s economic value.

"Appropriate" means to exercise control over someone else’s property permanently or for such an extended period of time so as to obtain a major part of the property’s economic value.

“Payment of money” means the tender of money or other valuable benefit by a home buyer, or by a lending institution on behalf of the home buyer, to a new home contractor as part of a new home construction contract.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 231(c), 841, 843, 844, 857, and 917(a).

Ticket Scalping . . . .11.918(a)

TICKET SCALPING

In order to find Defendant guilty of Ticket Scalping, you must find the State has proved the following five (5) elements beyond a reasonable doubt:

(1) Defendant sold, resold or exchanged any ticket at a price higher than the original price;

(2) The ticket was for any event or exhibit;

(3) The sale, resale or exchange occurred on the day of, or the day before, an event;

(4) The sale, resale or exchange took place at **[**the Bob Carpenter Sports/Convocation Center University of Delaware-South Campus/a NASCAR Race at Dover Downs/any state or federal highway within the State**]**; and

(5) Defendant acted intentionally or knowingly.

"Intentionally" means it was Defendant's conscious objective or purpose to act in the manner alleged.

"Knowingly" means Defendant knew or was aware Defendant was acting in the manner alleged.

"Ticket" is any admittance, receipt, entrance ticket or other evidence of a right to be admitted to an event or exhibit.

[*Comment*: *Although the matter is not entirely free from doubt, the word "at," preceding "the Bob Carpenter Sports/Convocation Center" refers to a prohibition from scalping in those areas listed. It appears that the word "at" does not prohibit scalping for events taking place in the Bob Carpenter Center or Dover Downs on the day of the preceding, or the day of the event altogether, if the scalping occurs in other places.***]**

Applicable Code Sections and Case Law:

11 *Del. C.* § 231(b, c) and 918(c) .

Transfer of Recorded Sounds . . . .11.920(a)

TRANSFER OF RECORDED SOUNDS

In order to find Defendant guilty of Transfer of Recorded Sounds, you must find the State has proved the following four (4) elements beyond a reasonable doubt:

(1) Defendant transferred, or caused to be transferred, directly or indirectly, by any means, any sounds recorded on any phonograph record, disc, wire, tape, film or other device;

(2) Defendant sold, caused to be sold, used for profit through public performance, or used to promote the sale of any product, any recording without the consent of the owner;

(3) Owner is domiciled, or had a principal place of business, in a country that is a signatory to the 1971 Geneva Convention on Phonograms; and

(4) Defendant acted intentionally and knowingly.

"Intentionally" means it was Defendant's conscious objective or purpose to take monetary advantage of the transferred recording without the owner's permission.

"Knowingly" means Defendant was aware Defendant was transferring a sound recording.

"Owner" means the person who owned the original phonograph record**,** disc, wire, tape, film or other device, of the sounds that were later transferred to the

recording in question.

The 1971 Geneva Convention on Phonograms protects producers of phonograms who are nationals of other Contracting States against the making of duplicates without the consent of the producer and against the importation of such duplicates for the purpose of distribution to the public, and against the distribution of such duplicates to the public.

"Phonograms" means any exclusively aural **(**audio**)** fixation of sounds of a performance or of other sounds.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 231(b, c) and 920(b).

Sale of Transferred Recorded Sounds . . . . . 11.921(a)

SALE OF TRANSFERRED RECORDED SOUNDS

In order to fund Defendant guilty of the Sale of Transferred Sounds, you must find the State has proved the following three (3) elements beyond a reasonable doubt:

(1) Defendant advertised, offered for sale or resale, sold, resold, distributed, or possessed for sale or resale, any sound produced without consent of the owner;

(2) Owner is domiciled, or had a principal place of business, in a country that is a signatory to the 1971 Geneva Convention on Phonograms; and

(3) Defendant acted knowingly, or with reasonable grounds to know.

"Knowingly" means Defendant was aware Defendant was transferring a sound recording.

"Owner" means the person who owned the original phonograph, record, disc, wire, tape, film or other device, of the sounds that were later transferred to the recording in question.

The 1971 Geneva Convention on Phonograms protects producers of phonograms who are nationals of other Contracting States against the making of duplicates without the consent of the producer and against the importation of such duplicates for the purpose of distribution to the public, and against the distribution of such duplicates to the public.

"Phonograms" means any exclusively aural **(**audio**)** fixation of sounds of a performance or of other sounds.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 231(c) and 920(b).

Improper Labeling . . . . . 11.922(a)

IMPROPER LABELING

In order to find Defendant guilty of Improper Labeling of sounds, you must find the State has proved the following three (3) elements beyond a reasonable doubt:

(1) Defendant advertised, offered for sale or resale, sold, resold, or possessed for sale or resale, an article on which sounds were recorded;

(2) The article did not clearly and conspicuously disclose the actual name and address of the manufacturer and the name of the actual performer or group on the cover, box, jacket or label;

(3) Defendant acted intentionally and knowingly.

"Intentionally" means it was Defendant's conscious objective or purpose to take monetary advantage of the transferred recording without the owner's permission.

"Knowingly" means Defendant was aware Defendant was transferring a sound recording.

Applicable Code Sections and Case Law:

11 *Del.C.* § 231(b, c)

Defense to Transfer of Recorded Sounds (Archive)

[*Statutory Defense, Non-Affirmative****]*** . . . . . 11.923(1)

DEFENSE TO TRANSFER OF RECORDED SOUNDS [STATUTORY DEFENSE, NON-AFFIRMATIVE]

A defense raised by Defendant in this case is that the offense of Transfer of Recorded Sounds does not apply to Defendant. The offense of Transfer of Recorded Sounds shall not apply to any broadcaster who, in connection with, or as part of a radio, television, or cable broadcast system, or for the purpose of archival preservation, transfers any such sounds recorded on a sound recording.

Applicable Code Sections and Case Law:

Defense to Transfer of Recorded Sounds (Personal Use)

[*Statutory Defense, Non-Affirmative****]*** . . . . . 11.923(2)

DEFENSE TO TRANSFER OF RECORDED SOUNDS [STATUTORY DEFENSE, NON-AFFIRMATIVE]

A defense raised by Defendant in this case is that the offense of Transfer of Recorded Sounds does not apply to Defendant. The offense of Transfer of Recorded Sounds shall not apply to any person who transfers such sounds in the home for personal use, and without compensation for such transfer.

Applicable Code Sections and Case Law:

Defense to Transfer of Recorded Sounds (50 Years Transpired)

[*Statutory Defense, Non-Affirmative****]*** . . . . . 11.923(3)

DEFENSE TO TRANSFER OF RECORDED SOUNDS [STATUTORY DEFENSE, NON-AFFIRMATIVE]

A defense raised by Defendant in this case is that the offense of Transfer of Recorded Sounds does not apply to Defendant. The offense of Transfer of Recorded Sounds shall not apply to any phonograph record, disc, wire, tape, film or other article upon which sound is recorded, where a period of 50 years has transpired since the original fixation of sounds thereon was made by the owner or on the owner's behalf.

Applicable Code Sections and Case Law:

11 *Del.C.* § 304

Invasion of Video Privacy . . . . . 11.925(a)

INVASION OF VIDEO PRIVACY

In order to find Defendant guilty of Invasion of Video Privacy, you must find the State has proved the following three (3) elements beyond a reasonable doubt:

(1) Defendant rented or sold videotapes;

(2) Defendant wrongfully disclosed a listing of videotapes purchased or rented; and

(3) Defendant acted intentionally or knowingly.

"Intentionally" means it was Defendant's conscious objective or purpose to wrongfully disclose a listing of videotapes purchased or rented by another.

"Knowingly" means Defendant was aware Defendant was wrongfully disclosing a list of videotapes purchased or rented by another.

"Wrongfully disclosed" means any publication that occurs in any circumstances in which the person who rented or bought a videotape has an expectation of privacy.

"Publication" means distribution to someone other than the protected person.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 231(b, c), 251(b), and 925(b)(3, 4a).

Trademark Counterfeiting . . . . . 11.926(a)

TRADEMARK COUNTERFEITING

In order to find Defendant guilty of Trademark Counterfeiting, you must find the State has proved the following two (2) elements beyond a reasonable doubt:

(1) Defendant **[**manufactured/used/displayed/advertised/distributed/offered for sale/sold/ possessed with intent to **(**sell/distribute**)]** any **[**item/service**][**bearing/identified by**]** a counterfeit mark;

(2) Defendant acted knowingly.

"Knowingly" means Defendant was aware Defendant **[**manufactured/used/displayed/ advertised/distributed/offered for sale/sold/possessed with intent to **(**sell/distribute**)]** any **[**item/service**][**bearing/identified by**]** a counterfeit mark.

Applicable Code Sections and Case Law:

Unauthorized Access to a Computer System 11.932

UNAUTHORIZED ACCESS TO A COMPUTER SYSTEM

In order to find Defendant guilty of Unauthorized Access to a Computer System, you must find the State has proved the following three (3) elements beyond a reasonable doubt:

(1) Defendant accessed, or caused to be accessed, a computer system;

(2) Defendant was not authorized to access, or cause access to, the computer system;

(3) Defendant acted knowingly.

In this case, **[**the State concedes the value of the property or services is less than $1,500. No further proof regarding the value of the property or services is needed and the correct offense is Unauthorized Access to a Computer System - Class A Misdemeanor/the State contends the value of the property or services is at least $1,500 and is therefore charging Defendant with Unauthorized Access to a Computer System - Class G Felony. Therefore, you must find beyond a reasonable doubt the value of the property or services is greater than $1,500 and so indicate on the verdict sheet/the State contends the value of the property or services is greater than $5,000 and is therefore charging Defendant with Unauthorized Access to a Computer System - Class E Felony. Therefore, you must find beyond a reasonable doubt the value of the property or services is greater than $5,000 and so indicate on the verdict sheet/the

State contends the value of the property or services is greater than $10,000 and is therefore charging Defendant with Unauthorized Access to a Computer System - Class D Felony. Therefore, you must find beyond a reasonable doubt the value of the property or services is greater than $10,000 and so indicate on the verdict *sheet/**[**if applicable**]*** the State contends Defendant engaged in conduct that created a risk of serious physical injury to another person, and is therefore charging Defendant with Unauthorized Access to a Computer System - Class G Felony. Therefore, you must find beyond a reasonable doubt Defendant engaged in conduct that created a risk of serious physical injury to another person and so indicate on the verdict sheet.**]**

[*Comment: A special verdict sheet will be needed for the jury to determine the level of value of the property if Defendant is to be found guilty*.**]**

"Knowingly" means Defendant was aware Defendant's conduct was unauthorized.

"Access" means to instruct, communicate with, store data in or retrieve data from a computer, computer system or computer network.

"Computer" means a programmable, electronic device capable of accepting and processing data.

"Computer network" means a set of related devices connected to a computer by

communications facilities; a complex of two (2) or more computers, including related devices, connected by communications facilities; or the communications transmission facilities and devices used to interconnect computational equipment, along with associated control mechanisms.

"Computer system" means a computer, its software, related equipment and communications facilities, if any, and includes computer networks.

"Data" means information of any kind in any form, including computer software.

"Property" means anything of value, including data.

"Value" means the market value of the property or services at the time and place of the offense, or if that cannot be easily determined, the cost of replacing the property or services within a reasonable time after the crime occurred.

[*if applicable****]***

["Serious physical injury" means any physical injury which creates a substantial risk of death, or which causes serious and prolonged disfigurement, prolonged impairment of health, or prolonged loss or impairment of the function of any bodily organ.**]**

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 222(25), 224, 231(c), 931(1, 3, 4, 8, 9, 15), and 939.

THEFT OF COMPUTER SERVICES

In order to find Defendant guilty of Theft of Computer Services, you must find the State has proved the following three (3) elements beyond a reasonable doubt:

(1) Defendant accessed, caused to be accessed, used or caused to be used, a computer system;

(2) Defendant obtained unauthorized computer services, software or data as a result of Defendant's access to or use of the computer system; and

(3) Defendant acted intentionally.

In this case, **[**the State concedes the value of the property or services is less than $1,500. No further proof regarding the value of the property or services is needed and the correct offense is Theft of Computer Services - Class A Misdemeanor/the State contends the value of the property or services is at least $1,500 and is therefore charging Defendant with Theft of Computer Services - Class G Felony. Therefore, you must find beyond a reasonable doubt the value of the property or services is greater than $1,500 and so indicate on the verdict sheet/the State contends the value of the property or services is greater than $5,000 and is therefore charging Defendant with Theft of Computer Services - Class E Felony. Therefore, you must find beyond a reasonable doubt the value of the property or services is greater than $5,000 and so indicate on the verdict sheet/the State contends the value of the property or services

is greater than $10,000 and is therefore charging Defendant with Theft of Computer Services - Class D Felony. Therefore, you must find beyond a reasonable doubt the value of the property or services is greater than $10,000 and so indicate on the verdict *sheet/**[**if applicable**]*** the State contends Defendant engaged in conduct that created a risk of serious physical injury to another person, and is therefore charging Defendant with Theft of Computer Services - Class G Felony. Therefore, you must find beyond a reasonable doubt Defendant engaged in conduct that created a risk of serious physical injury to another person and so indicate on the verdict sheet.**]**

"Intentionally" means it was Defendant's conscious objective or purpose to obtain services, software or data without obtaining proper permission.

"Access" means to instruct, communicate with, store data in or retrieve data from a computer, computer system or computer network.

"Computer" means a programmable, electronic device capable of accepting and processing data.

"Computer network" means a set of related devices connected to a computer by communications facilities; a complex of two (2) or more computers, including related devices, connected by communications facilities; or the communications transmission facilities and devices used to interconnect computational equipment, along with associated control mechanisms.

"Computer system" means a computer, its software, related equipment and communications facilities, if any, and includes computer networks.

"Data" means information of any kind in any form, including computer software.

"Property" means anything of value, including data.

"Value" means the market value of the property or services at the time and place of the offense, or if that cannot be easily determined, the cost of replacing the property or services within a reasonable time after the crime occurred.

[*if applicable****]***

["Serious physical injury" means any physical injury which creates a substantial risk of death, or which causes serious and prolonged disfigurement, prolonged impairment of health, or prolonged loss or impairment of the function of any bodily organ.**]**

[*Comment: A special verdict sheet will be needed for the jury to determine the level of value of the property if Defendant is to be found guilty*.**]**

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 222(25), 224, 231(b), 931(1, 3, 4, 5, 8, 9, 15), and 939.

INTERRUPTION OF COMPUTER SERVICES

In order to find Defendant guilty of Interruption of Computer Services, you must find the State has proved the following three (3) elements beyond a reasonable doubt:

(1) Defendant disrupted, degraded, or caused the disruption or degradation, of of computer services to an authorized user of a computer system;

(2) Defendant acted without authorization; and

(3) Defendant acted intentionally or recklessly.

In this case, **[**the State concedes the value of the property or services is less than $1,500. No further proof regarding the value of the property or services is needed and the correct offense is Interruption of Computer Services - Class A Misdemeanor/the State contends the value of the property or services is at least $1,500 and is therefore charging Defendant with Interruption of Computer Services - Class G Felony. Therefore, you must find beyond a reasonable doubt the value of the property or services is greater than $1,500 and so indicate on the verdict sheet/the State contends the value of the property or services is greater than $5,000 and is therefore charging Defendant with Interruption of Computer Services - Class E Felony. Therefore, you must find beyond a reasonable doubt the value of the property or services is greater than $5,000 and so indicate on the verdict sheet/the State contends the value of the

property or services is greater than $10,000 and is therefore charging Defendant with Interruption of Computer Services - Class D Felony. Therefore, you must find beyond a reasonable doubt the value of the property or services is greater than $10,000 and so indicate on the verdict *sheet/**[**if applicable**]*** the State contends Defendant engaged in conduct that created a risk of serious physical injury to another person, and is therefore charging Defendant with Interruption of Computer Services - Class G Felony. Therefore, you must find beyond a reasonable doubt Defendant engaged in conduct that created a risk of serious physical injury to another person and so indicate on the verdict sheet.**]**

"Intentionally" means it was Defendant's conscious objective or purpose to cause the disruption or degradation.

"Recklessly" means Defendant was aware of and consciously disregarded a substantial and unjustifiable risk that disruption or degradation would result from Defendant's conduct. The State must demonstrate the risk was of such a nature and degree Defendant's disregard of the risk was a gross deviation from the standard of conduct a reasonable person would observe under the same circumstances.

"Access" means to instruct, communicate with, store data in or retrieve data from a computer, computer system or computer network.

"Computer" means a programmable, electronic device capable of accepting and

processing data.

"Computer network" means a set of related devices connected to a computer by communications facilities; a complex of two (2) or more computers, including related devices, connected by communications facilities; or the communications transmission facilities and devices used to interconnect computational equipment, along with associated control mechanisms.

"Computer system" means a computer, its software, related equipment and communications facilities, if any, and includes computer networks.

"Data" means information of any kind in any form, including computer software.

"Property" means anything of value, including data.

[*if applicable****]***

["Serious physical injury" means any physical injury which creates a substantial risk of death, or which causes serious and prolonged disfigurement, prolonged impairment of health, or prolonged loss or impairment of the function of any bodily organ.**]**

"Value" means the market value of the property or services at the time and place of the offense, or if that cannot be easily determined, the cost of replacing the property or services within a reasonable time after the crime occurred.

[*Comment: A special verdict sheet will be needed for the jury to determine the level of value of the property if Defendant is to be found guilty*.**]**

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 222(25), 224, 231 (b, e), 931(1, 3, 4, 8, 9, 15), and 939.

MISUSE OF COMPUTER SYSTEM INFORMATION

In order to find Defendant guilty of Misuse of Computer System Information, you must find the State has proved the following three (3) elements beyond a reasonable doubt:

(1) Defendant accessed, or caused to be accessed, a computer system;

(2) Defendant made, or caused to be made an unauthorized display, use, disclosure or copy, in any form, of data **(**residing in, communicated by, or produced by**)** the computer system; and

(3) Defendant acted intentionally.

In this case, **[**the State concedes the value of the property or services is less than $1,500. No further proof regarding the value of the property or services is needed and the correct offense is Misuse of Computer System Information - Class A Misdemeanor/the State contends the value of the property or services is at least $1,500 and is therefore charging Defendant with Misuse of Computer System Information - Class G Felony. Therefore, you must find beyond a reasonable doubt the value of the property or services is greater than $1,500 and so indicate on the verdict sheet/the State contends the value of the property or services is greater than $5,000 and is therefore charging Defendant with Misuse of Computer System Information - Class E Felony. Therefore, you must find beyond a reasonable doubt the value of the

property or services is greater than $5,000 and so indicate on the verdict sheet/the State contends the value of the property or services is greater than $10,000 and is therefore charging Defendant with Misuse of Computer System Information - Class D Felony. Therefore, you must find beyond a reasonable doubt the value of the property or services is greater than $10,000 and so indicate on the verdict *sheet/**[**if applicable**]*** the State contends Defendant engaged in conduct that created a risk of serious physical injury to another person, and is therefore charging Defendant with Misuse of Computer System Information - Class G Felony. Therefore, you must find beyond a reasonable doubt Defendant engaged in conduct that created a risk of serious physical injury to another person and so indicate on the verdict sheet.**]**

"Intentionally" means it was Defendant's conscious objective or purpose to misuse computer system information.

"Access" means to instruct, communicate with, store data in or retrieve data from a computer, computer system or computer network.

"Computer" means a programmable, electronic device capable of accepting and processing data.

"Computer network" means a set of related devices connected to a computer by communications facilities; a complex of two or more computers, including related devices, connected by communications facilities; or the communications transmission

facilities and devices used to interconnect computational equipment, along with associated control mechanisms.

"Computer system" means a computer, its software, related equipment and communications facilities, if any, and includes computer networks.

"Data" means information of any kind in any form, including computer software.

"Person" means a natural person, corporation, trust, partnership, incorporated or unincorporated association and any other legal or governmental entity, including any state or municipal entity or public official.

"Property" means anything of value, including data.

[*if applicable****]***

[“Serious physical injury” means physical injury which creates a substantial risk of death, or which causes serious and prolonged disfigurement, prolonged impairment of health or prolonged loss or impairment of the function of any bodily organ, or which causes the unlawful termination of a pregnancy without the consent of the pregnant female.]

“Value” means the market value of the property or services at the time and place of the offense, or if that cannot be easily determined, the cost of replacing the property or services within a reasonable time after the crime occurred.

[*Comment: A special verdict sheet will be needed for the jury to determine the level of value of the property if Defendant is to be found guilty*.**]**

Applicable Code Sections and Case Law:

11 *Del. C*. §§ 222(25), 224, 231(b, c, e), 931(1, 3, 4, 8, 9, 15), and 939.

Misuse of Computer System Information[Tampering] . . . . . 11.935(2)a

MISUSE OF COMPUTER SYSTEM INFORMATION

In order to find Defendant guilty of Misuse of Computer System Information, you must find the State has proved the following two (2) elements beyond a reasonable doubt:

(1) Defendant altered, deleted, tampered with, damaged, destroyed or took data intended for use by a computer system without authorization; and

(2) Defendant acted intentionally or recklessly.

In this case, **[**the State concedes the value of the property or services is less than $1,500. No further proof regarding the value of the property or services is needed and the correct offense is Misuse of Computer System Information - Class A Misdemeanor/the State contends the value of the property or services is at least $1,500 and is therefore charging Defendant with Misuse of Computer System Information - Class G Felony. Therefore, you must find beyond a reasonable doubt the value of the property or services is greater than $1,500 and so indicate on the verdict sheet/the State contends the value of the property or services is greater than $5,000 and is therefore charging Defendant with Misuse of Computer System Information - Class E Felony. Therefore, you must find beyond a reasonable doubt the value of the property or services is greater than $5,000 and so indicate on the verdict sheet/the State contends the value of the property or services is greater than $10,000 and is

therefore charging Defendant with Misuse of Computer System Information - Class D Felony. Therefore, you must find beyond a reasonable doubt the value of the property or services is greater than $10,000 and so indicate on the verdict *sheet/**[**if applicable**]*** the State contends Defendant engaged in conduct that created a risk of serious physical injury to another person, and is therefore charging Defendant with Misuse of Computer System Information - Class G Felony. Therefore, you must find beyond a reasonable doubt Defendant engaged in conduct that created a risk of serious physical injury to another person and so indicate on the verdict sheet.**]**

"Intentionally" means that it was Defendant's conscious objective or purpose to misuse computer system information.

"Recklessly" means Defendant was aware of and consciously disregarded a substantial and unjustifiable risk that misuse would result from Defendant's conduct. The State must demonstrate the risk was of such a nature and degree that Defendant's disregard of the risk was a gross deviation from the standard of conduct a reasonable person would observe under the same circumstances.

"Computer" means a programmable, electronic device capable of accepting and processing data.

"Computer system" means a computer, its software, related equipment and communications facilities, if any, and includes computer networks.

"Data" means information of any kind in any form, including computer software.

"Property" means anything of value, including data.

[*if applicable****]***

["Serious physical injury" means physical injury which creates a substantial risk of death, or which causes serious and prolonged disfigurement, prolonged impairment of health or prolonged loss or impairment of the function of any bodily organ, or which causes the unlawful termination of a pregnancy without the consent of the pregnant female.**]**

"Value" means the market value of the property or services at the time and place of the offense, or if that cannot be easily determined, the cost of replacing the property or services within a reasonable time after the crime occurred.

[*Comment: A special verdict sheet will be needed for the jury to determine the level of value of the property if Defendant is to be found guilty*.**]**

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 224, 231(b, e), 931(3, 8, 9, 15), and 939.

MISUSE OF COMPUTER SYSTEM INFORMATION

In order to find Defendant guilty of Misuse of Computer System Information, you must find the State has proved the following two (2) elements beyond a reasonable doubt:

(1) Defendant interrupted or added data to the data residing within the computer system; and

(2) Defendant acted intentionally or recklessly.

In this case, **[**the State concedes the value of the property or services is less than $1,500. No further proof regarding the value of the property or services is needed and the correct offense is Misuse of Computer System Information - Class A Misdemeanor/the State contends the value of the property or services is at least $1,500 and is therefore charging Defendant with Misuse of Computer System Information - Class G Felony. Therefore, you must find beyond a reasonable doubt the value of the property or services is greater than $1,500 and so indicate on the verdict sheet/the State contends the value of the property or services is greater than $5,000 and is therefore charging Defendant with Misuse of Computer System Information - Class E Felony. Therefore, you must find beyond a reasonable doubt the value of the property or services is greater than $5,000 and so indicate on the verdict sheet/the State contends the value of the property or services is greater than $10,000 and is

therefore charging Defendant with Misuse of Computer System Information - Class D Felony. Therefore, you must find beyond a reasonable doubt the value of the property or services is greater than $10,000 and so indicate on the verdict *sheet/**[**if applicable**]*** the State contends Defendant engaged in conduct that created a risk of serious physical injury to another person, and is therefore charging Defendant with Misuse of Computer System Information - Class G Felony. Therefore, you must find beyond a reasonable doubt Defendant engaged in conduct that created a risk of serious physical injury to another person and so indicate on the verdict sheet.**]**

"Intentionally" means that it was the defendant's conscious objective or purpose misuse computer system information.

"Recklessly" means Defendant was aware of and consciously disregarded a substantial and unjustifiable risk that misuse would result from Defendant's conduct. The State must demonstrate the risk was of such a nature and degree that Defendant's disregard of the risk was a gross deviation from the standard of conduct a reasonable person would observe under the same circumstances.

"Computer" means a programmable, electronic device capable of accepting and processing data.

"Computer system" means a computer, its software, related equipment and communications facilities, if any, and includes computer networks.

"Data" means information of any kind in any form, including computer software.

"Property" means anything of value, including data.

[*if applicable****]***

["Serious physical injury" means physical injury which creates a substantial risk of death, or which causes serious and prolonged disfigurement, prolonged impairment of health or prolonged loss or impairment of the function of any bodily organ, or which causes the unlawful termination of a pregnancy without the consent of the pregnant female.**]**

"Value" means the market value of the property or services at the time and place of the offense, or if that cannot be easily determined, the cost of replacing the property or services within a reasonable time after the crime occurred.

[*Comment: A special verdict sheet will be needed for the jury to determine the level of value of the property if Defendant is to be found guilty*.**]**

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 222(25), 224, 231(b, e), 931(3, 8, 9, 15), and 939.

MISUSE OF COMPUTER SYSTEM INFORMATION

In order to find Defendant guilty of Misuse of Computer System Information, you must find the State has proved the following two (2) elements beyond a reasonable doubt:

(1) Defendant received or retained data obtained in violation of subsection **[(**1**)/(**2**)]** of section 935 of the Criminal Code; and

(2) Defendant acted knowingly.

In this case, **[**the State concedes the value of the property or services is less than $1,500. No further proof regarding the value of the property or services is needed and the correct offense is Misuse of Computer System Information - Class A Misdemeanor/the State contends the value of the property or services is at least $1,500 and is therefore charging Defendant with Misuse of Computer System Information - Class G Felony. Therefore, you must find beyond a reasonable doubt the value of the property or services is greater than $1,500 and so indicate on the verdict sheet/the State contends the value of the property or services is greater than $5,000 and is therefore charging Defendant with Misuse of Computer System Information - Class E Felony. Therefore, you must find beyond a reasonable doubt the value of the property or services is greater than $5,000 and so indicate on the verdict sheet/the State contends the value of the property or services is greater than $10,000 and is

therefore charging Defendant with Misuse of Computer System Information - Class D Felony. Therefore, you must find beyond a reasonable doubt the value of the property or services is greater than $10,000 and so indicate on the verdict *sheet/**[**if applicable**]*** the State contends Defendant engaged in conduct that created a risk of serious physical injury to another person, and is therefore charging Defendant with Misuse of Computer System Information - Class G Felony. Therefore, you must find beyond a reasonable doubt Defendant engaged in conduct that created a risk of serious physical injury to another person and so indicate on the verdict sheet.**]**

"Knowingly" means Defendant was aware Defendant's misuse of computer system information was unlawful.

"Access" means to instruct, communicate with, store data in or retrieve data from a computer, computer system or computer network.

"Computer" means a programmable, electronic device capable of accepting and processing data.

"Computer network" means a set of related devices connected to a computer by communications facilities; a complex of two or more computers, including related devices, connected by communications facilities; or the communications transmission facilities and devices used to interconnect computational equipment, along with associated control mechanisms.

"Computer system" means a computer, its software, related equipment and communications facilities, if any, and includes computer networks.

"Data" means information of any kind in any form, including computer software.

"Property" means anything of value, including data.

[*if applicable****]***

["Serious physical injury" means physical injury which creates a substantial risk of death, or which causes serious and prolonged disfigurement, prolonged impairment of health or prolonged loss or impairment of the function of any bodily organ, or which causes the unlawful termination of a pregnancy without the consent of the pregnant female.**]**

"Value" means the market value of the property or services at the time and place of the offense, or if that cannot be easily determined, the cost of replacing the property or services within a reasonable time after the crime occurred.

[*Comment: A special verdict sheet will be needed for the jury to determine the level of value of the property if Defendant is to be found guilty*.**]**

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 224, 231(c), 931(1, 3, 4, 8, 9, 15), and 939.

MISUSE OF COMPUTER SYSTEM INFORMATION

In order to find Defendant guilty of Misuse of Computer System Information, you must find the State has proved the following two (2) elements beyond a reasonable doubt:

(1) Defendant used or disclosed any date Defendant knew or believed was obtained in violation of subsection **[(**1**)/(**2**)]** of section 935 of the Criminal Code; and

(2) Defendant acted knowingly.

In this case, **[**the State concedes the value of the property or services is less than $1,500. No further proof regarding the value of the property or services is needed and the correct offense is Misuse of Computer System Information - Class A Misdemeanor/the State contends the value of the property or services is at least $1,500 and is therefore charging Defendant with Misuse of Computer System Information - Class G Felony. Therefore, you must find beyond a reasonable doubt the value of the property or services is greater than $1,500 and so indicate on the verdict sheet/the State contends the value of the property or services is greater than $5,000 and is therefore charging Defendant with Misuse of Computer System Information - Class E Felony. Therefore, you must find beyond a reasonable doubt the value of the property or services is greater than $5,000 and so indicate on the verdict sheet/the State contends the value of the property or services is greater than $10,000 and is

therefore charging Defendant with Misuse of Computer System Information - Class D Felony. Therefore, you must find beyond a reasonable doubt the value of the property or services is greater than $10,000 and so indicate on the verdict *sheet/**[**if applicable**]*** the State contends Defendant engaged in conduct that created a risk of serious physical injury to another person, and is therefore charging Defendant with Misuse of Computer System Information - Class G Felony. Therefore, you must find beyond a reasonable doubt Defendant engaged in conduct that created a risk of serious physical injury to another person and so indicate on the verdict sheet.**]**

"Knowingly" means Defendant was aware Defendant's **(**unlawful action**)** was unlawful.

"Access" means to instruct, communicate with, store data in or retrieve data from a computer, computer system or computer network.

"Computer" means a programmable, electronic device capable of accepting and processing data.

"Computer network" means a set of related devices connected to a computer by communications facilities; a complex of two or more computers, including related devices, connected by communications facilities; or the communications transmission facilities and devices used to interconnect computational equipment, along with associated control mechanisms.

"Computer system" means a computer, its software, related equipment and communications facilities, if any, and includes computer networks.

"Data" means information of any kind in any form, including computer software.

"Property" means anything of value, including data.

[*if applicable****]***

["Serious physical injury" means physical injury which creates a substantial risk of death, or which causes serious and prolonged disfigurement, prolonged impairment of health or prolonged loss or impairment of the function of any bodily organ, or which causes the unlawful termination of a pregnancy without the consent of the pregnant female.**]**

"Value" means the market value of the property or services at the time and place of the offense, or if that cannot be easily determined, the cost of replacing the property or services within a reasonable time after the crime occurred.

[*Comment: A special verdict sheet will be needed for the jury to determine the level of value of the property if Defendant is to be found guilty*.**]**

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 222(25), 224, 231(c**)**, 931(1, 3, 4, 8, 9, 15), and 939.

DESTRUCTION OF COMPUTER EQUIPMENT

In order to find Defendant guilty of Destruction of Computer Equipment, you must find the State has proved the following two (2) elements beyond a reasonable doubt:

(1) Defendant tampered with, took, transferred, concealed, altered, damaged, or destroyed computer equipment;

(2) Defendant acted without authorization; and

(3) Defendant acted intentionally or recklessly.

In this case, **[**the State concedes the value of the property or services is less than $1,500. No further proof regarding the value of the property or services is needed and the correct offense is Destruction of Computer Equipment - Class A Misdemeanor/the State contends the value of the property or services is at least $1,500 and is therefore charging Defendant with Destruction of Computer Equipment - Class G Felony. Therefore, you must find beyond a reasonable doubt the value of the property or services is greater than $1,500 and so indicate on the verdict sheet/the State contends the value of the property or services is greater than $5,000 and is therefore charging Defendant with Destruction of Computer Equipment - Class E Felony. Therefore, you must find beyond a reasonable doubt the value of the property or services is greater than $5,000 and so indicate on the verdict sheet/the State contends the value of the

property or services is greater than $10,000 and is therefore charging Defendant with Destruction of Computer Equipment - Class D Felony. Therefore, you must find beyond a reasonable doubt the value of the property or services is greater than $10,000 and so indicate on the verdict *sheet/**[**if applicable**]*** the State contends Defendant engaged in conduct that created a risk of serious physical injury to another person, and is therefore charging Defendant with Destruction of Computer Equipment - Class G Felony. Therefore, you must find beyond a reasonable doubt Defendant engaged in conduct that created a risk of serious physical injury to another person and so indicate on the verdict sheet.**]**

"Intentionally" means it was Defendant's conscious objective or purpose to cause the tampering with, taking, transfer, concealment, alteration, damage to, or destruction of the computer equipment.

"Recklessly" means Defendant was aware of and consciously disregarded a substantial and unjustifiable risk tampering with, taking, transfer, concealment, alteration, damage to, destruction of the computer equipment would result from Defendant's conduct. The State must demonstrate the risk was of such a nature and degree Defendant's disregard of the risk was a gross deviation from the standard of conduct a reasonable person would observe under the same circumstances.

"Access" means to instruct, communicate with, store data in or retrieve data

from a computer, computer system or computer network.

"Computer" means a programmable, electronic device capable of accepting and processing data.

"Computer network" means a set of related devices connected to a computer by communications facilities; a complex of two (2) or more computers, including related devices, connected by communications facilities; or the communications transmission facilities and devices used to interconnect computational equipment, along with associated control mechanisms.

"Computer program" means a set of instructions, statements or related data that, in actual or modified form, is capable of causing a computer or computer system to perform specified functions.

"Computer services" includes, but is not limited to, computer access, data processing and data storage.

"Computer software" means one or more computer programs, existing in any form, or any associated operational procedures, manuals or other documentation.

"Computer system" means a computer, its software, related equipment and communications facilities, if any, and includes computer networks.

"Data" means information of any kind in any form, including computer software.

"Property" means anything of value, including data.

[*if applicable****]***

["Serious physical injury" means any physical injury which creates a substantial risk of death, or which causes serious and prolonged disfigurement, prolonged impairment of health, or prolonged loss or impairment of the function of any bodily organ.**]**

"Value" means the market value of the property or services at the time and place of the offense, or if that cannot be easily determined, the cost of replacing the property or services within a reasonable time after the crime occurred.

[*Comment: A special verdict sheet will be needed for the jury to determine the level of value of the property if Defendant is to be found guilty*.**]**

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 224, 231(b, e**)**, 931(1, 3, 4, 5, 6, 7, 8, 9, 15), and 939.

Unrequested or Unauthorized Electronic Mail or Use of Network or Software to Cause Same . . . . . 11.937(1)

UNREQUESTED OR UNAUTHORIZED ELECTRONIC MAIL OR USE OF NETWORK OR SOFTWARE TO CAUSE SAME

In order to find Defendant guilty of Unrequested or Unwanted Electronic Mail or the Use of Network or Software to Cause Same, you must find the State has proved the following two (2) elements beyond a reasonable doubt:

(1) Defendant distributed any unsolicited bulk commercial electronic mail to any receiving address or account under the control of any authorized user of a computer system; and

(2) Defendant acted intentionally or recklessly.

In this case, **[**the State concedes the value of the property or services is less than $1,500. No further proof regarding the value of the property or services is needed and the correct offense is Unrequested or Unwanted Electronic Mail or the Use of Network or Software to Cause Same - Class A Misdemeanor/the State contends the value of the property or services is at least $1,500 and is therefore charging Defendant with Unrequested or Unwanted Electronic Mail or the Use of Network or Software to Cause Same - Class G Felony. Therefore, you must find beyond a reasonable doubt the value of the property or services is greater than $1,500 and so indicate on the verdict sheet/the State contends the value of the property or services is greater than $5,000 and is therefore charging Defendant with Unrequested or Unwanted Electronic Mail

or the Use of Network or Software to Cause Same - Class E Felony. Therefore, you must find beyond a reasonable doubt the value of the property or services is greater than $5,000 and so indicate on the verdict sheet/the State contends the value of the property or services is greater than $10,000 and is therefore charging Defendant with Unrequested or Unwanted Electronic Mail or the Use of Network or Software to Cause Same - Class D Felony. Therefore, you must find beyond a reasonable doubt the value of the property or services is greater than $10,000 and so indicate on the verdict *sheet/**[**if applicable**]*** the State contends Defendant engaged in conduct that created a risk of serious physical injury to another person, and is therefore charging Defendant with Unrequested or Unwanted Electronic Mail or the Use of Network or Software to Cause Same - Class G Felony. Therefore, you must find beyond a reasonable doubt Defendant engaged in conduct that created a risk of serious physical injury to another person and so indicate on the verdict sheet.**]**

[if applicable:]

[This section shall not apply if **(**the electronic mail is sent between human beings/the individual has requested said information**)**. This section shall not apply to the transmission of electronic mail from an organization **(**to its members/where there is a preexisting business relationship**)**. No **(**Internet/interactive**)** service provider shall be liable for **(**merely transmitting an unsolicited, bulk commercial electronic mail

message in its network/any action voluntarily taken in good faith to block the **{**receipt/transmission**}** through its service of any unsolicited, bulk electronic mail which it believes **{**is/will be**}** sent in violation to **{**disconnect/terminate**}** the service of any person that is in violation of this article.

[If applicable:]

["Serious physical injury" means any physical injury which creates a substantial risk of death, or which causes serious and prolonged disfigurement, prolonged impairment of health, or prolonged loss or impairment of the function of any bodily organ.]

“Intentionally” means it was Defendant's conscious objective or purpose to distribute unsolicited bulk commercial electronic mail.

“Recklessly” means Defendant was aware of and consciously disregarded a substantial and unjustifiable risk that would result from Defendant’s conduct distribution of unsolicited bulk commercial electronic mail . The State must demonstrate the risk was of such a nature and degree that Defendant’s disregard of the risk was a gross deviation from the standard of conduct a reasonable person would observe under the same circumstances.

“Commercial electronic mail” means any electronic mail message that is sent to a receiving address or account for the purposes of advertising, promoting, marketing, or otherwise attempting to solicit interest in any good, service, or

enterprise.

"Computer network" means a set of related devices connected to a computer by communications facilities, a complex of two (2) or more computers, including related devices, connected by communications facilities, or the communications transmission facilities and devices used to interconnect equipment, along with control mechanisms associated thereto.

"Computer system" means a computer, its software, related equipment and communications facilities, if any, and includes computer networks.

"Receiving address" or "receiving account" means the string used to specify the destination of any electronic mail message.

Applicable Code Sections and Case Law:

11 *Del.C.*§§ 222(25), 231(b, e), and 931(2, 4, 8, 17).

Unrequested or Unauthorized Electronic Mail or Use of Network or Software to Cause Same . . . . . 11.937(2)

UNREQUESTED OR UNAUTHORIZED ELECTRONIC MAIL OR USE OF NETWORK OR SOFTWARE TO CAUSE SAME

In order to find Defendant guilty of Unrequested or Unwanted Electronic Mail or the Use of Network or Software to Cause Same, you must find the State has proved the following three (3) elements beyond a reasonable doubt:

(1) Defendant used a computer or computer network without authority to transmit unsolicited bulk electronic mail through or into the computer network of an electronic mail service provider or its subscribers;

(2) Defendant falsified or forged electronic mail transmission information; and

(2) Defendant acted intentionally.

Unrequested or Unauthorized Electronic Mail or Use of Network or Software to Cause Same is a Class D, E, or G Felony, or a Class A Misdemeanor, depending on the value of the property or services affected by Defendant's access to them.

In this case, **[**the State concedes the value of the property or services is less than $1,500. No further proof regarding the value of the property or services is needed and the correct offense is Unrequested or Unwanted Electronic Mail or the Use of Network or Software to Cause Same - Class A Misdemeanor/the State contends the value of the property or services is at least $1,500 and is therefore charging Defendant with Unrequested or Unwanted Electronic Mail or the Use of Network or Software to Cause

Same - Class G Felony. Therefore, you must find beyond a reasonable doubt the value of the property or services is greater than $1,500 and so indicate on the verdict sheet/the State contends the value of the property or services is greater than $5,000 and is therefore charging Defendant with Unrequested or Unwanted Electronic Mail or the Use of Network or Software to Cause Same - Class E Felony. Therefore, you must find beyond a reasonable doubt the value of the property or services is greater than $5,000 and so indicate on the verdict sheet/the State contends the value of the property or services is greater than $10,000 and is therefore charging Defendant with Unrequested or Unwanted Electronic Mail or the Use of Network or Software to Cause Same - Class D Felony. Therefore, you must find beyond a reasonable doubt the value of the property or services is greater than $10,000 and so indicate on the verdict *sheet/**[**if applicable**]*** the State contends Defendant engaged in conduct that created a risk of serious physical injury to another person, and is therefore charging Defendant with Unrequested or Unwanted Electronic Mail or the Use of Network or Software to Cause Same - Class G Felony. Therefore, you must find beyond a reasonable doubt Defendant engaged in conduct that created a risk of serious physical injury to another person and so indicate on the verdict sheet.**]**

[If applicable:]

["Serious physical injury" means any physical injury which creates a substantial risk of death, or which causes serious and prolonged disfigurement, prolonged impairment of health, or prolonged loss or impairment of the function of any bodily organ.]

“Intentionally” means it was Defendant's conscious objective or purpose to distribute unsolicited bulk commercial electronic mail.

“Computer” means a programmable, electronic device capable of accepting and proceeding data.

“Computer network” means a set of related devices connected to a computer by communications facilities, a complex of two (2) or more computers, including related devices, connected by communications facilities, or the communications transmission facilities and devices used to interconnect equipment, along with control mechanisms associated thereto.

“Computer software” means 1 or more computer programs, existing in any form, or any associated operational procedures, manuals or other documentation.

“Data” means information of any kind in any form, including computer software.

“Electronic mail” means any message that is automatically passed from an originating address or account to a receiving address or account.

"Electronic mail service provider" means any person who is an intermediary in

sending and receiving electronic mail and provides to end-users of electronic mail services the ability to send or receive electronic mail.

Applicable Code Sections and Case Law:

11 *Del.C.* §§ 222(25), 231(b), and 931(3, 4, 7, 9, 10, 11).

Unrequested or Unauthorized Electronic Mail or Use of Network or Software to Cause Same . . . . . 11.937(3)a

UNREQUESTED OR UNAUTHORIZED ELECTRONIC MAIL OR USE OF NETWORK OR SOFTWARE TO CAUSE SAME

In order to find Defendant guilty of Unrequested or Unauthorized Electronic Mail or Use of Network or Software to Cause Same, you must find the State has proved the following three (3) elements beyond a reasonable doubt:

(1) Defendant sold, gave, or possessed to sell, give or distribute, software;

(2) The software was primarily designed or produced for the purpose of facilitating or enabling the falsification of electronic mail transmission or routing information; and

(3) Defendant acted intentionally.

In this case, **[**the State concedes the value of the property or services is less than $1,500. No further proof regarding the value of the property or services is needed and the correct offense is Unrequested or Unwanted Electronic Mail or the Use of Network or Software to Cause Same - Class A Misdemeanor/the State contends the value of the property or services is at least $1,500 and is therefore charging Defendant with Unrequested or Unwanted Electronic Mail or the Use of Network or Software to Cause Same - Class G Felony. Therefore, you must find beyond a reasonable doubt the value of the property or services is greater than $1,500 and so indicate on the verdict sheet/the State contends the value of the property or services is greater than $5,000

and is therefore charging Defendant with Unrequested or Unwanted Electronic Mail or the Use of Network or Software to Cause Same - Class E Felony. Therefore, you must find beyond a reasonable doubt the value of the property or services is greater than $5,000 and so indicate on the verdict sheet/the State contends the value of the property or services is greater than $10,000 and is therefore charging Defendant with Unrequested or Unwanted Electronic Mail or the Use of Network or Software to Cause Same - Class D Felony. Therefore, you must find beyond a reasonable doubt the value of the property or services is greater than $10,000 and so indicate on the verdict *sheet/**[**if applicable**]*** the State contends Defendant engaged in conduct that created a risk of serious physical injury to another person, and is therefore charging Defendant with Unrequested or Unwanted Electronic Mail or the Use of Network or Software to Cause Same - Class G Felony. Therefore, you must find beyond a reasonable doubt Defendant engaged in conduct that created a risk of serious physical injury to another person and so indicate on the verdict sheet.**]**

[If applicable:]

["Serious physical injury" means any physical injury which creates a substantial risk of death, or which causes serious and prolonged disfigurement, prolonged impairment of health, or prolonged loss or impairment of the function of any bodily organ.]

“Intentionally” means it was Defendant's conscious objective or purpose to

distribute unsolicited bulk commercial electronic mail.

"Computer software" means 1 or more computer programs, existing in any form, or any associated operational procedures, manuals or other documentation.

"Electronic mail" means any message that is automatically passed from an originating address or account to a receiving address or account.

Applicable Code Sections and Case Law:

11 *Del.C.* 222(25), 231(b), and 931(7, 10).

Unrequested or Unauthorized Electronic Mail or Use of Network or Software to Cause Same . . . . . 11.937(3)b

UNREQUESTED OR UNAUTHORIZED ELECTRONIC MAIL OR USE OF NETWORK OR SOFTWARE TO CAUSE SAME

In order to find Defendant guilty of Unrequested or Unauthorized Electronic Mail or Use of Network or Software to Cause Same, you must find the State has proved the following three (3) elements beyond a reasonable doubt:

(1) Defendant sold, gave, or possessed to sell, give or distribute, software;

(2) The software had only limited commercially significant purpose or use other than to facilitate or enable the falsification of electronic mail transmission or routing information; and

(3) Defendant acted intentionally.

In this case, **[**the State concedes the value of the property or services is less than $1,500. No further proof regarding the value of the property or services is needed and the correct offense is Unrequested or Unwanted Electronic Mail or the Use of Network or Software to Cause Same - Class A Misdemeanor/the State contends the value of the property or services is at least $1,500 and is therefore charging Defendant with Unrequested or Unwanted Electronic Mail or the Use of Network or Software to Cause Same - Class G Felony. Therefore, you must find beyond a reasonable doubt the value of the property or services is greater than $1,500 and so indicate on the verdict sheet/the State contends the value of the property or services is greater than $5,000

and is therefore charging Defendant with Unrequested or Unwanted Electronic Mail or the Use of Network or Software to Cause Same - Class E Felony. Therefore, you must find beyond a reasonable doubt the value of the property or services is greater than $5,000 and so indicate on the verdict sheet/the State contends the value of the property or services is greater than $10,000 and is therefore charging Defendant with Unrequested or Unwanted Electronic Mail or the Use of Network or Software to Cause Same - Class D Felony. Therefore, you must find beyond a reasonable doubt the value of the property or services is greater than $10,000 and so indicate on the verdict *sheet/**[**if applicable**]*** the State contends Defendant engaged in conduct that created a risk of serious physical injury to another person, and is therefore charging Defendant with Unrequested or Unwanted Electronic Mail or the Use of Network or Software to Cause Same - Class G Felony. Therefore, you must find beyond a reasonable doubt Defendant engaged in conduct that created a risk of serious physical injury to another person and so indicate on the verdict sheet.**]** \

[If applicable:]

["Serious physical injury" means any physical injury which creates a substantial risk of death, or which causes serious and prolonged disfigurement, prolonged impairment of health, or prolonged loss or impairment of the function of any bodily organ.]

“Intentionally” means it was Defendant's conscious objective or purpose to

distribute unsolicited bulk commercial electronic mail.

"Computer software" means 1 or more computer programs, existing in any form, or any associated operational procedures, manuals or other documentation.

"Electronic mail" means any message that is automatically passed from an originating address or account to a receiving address or account.

Applicable Code Sections and Case Law:

11 Del.C. §§ 222(25), 231(b), and 931(7, 10).

Unrequested or Unauthorized Electronic Mail or Use of Network or Software to Cause Same . . . . . 11.937(3)c

UNREQUESTED OR UNAUTHORIZED ELECTRONIC MAIL OR USE OF NETWORK OR SOFTWARE TO CAUSE SAME

In order to find Defendant guilty of Unrequested or Unauthorized Electronic Mail or Use of Network or Software to Cause Same, you must find the State has proved the following three (3) elements beyond a reasonable doubt:

(1) Defendant sold, gave, or possessed to sell, give or distribute, software;

(2) The software was marketed by Defendant, or by another acting in concert with Defendant's knowledge, for use in facilitating or enabling the falsification of electronic mail transmission or routing information; and

(3) Defendant acted intentionally.

In this case, **[**the State concedes the value of the property or services is less than $1,500. No further proof regarding the value of the property or services is needed and the correct offense is Unrequested or Unwanted Electronic Mail or the Use of Network or Software to Cause Same - Class A Misdemeanor/the State contends the value of the property or services is at least $1,500 and is therefore charging Defendant with Unrequested or Unwanted Electronic Mail or the Use of Network or Software to Cause Same - Class G Felony. Therefore, you must find beyond a reasonable doubt the value of the property or services is greater than $1,500 and so indicate on the verdict sheet/the State contends the value of the property or services is greater than $5,000

and is therefore charging Defendant with Unrequested or Unwanted Electronic Mail or the Use of Network or Software to Cause Same - Class E Felony. Therefore, you must find beyond a reasonable doubt the value of the property or services is greater than $5,000 and so indicate on the verdict sheet/the State contends the value of the property or services is greater than $10,000 and is therefore charging Defendant with Unrequested or Unwanted Electronic Mail or the Use of Network or Software to Cause Same - Class D Felony. Therefore, you must find beyond a reasonable doubt the value of the property or services is greater than $10,000 and so indicate on the verdict *sheet/**[**if applicable**]*** the State contends Defendant engaged in conduct that created a risk of serious physical injury to another person, and is therefore charging Defendant with Unrequested or Unwanted Electronic Mail or the Use of Network or Software to Cause Same - Class G Felony. Therefore, you must find beyond a reasonable doubt Defendant engaged in conduct that created a risk of serious physical injury to another person and so indicate on the verdict sheet.**]**

[If applicable:]

["Serious physical injury" means any physical injury which creates a substantial risk of death, or which causes serious and prolonged disfigurement, prolonged impairment of health, or prolonged loss or impairment of the function of any bodily organ.]

“Intentionally” means it was Defendant's conscious objective or purpose to

distribute unsolicited bulk commercial electronic mail.

"Computer software" means 1 or more computer programs, existing in any form, or any associated operational procedures, manuals or other documentation.

"Electronic mail" means any message that is automatically passed from an originating address or account to a receiving address or account.

Applicable Code Sections and Case Law:

11 *Del.C.* §§ 222(25), 231(b), and 931(7, 10).

FAILURE TO PROMPTLY CEASE ELECTRONIC COMMUNICATION UPON REQUEST

In order to find Defendant guilty of Failure to Promptly Case Electronic Communication Upon Request, you must find the State has proved the following two (2) elements beyond a reasonable doubt:

(1) Defendant failed to stop sending commercial electronic mail to any receiving address or account under the control of any authorized user of a computer system after being requested to do so; and

(2) Defendant acted **[**intentionally/recklessly/negligently**]**.

In this case, **[**the State concedes the value of the property or services is less than $1,500. No further proof regarding the value of the property or services is needed and the correct offense is Failure to Promptly Cease Electronic Communication Upon Request - Class A Misdemeanor/the State contends the value of the property or services is at least $1,500 and is therefore charging Defendant with Failure to Promptly Cease Electronic Communication Upon Request - Class G Felony. Therefore, you must find beyond a reasonable doubt the value of the property or services is greater than $1,500 and so indicate on the verdict sheet/the State contends the value of the property or services is greater than $5,000 and is therefore charging Defendant with Failure to Promptly Cease Electronic Communication Upon Request -

Class E Felony. Therefore, you must find beyond a reasonable doubt the value of the property or services is greater than $5,000 and so indicate on the verdict sheet/the State contends the value of the property or services is greater than $10,000 and is therefore charging Defendant with Failure to Promptly Cease Electronic Communication Upon Request - Class D Felony. Therefore, you must find beyond a reasonable doubt the value of the property or services is greater than $10,000 and so indicate on the verdict *sheet/**[**if applicable**]*** the State contends Defendant engaged in conduct that created a risk of serious physical injury to another person, and is therefore charging Defendant with Failure to Promptly Cease Electronic Communication Upon Request - Class G Felony. Therefore, you must find beyond a reasonable doubt Defendant engaged in conduct that created a risk of serious physical injury to another person and so indicate on the verdict sheet.**]**

[If applicable:]

["Serious physical injury" means any physical injury which creates a substantial risk of death, or which causes serious and prolonged disfigurement, prolonged impairment of health, or prolonged loss or impairment of the function of any bodily organ.]

[“Intentionally” means it was Defendant's conscious objective or purpose to distribute unsolicited bulk commercial electronic mail.]

[“Recklessly” means Defendant was aware of and consciously disregarded a

substantial and unjustifiable risk that would result from Defendant's Failure to Promptly Cease Electronic Communication Upon Request. The State must demonstrate the risk was of such a nature and degree Defendant's disregard of the risk was a gross deviation from the standard of conduct a reasonable person would observe under the same circumstances]

["Negligently" means Defendant failed to exercise the standard of care which a reasonable person would observe in the situation.]

"Computer System" means a computer, its software, related equipment and communications facilities, if any, and includes computer networks.

Commercial electronic mail" means any electronic mail message that is sent to a receiving address or account for the purposes of advertising, promoting, marketing or otherwise attempting to solicit interest in any good service or enterprise.

Applicable Code Sections and Case Law:

11 *Del.C.* §§ 222(25), 231(b, e, e), and 931(2, 8).

Money Laundering . . . . . 11.951(a)(1)

MONEY LAUNDERING

In order to find Defendant guilty of Money Laundering, you must find the State has proved the following two (2) elements beyond a reasonable doubt:

(1) Defendant acquired, maintained an interest in, concealed, possessed, transferred or transported, the proceeds of criminal activity: and

(2) Defendant acted knowingly.

It is a defense to prosecution that the transaction was necessary to preserve Defendant's right to representation as guaranteed by the Sixth Amendment of the United States Constitution; or that the funds were received as *bona fide* legal fees by a licensed attorney and, at the time of their receipt, the attorney did not have actual knowledge the funds were derived from criminal activity.

"Knowingly" means Defendant was aware Defendant had an interest in, concealed, possessed, transferred or transported the proceeds of a criminal activity.

"Criminal activity" means any offense that is a crime under the Laws of the State of Delaware, any other state, or the United States.

Applicable Code Sections and Case Law:

11 *Del.C.* §§ 231(c) and 951(c)(1).

Money Laundering[Facilitated Transaction] . . . . . 11.951(a)(2)

MONEY LAUNDERING

In order to find Defendant guilty of Money Laundering, you must find the State has proved the following two (2) elements beyond a reasonable doubt:

(1) Defendant conducted, supervised or facilitated a transaction involving the proceeds of criminal activity: and

(2) Defendant acted knowingly.

It is a defense to prosecution that the transaction was necessary to preserve Defendant's right to representation as guaranteed by the Sixth Amendment of the United States Constitution; or that the funds were received as *bona fide* legal fees by a licensed attorney and, at the time of their receipt, the attorney did not have actual knowledge the funds were derived from criminal activity.

"Knowingly" means Defendant was aware Defendant conducted, supervised or facilitated a transaction involving the proceeds of a criminal activity.

"Criminal activity" means any offense that is a crime under the Laws of the State of Delaware, any other state, or the United States.

Applicable Code Sections and Case Law:

11 *Del.C.* §§ 231(c) and 951(c)(1).

Money Laundering[Invested/Expended/Received] . . . . . 11.951(a)(3)

MONEY LAUNDERING

In order to find Defendant guilty of Money Laundering, you must find the State has proved the following two (2) elements beyond a reasonable doubt:

(1) Defendant invested, expended, received (or offered to invest, expend or receive**)** the proceeds (or funds Defendant believed were proceeds) of criminal activity: and

(2) Defendant acted knowingly.

It is a defense to prosecution that the transaction was necessary to preserve Defendant's right to representation as guaranteed by the Sixth Amendment of the United States Constitution;or that the funds were received as *bona fide* legal fees by a licensed attorney and, at the time of their receipt, the attorney did not have actual knowledge the funds were derived from criminal activity.

"Knowingly" means Defendant was aware Defendant invested, expended, received (or offered to invest, expend or receive**)** the proceeds (or funds Defendant believed were proceeds) of a criminal activity.

"Criminal activity" means any offense that is a crime under the Laws of the State of Delaware, any other state, or the United States.

"Funds" include coin or currency of the United States or any other country, bank

checks or money orders, or investment or negotiable instruments, in bearer form or otherwise in such form that title thereto passes upon delivery.

"Funds that the person believes are the proceeds of criminal activity" means any funds believed to be proceeds of criminal activity including funds that are not proceeds of criminal activity.

“Proceeds” means funds acquired or derived, directly or indirectly, from, produced through, or realized through an act.

Applicable Code Sections and Case Law:

11 *Del.C.* §§ 231(c) and 951(c)(1, 2, 3, 4).

Money Laundering[Financed/Invested] . . . . . 11.951(a)(4)

MONEY LAUNDERING

In order to find Defendant guilty of Money Laundering, you must find the State has proved the following two (2) elements beyond a reasonable doubt:

(1) Defendant financed or invested funds (or intended to finance or invest funds**)** Defendant believed were intended to further the commission of criminal activity: and

(2) Defendant acted knowingly.

It is a defense to prosecution that the transaction was necessary to preserve Defendant's right to representation as guaranteed by the Sixth Amendment of the United States Constitution; or that the funds were received as *bona fide* legal fees by a licensed attorney and, at the time of their receipt, the attorney did not have actual knowledge the funds were derived from criminal activity.

"Knowingly" means Defendant was aware Defendant financed or invested funds (or intended to finance or invest funds**)** Defendant believed were intended to further the commission of a criminal activity.

"Criminal activity" means any offense that is a crime under the Laws of the State of Delaware, any other state, or the United States.

"Funds" include coin or currency of the United States or any other country, bank

checks or money orders, or investment or negotiable instruments, in bearer form or otherwise in such form that title thereto passes upon delivery.

Applicable Code Sections and Case Law:

11 *Del.C.* §§ 231(c) and 951(c)(1, 2).

MONEY LAUNDERING

In order to find Defendant guilty of Money Laundering, you must find the State has proved the following two (2) elements beyond a reasonable doubt:

(1) Defendant engaged in a transaction involving the proceeds of criminal activity intended, in whole or in part, to avoid a currency transaction reporting requirement under the laws of the State of Delaware, any other State, or the United States; and

(2) Defendant acted knowingly.

It is a defense to prosecution that the transaction was necessary to preserve Defendant's right to representation as guaranteed by the Sixth Amendment of the United States Constitution; or that the funds were received as *bona fide* legal fees by a licensed attorney and, at the time of their receipt, the attorney did not have actual knowledge the funds were derived from criminal activity.

"Knowingly" means Defendant was aware Defendant engaged in a transaction involving the proceeds of criminal activity intended, in whole or in part, to avoid a currency transaction reporting requirement.

"Avoid a transaction reporting requirement" means a person:

(1) Causes or attempts to cause a financial institution (including a video lottery facility, foreign or domestic money transmitter or an authorized delegate thereof, check casher, person engaged in a trade or business or any other individual or entity required by state or federal law to file a report regarding currency transactions or suspicious transactions) to fail to file a report; or

(2) Causes or attempts to cause a financial institution (including a video lottery facility, foreign or domestic money transmitter or an authorized delegate thereof, check casher, person engaged in a trade or business or any other individual or entity required by state or federal law to file a report regarding currency transactions or suspicious transactions) to file a report that contains a material omission or misstatement of fact; or

(3) Structures or assists in structuring, or attempts to structure or assist in structuring, any transaction with one or more financial institutions (including a video lottery facility, foreign or domestic money transmitters or an authorized delegate thereof, check cashers, persons engaged in a trade or business or any other individuals or entities required by state or federal law) to file a report regarding currency transactions or suspicious transactions.

“Struscture” or “Structuring” means a person, acting alone, or in conjunction

with, or on behalf of, other persons, conducts or attempts to conduct 1 or more transactions in currency, in any amount, at 1 or more financial institutions (including video lottery facilities) on 1 or more days, in any manner, for the purpose of evading currency transaction reporting requirements provided by state or federal law.

"In any manner" includes, but is not limited to, breaking currency down into smaller sums to avoid triggering a currency reporting requirement; or the conduct of a transaction, or series of currency transactions, at or below the reporting requirement. The transaction or transactions need not exceed the reporting threshold at any single financial institution on any single day in order to meet the definition of "structure" or "structuring." Among the factors you may consider in determining that a transaction has been designed to avoid a transaction reporting requirement shall be whether the person, acting alone or with others, conducted 1 or more transactions in currency, in any amount, at 1 or more financial institutions, on 1 or more days, in any manner.

Applicable Code Sections and Case Law:

11 *Del.C.* §§ 231(c) and 951((c)(1, 2, 4), f).

Bigamy 11.1001

BIGAMY

In order to find Defendant guilty of Bigamy, you must find the State proved the following three (3) elements beyond a reasonable doubt:

(1) Defendant **[**contracted/purported to contract**]** a marriage with **[**person**]**;

(2) Defendant was aware **[**Defendant/person**]** had a living spouse at that time; and

(3) Defendant acted knowingly.

"Knowingly"means Defendant was aware **[**Defendant/person**]** was already married.

Applicable Code Sections and Case Law:

11 *Del.C.* § 231(c).

Bigamy ***[****Statutory Defense, Non-Affirmative****]*** . . . . . 11.1002(1)

BIGAMY [STATUTORY DEFENSE, NON-AFFIRMATIVE]

A defense raised by Defendant to the charge of Bigamy is that Defendant did not act knowingly. Defendant is not guilty if you find that Defendant believed, after diligent inquiry, that Defendant's former spouse was dead.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 302 and 303.

Bigamy ***[****Statutory Defense, Non-Affirmative****]*** . . . . . 11.1002(2)

BIGAMY [STATUTORY DEFENSE, NON-AFFIRMATIVE]

A defense raised by Defendant to the charge of Bigamy is Defendant did not act knowingly. The Defendant is not guilty if you find that the parties to the former marriage had lived apart for seven consecutive years, and throughout that time, Defendant had no reasonable grounds to believe Defendant's former spouse was still alive.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 302 and 303.

Bigamy ***[****Statutory Defense, Non-Affirmative****]*** . . . . . 11.1002(3)

BIGAMY [STATUTORY DEFENSE, NON-AFFIRMATIVE]

A defense raised by Defendant to the charge of Bigamy is Defendant did not act knowingly. Defendant is not guilty if you find that a court in an American or foreign jurisdiction had entered a judgment purporting to terminate or annul any prior disqualifying marriage and Defendant did not know the judgment was invalid.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 302 and 303.

Bigamy ***[****Statutory Defense, Non-Affirmative****]*** . . . . . 11.1002(4)

BIGAMY [STATUTORY DEFENSE, NON-AFFIRMATIVE]

A defense raised by Defendant to the charge of Bigamy is Defendant did not act knowingly. Defendant is not guilty if you find that Defendant reasonably believed Defendant was legally eligible to remarry.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 302 and 303.

Bigamous Marriage Contracted Outside Delaware 11.1003

BIGAMOUS MARRIAGE CONTRACTED OUTSIDE DELAWARE

In order to find Defendant guilty of Contracting a Bigamous Marriage Outside the State of Delaware, you must find the State proved the following four (4) elements beyond a reasonable doubt:

(1) Defendant **[**contracted/purported to contract**]** a marriage with **[**person**]**;

(2) Defendant was aware **[**Defendant/person**]** had a living spouse at that time;

(3) Defendant was aware Defendant went out of Delaware to contract marriage; and

(4) Defendant acted knowingly.

"Knowingly"means Defendant was aware **[**Defendant/person**]** was already married.

Applicable Code Sections and Case Law:

11 *Del.C.* § 231(c).

Advertising Marriage in a Another State 11.1004

ADVERTISING MARRIAGE IN ANOTHER STATE

In order to find Defendant guilty of Advertising Marriage in Another State, you must find the State proved the following three (3) elements beyond a reasonable doubt:

(1) Defendant **[**erected a **(**sign/billboard**)/(**published/distributed**)** any material**]** giving information relative to performance of marriage in another state; and

(2) Defendant acted knowingly.

Applicable Code Sections and Case Law:

11 *Del.C.* § 231(c).

DEALING IN CHILDREN

In order to find Defendant guilty of Dealing in Children, you must find the State has proved the following three (3) elements beyond a reasonable doubt:

(1) Defendant **[**traded/bartered/bought/negotiated to **(**trade/barter/buy/sell**)]** **[**child**]**;

(2) **[**child**]** was under eighteen (18) years of age at the time of the charged offense; and

(3) Defendant acted **[**intentionally/knowingly**]**.

[Payment for reasonable medical expenses related to pregnancy and the delivery of a child put up for adoption in accordance with 13 Del. C. § 904(a)(2) is not a violation of § 1100.]

"Intentionally" means it was Defendant's conscious objective or purpose to trade, barter, purchase, or negotiate to trade, barter purchase, or sell a child under the age of 18.

"Knowingly" means Defendant was aware the Defendant was trading, bartering, purchasing, or negotiating to trade, barter purchase, or sell a child under the age of 18.

"Child" means any individual under the age of 18.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 231(b, c), 251(b) and § 1103(b).

ABANDONMENT OF CHILD

In order to find Defendant guilty of Abandonment of a Child, you must find the State has proved the following five (5) elements beyond a reasonable doubt:

(1) Defendant was a **[**parent/guardian/person legally charged with the care or custody**]** of **[**child**]**;

(2) **[**child**]** was **[**less than 14 years of age/14 years of age or older**]** at the time of the charged offense;

(3) Defendant deserted **[**name of child**]** at **[**place**]** on **[**date**]**;

(4) Defendant meant to abandon the child permanently; and

(5) Defendant acted intentionally.

"Intentionally" means it was Defendant's conscious objective or purpose to desert the child permanently.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 231(b), 251(b) and 1103(b).

ENDANGERING THE WELFARE OF A CHILD
[PHYSICAL OR MENTAL INJURY/NEGLECT]

In order to find Defendant guilty of Endangering the Welfare of a Child, you must find the State has proved the following **[**three/four**] [**(3**)/(**4**)]** elements beyond a reasonable doubt:

(1) Defendant was a **[**parent/guardian/person legally charged with the care or custody**]** of **[**child**]**;

(2) **[**child**]** was a child at the time of the charged offense; and

(3) Defendant knowingly acted in a manner likely to be injurious to the **[**physical/mental/ moral**]** welfare of **[**child**]**.

[*where appropriate****]***

[; and

(4) Defendant's acts resulted in the **(**death of/serious physical injury to**)** **(**child**)]**.

With respect to element (4), the State is not required to prove Defendant's state of mind or responsibility for causing **[**child's**] (**death/serious injury**)**.

[*where appropriate****]***

["Serious physical injury" means any physical injury which creates a substantial risk of death, or which causes serious and prolonged disfigurement, prolonged impairment of health, or prolonged loss or impairment of the function of any bodily organ.**]**

"Knowingly" means Defendant was aware **[**Defendant's**]** actions were likely to be injurious to the child's physical, mental, or moral welfare.

"Child" means any individual under the age of 18.

[*Comment: If the State is alleging death or physical injury, then strict liability applies.****]***

Applicable Code Sections and Case Law:

10 *Del.C.* §901, 11 *Del. C.* §§ 222(25), 231(c), 1102(b) and 1103(b).

*Endangering the Welfare of a Child **[**Physical or Mental Injury/Neglect**]***
. . . . . 11.1102(a)(1)b

ENDANGERING THE WELFARE OF A CHILD [PHYSICAL OR MENTAL INJURY/NEGLECT]

In order to find Defendant guilty of Endangering the Welfare of a Child, you must find the State has proved the following **[**two/three**] [(**2**)/(**3**)]**elements beyond a reasonable doubt:

(1) Defendant was a **[**parent/guardian/person legally charged with the care or custody**]** of **[**child**]**;

(2) **[**child**]** was a child at the time of the charged offense; and

(3) Defendant intentionally **[**acted/failed to act**]** with the result **[**child**]** became a neglected child**]**.

[*where appropriate****]***

[and

(3) Defendant's acts resulted in the **(**death of/serious physical injury to**) (**child**)]**.

With respect to element (3), the State is not required to prove Defendant's state of mind or responsibility for causing **(**child's**) (**death/serious injury**)**.

"Neglected child" means a child whose physical, mental or emotional health or well-being is threatened or impaired through inadequate care or protection, nontreatment or abandonment by the child's custodian when the custodian has the ability and financial means to provide adequate care or protection, but does not or will not do so.

[*where appropriate****]***

["Serious physical injury" means any physical injury which creates a substantial risk of death, or which causes serious and prolonged disfigurement, prolonged impairment of health, or prolonged loss or impairment of the function of any bodily organ.**]**

"Intentionally" means it was Defendant's conscious objective or purpose to **(**act/fail to act**)** with the result the child became a neglected child.

"Child" means any individual under the age of 18.

[*Comment: If the State is alleging death or physical injury, then strict liability applies.****]***

Applicable Code Sections and Case Law:

10 *Del.C.* §901(18), 11 *Del. C.* §§ 222(25), 231(c) and 1103(b).

*Endangering the Welfare of a Child **[**Contributing to Delinquency**]*** . 11.1102(a)(2)

ENDANGERING THE WELFARE OF A CHILD [CONTRIBUTING TO DELINQUENCY]

In order to find Defendant guilty of Endangering the Welfare of a Child, you must find the State has proved the following **[**two/three**] [(**2**)/(**3**)]**elements beyond a reasonable doubt:

(1) Defendant knowingly contributed to the delinquency of **[**child**]**;

(2) Defendant **[**did/failed to do**]** an act with the result **[**child**]** became a delinquent child.

[*where appropriate****]***

[; and

(3) Defendant's acts resulted in the **(**death of/serious physical injury to**) (**child**)]**.

With respect to element (3), the State is not required to prove Defendant's state of mind or responsibility for causing **(**child's**) (**death/serious injury**)**.

"Serious physical injury" means any physical injury which creates a substantial risk of death, or which causes serious and prolonged disfigurement, prolonged impairment of health, or prolonged loss or impairment of the function of any bodily organ.**]**

"Knowingly" means Defendant was aware Defendant's actions contributed to the delinquency of **[**child**]**.

"Child" means any individual under the age of 18.

"Delinquent child" means a child who commits an act which if committed by an adult would constitute a crime.

[*Comment: If the State is alleging death or physical injury, then strict liability applies.****]***

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 222(25), 231(c**)** and 1103(b, c).

ENDANGERING THE WELFARE OF A CHILD [RUN AWAY/HARBORING]

In order to find Defendant guilty of Endangering the Welfare of a Child, you must find the State has proved the following **[**three/four**] [(**3**)/(**4**)]** elements beyond a reasonable doubt:

(1) Defendant **[(**encouraged/aided/abetted/conspired with**) (**child**)** to run away from the home of **(**child's**) (**parents/guardian/custodian**)**/illegally harbored **(**child**)**, who had run away from home**]**;

(2) **[**child**]** was a child at the time of the charged offense;

(3) Defendant acted knowingly.

[*where appropriate****]***

[and

(4) Defendant's acts resulted in the **(**death of/serious physical injury to**) (**child**)]**.

With respect to element (4), the State is not required to prove Defendant's state of mind or responsibility for causing **(**child's**) (**death/serious injury**)**.

"Serious physical injury" means any physical injury which creates a substantial risk of death, or which causes serious and prolonged disfigurement, prolonged impairment of health, or prolonged loss or impairment of the function of any bodily organ.**]**

"Knowingly" means Defendant was aware Defendant **[(**encouraged/aided/abetted/conspired with**) (**child**)** to run away from home/harbored **(**child**)**, who had run away from home.**]**

"Child" means any individual under the age of 18.

[*Comment: If the State is alleging death or physical injury, then strict liability applies.****]***

Applicable Code Sections and Case Law:

11 *Del. C.* § 222(25), 231(c), and 1103(b).

*Endangering the Welfare of a Child **[**Witness to Violent Crime**]*** . . . . 11.1102(a)(4)

ENDANGERING THE WELFARE OF A CHILD [WITNESS TO VIOLENT CRIME]

In order to find Defendant guilty of Endangering the Welfare of a Child, you must find the State has proved the following **[**five/six**] [(**5**)/(**6**)]** elements beyond a reasonable doubt:

(1) Defendant committed **[**crime**]** against **[**victim**]**;

(2) Defendant was aware the crime was **[**seen/heard by **[**child**]**;

(3) **[**child**]** was a child at the time of the charged offense;

(4) **[**child**]** was a member of the **[**Defendant's/victim's**]** family;

(5) Defendant acted knowingly.

[**where appropriate**]

[and

(6) Defendant's acts resulted in the **(**death of/serious physical injury to**) (**child**)]**.

With respect to element 6, the State is not required to prove Defendant's state of mind or responsibility for causing **(**child's**) (**death/serious injury**)**.

The elements of **[**crime**]** are ***[**insert elements of crime**]***.

"Serious physical injury" means any physical injury which creates a substantial risk of death, or which causes serious and prolonged disfigurement, prolonged impairment of health, or prolonged loss or impairment of the function of any bodily organ.**]**

"Knowingly" means Defendant was aware the crime was witnessed by a child less than 18 years of age.

"Child" means any individual under the age of 18.

[*Comment: If the State is alleging death or physical injury, then strict liability applies.****]***

Applicable Code Sections and Case Law:

11 *Del. C* §§ 222(25), 231(c), and 1103(b) .

*Endangering the Welfare of a Child **[**DUI Passenger**]*** . . . . . 11.1102(a)(5)

ENDANGERING THE WELFARE OF A CHILD [DUI PASSENGER]

In order to find Defendant guilty of Endangering the Welfare of a Child, you must find the State has proved the following **[**four/five**] [**(4)/(5)**]** elements beyond a reasonable doubt:

(1) Defendant committed the offense of **[**Driving Under the Influence/Operating a Vessel or Boat Under the Influence**]**;

(2) Defendant permitted **[**child**]** to be a passenger **[**in/on**]** the **[**vehicle/vessel/boat**]**, during the commission of the charged offense;

(3) **[**child**]** was a child at the time of the charged offense; and

(4) Defendant acted knowingly.

[**where appropriate**]

[and

(5) Defendant's acts resulted in the **(**death of/serious physical injury to**)** **(**child**)]**.

With respect to element 5, the State is not required to prove Defendant's state of mind or responsibility for causing **(**child's**) (**death/serious injury**)**.

The elements of **[**DUI offense**]** are **[**state elements**]**.

"Serious physical injury" means any physical injury which creates a substantial risk of death, or which causes serious and prolonged disfigurement, prolonged impairment of health, or prolonged loss or impairment of the function of any bodily organ.**]**

"Knowingly" means Defendant was aware Defendant was permitting a child less than 18 years of age to be a passenger **[**in/on**]** the **[**vehicle/vessel/boat**]**, which Defendant was operating while under the influence of alcohol.

"Child" means any individual under the age of 18.

[*Comment: If the State is alleging death or physical injury, then strict liability applies.****]***

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 222(25), 231(c**)**, 1103(b); 21 *Del.C.* §4177; 23 *Del.C.* § 2302.

ENDANGERING THE WELFARE OF A CHILD
[PRESENCE OF CHILD DURING DRUG OFFENSE]

In order to find Defendant guilty of Endangering the Welfare of a Child, you must find the State has proved the following **[**four/five**] [**(4)/(5)**]** elements beyond a reasonable doubt:

(1) Defendant committed **[**drug offense**]** in a dwelling;

(2) **[**child**]** was in the dwelling ;

(3) **[**child**]** was a child at the time the charged offense occurred; and

(4) Defendant acted knowingly.

[*where appropriate****]***

[and

(5) Defendant's acts resulted in the **(**death of/serious physical injury to**)** **(**child**).]**

With respect to element 5, the State is not required to prove Defendant's state of mind or responsibility for causing **(**child's**) (**death/serious injury**)**.

The elements of **[**drug offense**]** are **[***list elements***]**.

"Serious physical injury" means any physical injury which creates a substantial risk of death, or which causes serious and prolonged disfigurement, prolonged

impairment of health, or prolonged loss or impairment of the function of any bodily organ.**]**

"Knowingly" means Defendant was aware a child less than 18 years of age was in the dwelling when the offense occurred.

"Dwelling" means a building is usually occupied by a person who lives there at night.

"Child" means any individual under the age of 18.

[*Comment: If the State is alleging death or physical injury, then strict liability applies.****]***

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 222(25), 231(c**)**, 829(b), 1103(b); 16 *Del.C.* § 4751.

ABANDONMENT OF A BABY AT A HOSPITAL [AFFIRMATIVE DEFENSE]

In this case, Defendant has asserted the affirmative defense of Abandonment of a Baby at a Hospital to the charge of Abandonment or Endangering the Welfare of a Child. In order to establish this affirmative defense, Defendant must prove each of the following two (2) elements by a preponderance of the evidence:

(1) Defendant surrendered care or custody of a baby directly to an employee or volunteer of a hospital emergency department inside the emergency department; and

(2) The baby was alive, unharmed and in a safe place inside the hospital emergency department.

Proof by a preponderance of the evidence means proof something is more likely than not. It means certain evidence, when compared to the evidence opposed to it, has the more convincing force and makes you believe something is more likely true than not. Preponderance of the evidence does not depend on the number of witnesses. If the evidence supporting the existence of the defense is evenly balanced, then Defendant has not proved the existence of the defense by a preponderance of the

evidence, and you must find against Defendant on that point. The state has no burden to present any evidence on this matter.

If after considering all of the evidence, you find this affirmative defense is established by a preponderance of the evidence, then you must find Defendant not guilty of Abandonment or Endangering the Welfare of a Child. Even if Defendant has not met this burden of proof for this particular affirmative defense, you must find Defendant not guilty of Abandonment or Endangering the Welfare of a Child if you find the State has not met its burden of proving its case beyond a reasonable doubt.

Applicable Code Sections and Case Law:

11 *Del.C.* § 304.

TREATMENT OF CHILD BY PRAYER [AFFIRMATIVE DEFENSE]

In this case, Defendant has asserted the affirmative defense of Treatment of Child by Prayer to the charge of Endangering the Welfare of a Child. In order to establish this affirmative defense, Defendant must prove each of the following two (2) elements by a preponderance of the evidence:

(1) Defendant is a member of an organized **[**church/religious group**]** whose tenets prescribe prayer as the principal treatment for illness; and

(2) Defendant **[**treated/caused to be treated**] [**child**]** in accordance with these tenets.

Proof by a preponderance of the evidence means proof something is more likely than not. It means certain evidence, when compared to the evidence opposed to it, has the more convincing force and makes you believe something is more likely true than not. Preponderance of the evidence does not depend on the number of witnesses. If the evidence supporting the existence of the defense is evenly balanced, then Defendant has not proved the existence of the defense by a preponderance of the evidence, and you must find against Defendant on that point. The state has no burden to present any evidence on this matter.

If after considering all of the evidence, you find this affirmative defense is established by a preponderance of the evidence, then you must find Defendant not guilty of Endangering the Welfare of a Child. Even if Defendant has not met this burden of proof for this particular affirmative defense, you must find Defendant not guilty of Endangering the Welfare of a Child if you find the State has not met its burden of proving its case beyond a reasonable doubt.

[*Comment: This affirmative defense is limited to prosecutions based on an alleged failure or refusal to provide proper medical care to a child. It may not be raised against prosecutions in which a child died or suffered serious physical injury while the child's welfare was endangered as defined in § 1102(b)(1) & (2). The defense also may not be raised if Defendant has violated any laws related to communicable or reportable diseases and to sanitary matters.***]**

Applicable Code Sections and Case Law:

11 *Del.C.* § 304.

Endangering the Welfare of an Incompetent Person . . . . . 11.1105(a)

ENDANGERING THE WELFARE OF A VULNERABLE ADULT

In order to find Defendant guilty of Endangering the Welfare of an Incompetent Person, you must find the State has proved the following three (3) elements beyond a reasonable doubt:

(1) Defendant **[**committed/attempted to commit**]** **[**crime/offense**]** against **[**victim**]**;

(2) **[**victim**]** was a vulnerable adult

(3) Defendant acted knowingly.

"Knowingly" means Defendant was aware Defendant's actions were likely to be injurious to **[**victim**]**, who was unable to care for **[**himself/herself**]** because of a mental illness or defect.

"Vulnerable adult" is a person eighteen (18) years of age or more who, by reason of isolation, sickness, debilitation, mental illness or physical, mental or cognitive disability, is easily susceptible to abuse, neglect, mistreatment, intimidation, manipulation, coercion or exploitation. "Vulnerable adult" includes any person for whom a guardian has been appointed.

[It is no defense that Defendant did not know **[**victim**]** was a vulnerable adult or reasonably believed **[**victim**]** was not a vulnerable adult, unless the underlying

statute expressly provides that lack of knowledge that **[**victim**]** is a vulnerable adult is a defense.]

Underlying crimes and offenses:
Title 11: § 601 Offensive Touching, § 602(a) Menacing, § 602(b) Aggravated Menacing, § 603 Reckless Endangering in the Second Degree, § 604 Reckless Endangering in the First Degree, § 605 Abuse of a Pregnant Woman in the Second Degree, § 606 Abuse of a Pregnant Woman in the First Degree, § 611 Assault in the Third Degree, § 612 Assault in the Second Degree, § 621 Terroristic Threatening, § 622 Hoax Device, § 625 Unlawful Administering Drugs, § 626 Unlawful Administering Controlled Substance or Counterfeit Substance of Narcotic Drug, § 645 Promoting Suicide, § 763 Sexual Harassment, § 764 Indecent Exposure in the Second Degree, § 766 Incest, § 767 Unlawful Sexual Contact in the Third Degree, § 769 Unlawful Sexual Contact in the First Degree, § 770 Rape in the Fourth Degree, § 776 Sexual Extortion, § 780 Female Genital Mutilation, § 781 Unlawful Imprisonment in the Second Degree, § 782 Unlawful Imprisonment in the First Degree, § 783 Kidnapping in the Second Degree, § 791 Acts Constituting Coercion, § 811 Criminal Mischief, § 825 Burglary in the Second Degree, § 831 Robbery in the Second Degree, § 835 Carjacking in the Second Degree, § 841 Theft, except c)(3)b, § 841A Theft of a motor vehicle, § 842 Theft, Lost or Misplaced Property, § 843 Theft, False Pretenses, § 844 Theft, False Promises, § 846 Extortion, § 848 Misapplication of property, § 853 Unauthorized Use of a Vehicle, § 854 Identity Theft, § 861 Forgery, § 903 Unlawful Use of a Credit Card, § Securing Execution of Documents by Deception, § 814 Use of Consumer Identification Information, § 916 Home Improvement Fraud, § 917 New Home Construction Fraud, except (d)(3), § 1001 Bigamy, § 1311 Harassment, § 1312 Stalking, except (d)(1) and (d)(2), § Violation of Privacy, § 1339 Adulteration, § 1451 Theft of a Firearm.
Title 6: § 7322 Securities Fraud.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 231(c) and 1105(c).

Unlawfully Dealing with a Child . . . . . 11.1106(1)

UNLAWFULLY DEALING WITH A CHILD

In order to find Defendant guilty of Unlawfully Dealing with a Child, you must find the State has proved the following three (3) elements beyond a reasonable doubt:

(1) Defendant permitted **[**child**]** to **[**enter/remain**]** in **[**place**]**, where **[**unlawful narcotics/ dangerous drugs**]** activity was **[**maintained/conducted**]**;

(2) **[**child**]** was a child at the time of the charged offense; and

(3) Defendant acted knowingly.

"Knowingly" means Defendant was aware Defendant had permitted **[**child**]** to enter or remain in a place where such activities were taking place.

"Child" means any individual under the age of 18.

Applicable Code Sections and Case Law:

11 *Del. C.* § 231(c**)** and 1103(b).

UNLAWFULLY DEALING WITH A CHILD

In order to find Defendant guilty of Unlawfully Dealing with a Child, you must find the State has proved the following three (3) elements beyond a reasonable doubt:

(1) Defendant permitted **[**child**]** to **[**enter/remain**]** in **[**place**]**, where unlawful sexual activity was **[**maintained/conducted**]**;

(2) **[**child**]** was a child at the time of the charged offense; and

(3) Defendant acted knowingly.

"Child" means any individual under the age of 18.

"Knowingly" means Defendant was aware Defendant had permitted **[**child**]** to enter or remain in a place where such activities were taking place.

Applicable Code Sections and Case Law:

11 *Del. C.* § 231(c**)** and 1103(b).

Unlawfully Dealing with a Child . . . . . 11.1106(3)

UNLAWFULLY DEALING WITH A CHILD

In order to find Defendant guilty of Unlawfully Dealing with a Child, you must find the State has proved the following three (3) elements beyond a reasonable doubt:

(1) Defendant permitted **[**child**]** to **[**enter/remain**]** in **[**place**]**, where unlawful gambling activity was **[**maintained/conducted**]**

(2) **[**child**]** was a child at the time of the charged offense; and

(3) Defendant acted knowingly.

"Knowingly" means Defendant was aware Defendant had permitted **[**child**]** to enter or remain in a place where such activities were taking place.

"Child" means any individual under the age of 18.

Applicable Code Sections and Case Law:

11 *Del. C.* § 231(c) and 1103(b).

Unlawfully Dealing with a Child . . . . . 11.1106(4)

UNLAWFULLY DEALING WITH A CHILD

In order to find Defendant guilty of Unlawfully Dealing with a Child, you must find the State has proved the following five (5) elements beyond a reasonable doubt:

(1) Defendant was the **[**owner/person in charge**]** of **[**establishment**]**, a **[**dance house/concert saloon/theater/museum/similar place of amusement**]**, where alcoholic beverages were **[**sold/given away**]**;

(2) Defendant allowed **[**child**]** to **[**enter/remain in**] [**establishment**]**;

(3) **[**child**]** was a child at the time of the charged offense;

(4) **[**child**]** was unaccompanied by **[**parent/guardian**]**; and

(5) Defendant acted knowingly.

"Child" means any individual under the age of 18.

"Knowingly" means Defendant was aware Defendant had permitted **[**child**]** to enter or remain in a place where such activities were taking place.

Applicable Code Sections and Case Law:

11 *Del. C.* § 231(c**)** and 1103(b).

ENDANGERING CHILDREN

In order to find Defendant guilty of Endangering Children, you must find the State has proved the following three (3) elements beyond a reasonable doubt:

(1) Defendant **[**abandoned/left unattended**] [**child**]**;

(2) **[**child**]** was in a place where **[**child**]** had access to any **[**refrigerator/ice box/similar air tight **(**box/container**)]**without first **[**unhinging and removing the **(**door/lid**)**/detaching the locking device from the **(**door/lid**)]; **and

(3) Defendant acted negligently.

Nothing in this section prohibits the normal use of a refrigerator, icebox, or freezer for the storage of food.

"Negligently" means Defendant failed to exercise the standard of care which a reasonable person would observe in the situation.

"Child" means any individual under the age of 18.

Applicable Code Sections and Case Law:

11 *Del.C.* § 231(d) and 1103(b).

SEXUAL EXPLOITATION OF A CHILD

In order to find Defendant guilty of Sexual Exploitation of a Child, you must find the State has proved the following two (2) elements beyond a reasonable doubt:

(1) Defendant **[**photographed/filmed/created a visual depiction of**]** a child engaged in a **[**prohibited sexual/simulation of a prohibited sexual**]** act; and

(2) Defendant acted knowingly.

"Knowingly" means Defendant knew or was aware of the nature of Defendant's actions.

"Child" means any individual under the age of 18 at the time of the charged offense.

[For the purposes of § 1108 of this Title, "child" shall also mean any individual intended by Defendant to appear to be 14 years of age or less.]

"Prohibited sexual act" includes: sexual intercourse; anal intercourse; masturbation; bestiality; sadism; masochism; fellatio; cunnilingus; nudity, if such nudity is depicted to sexually stimulate or gratify any individual who may view the depiction; sexual contact; lascivious exhibition of any child's genitals or pubic area; or any other act which is intended to be a depiction or simulation of any of the above.

[Comment: This section was purportedly amended by 77 Del. Laws, c. 148, § 37. However, § 37 references § 1112(a)(1). The changes were made in § 1112A(a)(1) according to the Code on the State website.]

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 231(c**)** and 1103(b, e**)**.

Sexual Exploitation of a Child . . . . . 11.1108(2)

SEXUAL EXPLOITATION OF A CHILD

In order to find Defendant guilty of Sexual Exploitation of a Child, you must find the State has proved the following two (2) elements beyond a reasonable doubt:

(1) Defendant **[**financed/produced**]** a **[**motion picture/video/visual depiction**]** depicting a child engaged in a **[**prohibited sexual/simulation of a prohibited sexual**]** act; and

(2) Defendant acted knowingly.

"Knowingly" means Defendant knew or was aware of the nature of Defendant's actions.

"Child" means any individual under the age of 18 at the time of the charged offense.

[For the purposes of § 1108 of this Title, "child" shall also mean any individual intended by Defendant to appear to be 14 years of age or less.]

"Prohibited sexual act" includes: sexual intercourse; anal intercourse; masturbation; bestiality; sadism; masochism; fellatio; cunnilingus; nudity, if such nudity is depicted to sexually stimulate or gratify any individual who may view the depiction; sexual contact; lascivious exhibition of any child's genitals or pubic area; or any other act which is intended to be a depiction or simulation of any of the above.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 231(c) and 1103(b, e**)**.

SEXUAL EXPLOITATION OF A CHILD

In order to find Defendant guilty of Sexual Exploitation of a Child, you must find the State has proved the following two (2) elements beyond a reasonable doubt:

(1) Defendant **[**published/made available for public distribution or sale**]** a **[**book/magazine/ periodical/pamphlet/photograph/Internet site/web page**]** depicting a child engaged in a **[**prohibited sexual/simulation of a prohibited sexual**]** act; and

(2) Defendant acted knowingly.

"Knowingly" means Defendant knew or was aware of the nature of Defendant's actions.

"Child" means any individual under the age of 18 at the time of the charged offense.

[For the purposes of § 1108 of this Title, "child" shall also mean any individual intended by Defendant to appear to be 14 years of age or less.]

"Prohibited sexual act" includes: sexual intercourse; anal intercourse; masturbation; bestiality; sadism; masochism; fellatio; cunnilingus; nudity, if such nudity is depicted to sexually stimulate or gratify any individual who may view the depiction; sexual contact; lascivious exhibition of any child's genitals or pubic area; or any other act which is intended to be a depiction or simulation of any of the above.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 231(c**)** and 1103(b, e**)**.

SEXUAL EXPLOITATION OF A CHILD

In order to find Defendant guilty of Sexual Exploitation of a Child, you must find the State has proved the following two (2) elements beyond a reasonable doubt:

(1)Defendant **[**permitted/ caused/ promoted/ facilitated/ financed/ produced/ otherwise advanced**]** an **[**exhibition/display/performance**]** of a child engaged in a **[**prohibited sexual/ simulation of a prohibited sexual**]** act; and

(2) Defendant acted knowingly.

"Knowingly" means Defendant knew or was aware of the nature of Defendant's actions.

"Child" means any individual under the age of 18 at the time of the charged offense.

[For the purposes of § 1108 of this Title, "child" shall also mean any individual intended by Defendant to appear to be 14 years of age or less.]

"Prohibited sexual act" includes: sexual intercourse; anal intercourse; masturbation; bestiality; sadism; masochism; fellatio; cunnilingus; nudity, if such nudity is depicted to sexually stimulate or gratify any individual who may view the depiction; sexual contact; lascivious exhibition of any child's genitals or pubic area; or any other act which is intended to be a depiction or simulation of any of the above.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 231(c**)** and 1103(b, e**)**.

DEALING IN CHILD PORNOGRAPHY

In order to find Defendant guilty of Dealing in Child Pornography, you must find the State has proved the following two (2) elements beyond a reasonable doubt:

(1) Defendant **[**transported/shipped/mailed/transmitted by any means**]** a **[**book/ magazine/ periodical/photograph/pamphlet/video/film/any other visual representation**]** depicting a child engaged in a **[**prohibited sexual act/simulation of a prohibited sexual act**]**; and

(2) Defendant acted knowingly.

With respect to **[**transported/shipped/mailed/transmitted by any means**]**, computers or any other electronic or digital method is included.

"Knowingly" means Defendant knew or was aware of the nature of Defendant's actions.

"Child" means any individual under the age of 18.

[For the purposes of § 1109 of this Title, "child" shall also mean any individual intended by Defendant to appear to be 14 years of age or less.]

"Prohibited sexual act" includes: sexual intercourse; anal intercourse; masturbation; bestiality; sadism; masochism; fellatio; cunnilingus; nudity, if such

nudity is depicted to sexually stimulate or gratify any individual who may view the depiction; sexual contact; lascivious exhibition of any child's genitals or pubic area; or any other act which is intended to be a depiction or simulation of any of the above.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 231(c**)** and 1103(b, e**)**.

DEALING IN CHILD PORNOGRAPHY

In order to find Defendant guilty of Dealing in Child Pornography, you must find the State has proved the following two (2) elements beyond a reasonable doubt:

(1) Defendant **[**received for the purpose of selling/sold**]** a **[**magazine/photograph/film/any other visual representation**]** depicting a child engaged in a **[**prohibited sexual act/simulation of a prohibited sexual act**]**;

(2) Defendant acted knowingly.

"Knowingly" means Defendant knew or was aware of the nature of Defendant's actions.

"Child" means any individual under the age of 18.

[For the purposes of § 1109 of this Title, "child" shall also mean any individual intended by Defendant to appear to be 14 years of age or less.]

"Prohibited sexual act" includes: sexual intercourse; anal intercourse; masturbation; bestiality; sadism; masochism; fellatio; cunnilingus; nudity, if such nudity is depicted to sexually stimulate or gratify any individual who may view the depiction; sexual contact; lascivious exhibition of any child's genitals or pubic area; or any other act which is intended to be a depiction or simulation of any of the above.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 231(c**)** and 1103(b, e**)**.

DEALING IN CHILD PORNOGRAPHY

In order to find Defendant guilty of Dealing in Child Pornography, you must find the State has proved the following two (2) elements beyond a reasonable doubt:

(1) Defendant **[**distributed/disseminated**]** by means of **[**computer/any other **(**electronic/ digital**)** method/shows/viewings**]** a **[**motion picture/video/visual depiction**]** which showed a child engaging in a **[**prohibited sexual act/simulation of a prohibited sexual act**]**; and

(2) Defendant acted knowingly.

For purposes of **[**distribution/dissemination**]**, you may infer the person who **[**is in possession of/shows**]** such a **[**motion picture/video/visual depiction**]** is the owner of the materials.

"Knowingly" means Defendant knew or was aware of the nature of Defendant's actions.

"Child" means any individual under the age of 18.

[For the purposes of § 1109 of this Title, "child" shall also mean any individual intended by Defendant to appear to be 14 years of age or less.]

"Prohibited sexual act" includes: sexual intercourse; anal intercourse; masturbation; bestiality; sadism; masochism; fellatio; cunnilingus; nudity, if such nudity is depicted to sexually stimulate or gratify any individual who may view the depiction; sexual contact; lascivious exhibition of any child's genitals or pubic area; or any other act which is intended to be a depiction or simulation of any of the above.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 231(c**)** and 1103(b, e**)**.

Unlawfully Dealing in Child Pornography . . . . . 11.1109(4)

DEALING IN CHILD PORNOGRAPHY

In order to find Defendant guilty of Dealing in Child Pornography, you must find the State has proved the following two (2) elements beyond a reasonable doubt:

(1) Defendant **[**compiled/ entered/ accessed/ transmitted/ received/ exchanged/ disseminated/ stored/ made/ printed/ reproduced/ otherwise possessed**]** any **[**photograph/image/file/data/other visual depiction**]** of a child engaged in a **[**prohibited sexual act/simulation of prohibited sexual act**]**; and

(2) Defendant acted intentionally.

[*if appropriate****]***

[Conduct outside this State shall be sufficient to constitute this offense if such conduct is within the terms of 11 *Del.C.* § 204 or if such **(**photograph/ image/ file/ data/ other visual depiction**)** was **(**compiled/ entered/ accessed/ transmitted/ received/ exchanged/ disseminated/ stored/ made/ printed/ reproduced/ otherwise processed**)** **(**by/through/with**)** any computer located within Delaware and Defendant was aware of circumstances which rendered the presence of such computer within Delaware a reasonable possibility.**]**

[Territorial applicability means a person may be convicted under the law of this State of an offense committed by the person's own conduct or by the conduct of another for which the person is legally accountable if the offense is based on a statute of Delaware which expressly prohibits conduct outside the State, when the conduct bears a reasonable relation to a legitimate interest of this State and the defendant knows or should know that the defendant's conduct is likely to affect that interest.]

"Intentionally" means it was Defendant's conscious objective or purpose to compile, enter, access, exchange, disseminate, store, make, print, reproduce, otherwise possess a photograph, image, file, data, other visual depiction of a child engaged in a prohibited sexual act or simulation of a prohibited sexual act.

"Child" means any individual under the age of 18.

[For the purposes of § 1109 of this Title, "child" shall also mean any individual intended by Defendant to appear to be 14 years of age or less.]

“Prohibited sexual act" includes: sexual intercourse; anal intercourse; masturbation; bestiality; sadism; masochism; fellatio; cunnilingus; nudity, if such nudity is depicted to sexually stimulate or gratify any individual who may view the depiction; sexual contact; lascivious exhibition of any child’s genitals or pubic area; or any other act which is intended to be a depiction or simulation of any of the above.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 231(c**)** and 1103(b, e**)**.

DEALING IN CHILD PORNOGRAPHY

In order to find Defendant guilty of Dealing in Child Pornography, you must find the State has proved the following two (2) elements beyond a reasonable doubt:

(1) Defendant **[**advertised/promoted/presented/described/transmitted/distributed**]** any visual **[**depiction/exhibition/display/performance**]** with intent to **[**create/convey**]** the impression such visual **[**depiction/exhibition/display/performance**]** contains a depiction of a child engaging in a **[**prohibited sexual act/simulation of a prohibited sexual act**]**; and

(2) Defendant acted knowingly.

"Knowingly" means Defendant knew or was aware of the nature of Defendant's actions.

"Child" means any individual under the age of 18.

[For the purposes of § 1109 of this Title, "child" shall also mean any individual intended by Defendant to appear to be 14 years of age or less.]

"Prohibited sexual act" includes: sexual intercourse; anal intercourse; masturbation; bestiality; sadism; masochism; fellatio; cunnilingus; nudity, if such nudity is depicted to sexually stimulate or gratify any individual who may view the

depiction; sexual contact; lascivious exhibition of any child's genitals or pubic area; or any other act which is intended to be a depiction or simulation of any of the above.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 231(c) and 1103(b, e**)**.

POSSESSION OF CHILD PORNOGRAPHY

In order to find Defendant guilty of Possession of Child Pornography, you must find the State has proved the following two (2) elements beyond a reasonable doubt:

(1) Defendant possessed any visual depiction of a child in a **[**prohibited sexual act/simulation of a prohibited sexual act**]**; and

(2) Defendant acted knowingly.

"Knowingly" means Defendant knew or was aware of the nature of Defendant's actions.

"Child" means any individual under the age of 18.

[For the purposes of § 1111 of this Title, "child" shall also mean any individual intended by Defendant to appear to be 14 years of age or less.]

"Prohibited sexual act" includes: sexual intercourse; anal intercourse; masturbation; bestiality; sadism; masochism; fellatio; cunnilingus; nudity, if such nudity is depicted to sexually stimulate or gratify any individual who may view the depiction; sexual contact; lascivious exhibition of any child's genitals or pubic area; or any other act which is intended to be a depiction or simulation of any of the above.

"Visual depiction" includes any image which is recorded, stored or contained on film or videotape, or any data stored or transmitted on or by any computer, or any picture made, stored or produced by electronic, digital or mechanical means.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 231(c**)** and 1103(b, e, g**)**

POSSESSION OF CHILD PORNOGRAPHY

In order to find Defendant guilty of Possession of Child Pornography, you must find the State has proved the following two (2) elements beyond a reasonable doubt:

(1) Defendant possessed any visual depiction **[**created/adapted/modified/edited**]** so as to appear a child was engaging in a **[**prohibited sexual act/simulation of a prohibited sexual act**]**; and

(2) Defendant acted knowingly.

"Knowingly" means Defendant knew or was aware of the nature of Defendant's actions.

"Child" means any individual under the age of 18.

[For the purposes of § 1111 of this Title, "child" shall also mean any individual intended by Defendant to appear to be 14 years of age or less.]

"Prohibited sexual act" includes: sexual intercourse; anal intercourse; masturbation; bestiality; sadism; masochism; fellatio; cunnilingus; nudity, if such nudity is depicted to sexually stimulate or gratify any individual who may view the depiction; sexual contact; lascivious exhibition of any child's genitals or pubic area; or any other act which is intended to be a depiction or simulation of any of the above.

"Visual depiction" includes any image which is recorded, stored or contained on film or videotape, or any data stored or transmitted on or by any computer, or any picture made, stored or produced by electronic, digital or mechanical means.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 231(c**)** and 1103(b, e, g**)**

Sexual Offender Prohibited From School Zone . . . . . 11.1112(a)(1)

SEXUAL OFFENDER PROHIBITED FROM SCHOOL ZONE

In order to find Defendant guilty of Sexual Offender Prohibited From School Zone, you must find the State has proved the following elements beyond a reasonable doubt:

(1) Defendant is a sexual offender; and

(2) Defendant resided within 500 feet of the property of **[**school**]**.

It is not a defense Defendant was unaware Defendant's residence was within 500 feet of any school property.

"Reside" means to dwell permanently or continuously or to occupy a dwelling or home as one's permanent or temporary place of abode.

"School" means any preschool, kindergarten, elementary school, secondary school, vocational technical school or any other institution which has as its primary purpose the education or instruction of children under 16 years of age.

"Sexual offender" means any person who has been:

(1) Convicted in this State of the commission or attempt to commit any of the following sexual offenses upon a child under 16 years of age: unlawful sexual contact in the first, second or third degree; rape in the first, second, third or fourth degree; continual sexual abuse; dangerous crime against a child; unlawful sexual conduct;

sexual abuse of a child by a person in a position of trust, authority or supervision in the first or second degree; sexual exploitation of a child; dealing in child pornography; possession of child pornography; or sexual solicitation of a child;

(2) Discharged or paroled from a penal institution where Defendant was confined because of the commission or attempt to commit one or more of the charged offenses just listed;

(3) Adjudged "guilty but mentally ill" or "not guilty by reason of insanity" for the commission or attempt to commit one or more of the charged offenses just listed; or

(4) Convicted in any other state of any offense which, if committed or attempted in this State, would have been punishable as one or more of the charged offenses just listed.

Applicable Code Sections and Case Law

11 *Del. C.* §§ 401, 767, 768. 469, 770, 771, 772, 773, 776, 777, 777A, 778, 778A, 1108, 1109,1111, and 1112(b)(2, 3, 4).

Sexual Offender Prohibited From School Zone . . . . . 11.1112(a)(2)

SEXUAL OFFENDER PROHIBITED FROM SCHOOL ZONE

In order to find Defendant guilty of Sexual Offender Prohibited From School Zone, you must find the State has proved the following elements beyond a reasonable doubt:

(1) Defendant is a sexual offender; and

(2) Defendant loitered within 500 feet of the property of **[**school**]**.

It is not a defense Defendant was unaware Defendant's prohibited conduct took place within 500 feet of any school property.

"Loiter" means to stand or sit idly, whether or not the person is in a vehicle, or to remain in or around school property, without any reason or relationship involving custody of or responsibility for a pupil or any other specific or legitimate reason for being there; or to stand or sit idly, whether or not the person is in a vehicle, or to remain in or around school property, for the purpose of engaging in or soliciting another person to engage in sexual intercourse, sexual penetration, sexual contact, sexual harassment, sexual extortion, or indecent exposure.

"School" means any preschool, kindergarten, elementary school, secondary school, vocational technical school or any other institution which has as its primary purpose the education or instruction of children under 16 years of age.

"Sexual offender" means any person who has been:

(1) Convicted in this State of the commission or attempt to commit any of the following sexual offenses upon a child under 16 years of age: unlawful sexual contact in the first, second or third degree; rape in the first, second, third or fourth degree; continual sexual abuse; dangerous crime against a child; unlawful sexual conduct; sexual abuse of a child by a person in a position of trust, authority or supervision in the first or second degree; sexual exploitation of a child; dealing in child pornography; possession of child pornography; or sexual solicitation of a child;

(2) Discharged or paroled from a penal institution where Defendant was confined because of the commission or attempt to commit one or more of the charged offenses just listed;

(3) Adjudged "guilty but mentally ill" or "not guilty by reason of insanity" for the commission or attempt to commit one or more of the charged offenses just listed; or

(4) Convicted in any other state of any offense which, if committed or attempted in this State, would have been punishable as one or more of the offenses just listed.

Applicable Code Sections and Case Law

11 *Del. C.* §§ 401, 767, 768. 469, 770, 771, 772, 773, 776, 777, 777A, 778, 778A, 1108, 1109,1111, and 1112(b)(1, 3, 4).

SEXUAL SOLICITATION OF A CHILD

In order to find Defendant guilty of Sexual Solicitation of a Child, you must find the State has proved the following four (4) elements beyond a reasonable doubt:

(1) Defendant **[**solicited/requested/commanded/importuned/ otherwise attempted to cause**] [**child**]** to engaging in a prohibited sexual act;

(2) Defendant was 18 years of age or older at the time of the charged offense;

(3) **[**child**]** was not yet 18 years of age at the time of the charged offense; and

(4) Defendant acted **[**intentionally/knowingly**]**.

It is no defense that, at the time of the charged offense, Defendant did not know the child's age or reasonably believed the child had reached **[**his/her**]** eighteenth birthday.

"Intentionally" means it was Defendant's conscious objective or purpose to cause a child under the age of 18 to engage in any prohibited sexual act

"Knowingly" means Defendant knew or was aware Defendant caused child under the age of 18 to engage in any prohibited sexual act.

"Child" means any individual under the age of 18.

[For the purposes of § 1112A of this Title, "child" shall also mean any individual intended by Defendant to appear to be 14 years of age or less.]

"Prohibited sexual act" includes: sexual intercourse; anal intercourse; masturbation; bestiality; sadism; masochism; fellatio; cunnilingus; nudity, if such nudity is depicted to sexually stimulate or gratify any individual who may view the depiction; sexual contact; lascivious exhibition of any child's genitals or pubic area; or any other act which is intended to be a depiction or simulation of any of the above.

[Comment: This section was changed after 77 Del. Laws. C. 148, § 37 was passed. This section reads:

> *Section 37. Amend § 1112(a)(1), Title 11 of the Delaware Code, by deleting the word, "sixteenth" after the phrase "any child who has not yet reached his or her", but before the phrase "birthday to meet with", and inserting in lieu thereof the word "eighteenth".*

§ 1112(a)(1) was amended, not § 1112A(a)(1). § 1112A(a)(1) has 18 in it. § 1112(a)(1) prohibits sexual offenders from either residing or loitering on or within 5000 of a school. No age is mentioned in § 1112(a)(1) .

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 231(b, c), 762, and 1103(b, e**)**.

Solicitation of a Child . . . . . 11.1112(a)(2)

SEXUAL SOLICITATION OF A CHILD

In order to find Defendant guilty of Sexual Solicitation of a Child, you must find the State has proved the following four (4) elements beyond a reasonable doubt:

(1) Defendant **[**solicited/requested/commanded/importuned/attempted to cause**]** **[**child**]** to meet with **[**Defendant/any other person**]** for the purpose of engaging in a prohibited sexual act;

(2) Defendant was 18 years of age or older at the time of the charged offense

(3) **[**child**]** was not yet sixteen (16) years of age at the time of the charged offense; and

(4) Defendant acted **[**intentionally/knowingly**]**.

It is no defense that, at the time of the charged offense, Defendant did not know the child's age or reasonably believed the child had reached **[**his/her**]** sixteenth birthday.

[*if applicable****]***

[Conduct occurring outside the State shall be sufficient to constitute this offense if either the conduct or the result (which is an element of the charged offense) occurs in Delaware, or if the child was within the State at the time of the prohibited conduct and Defendant was aware of circumstances which rendered the presence of such child within Delaware a reasonable possibility.**]**

"Intentionally" means it was Defendant's conscious objective or purpose to a child under the age of 16 to meet with Defendant or another person to engage in a prohibited sexual act.

"Knowingly" means Defendant knew or was aware Defendant's actions caused a child not yet 16 years of age to meet with Defendant or another person to engage in a prohibited sexual act.

"Child" means any individual under the age of 18.

[For the purposes of § 1112A of this Title, "child" shall also mean any individual intended by Defendant to appear to be 14 years of age or less.]

"Prohibited sexual act" includes: sexual intercourse; anal intercourse; masturbation; bestiality; sadism; masochism; fellatio; cunnilingus; nudity, if such nudity is depicted to sexually stimulate or gratify any individual who may view the depiction; sexual contact; lascivious exhibition of any child's genitals or pubic area; or any other act which is intended to be a depiction or simulation of any of the above.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 231(b, c), 762, and 1103(b, e**)**.

Solicitation of a Child . . . . . 11.1112A(a)(3)

SEXUAL SOLICITATION OF A CHILD

In order to find Defendant guilty of Sexual Solicitation of a Child, you must find the State has proved the following three (3) elements beyond a reasonable doubt:

(1) Defendant **[**compiled/ entered/ accessed/ transmitted/ received/ exchanged/ disseminated/ stored/ made/ printed/ reproduced/ otherwise possessed by any means including computer**]** any **[**notice/statement/document/advertisement/file/data**]** containing the **[**name/telephone number/ address/e-mail address/school address/location/physical attributes/other **(**descriptive/identifying information**)]** pertaining to a child not yet 16 years of age at the time of the charged offense for the purpose of **[**facilitating/ encouraging/ offering/ soliciting**]** a prohibited sexual act involving child and Defendant or another person; and

(2) Defendant was 18 years of age or older at the time of the charged offense; and

(3) Defendant acted **[**intentionally/knowingly**]**.

It is no defense that, at the time of the charged offense, Defendant did not know the child's age or reasonably believed the child had reached **[**his/her**]** sixteenth birthday.

[*if applicable****]***

[Conduct occurring outside the State shall be sufficient to constitute this offense if either the conduct or the result which is an element of the charged offense occurs in Delaware, or if the child was within the State at the time of the prohibited conduct and Defendant was aware of circumstances which rendered the presence of such child within Delaware a reasonable possibility.**]**

"Intentionally" means it was Defendant's conscious objective or purpose to facilitate, encourage, offer or solicit a prohibited sexual act involving Defendant or another person and a child.

"Knowingly" means Defendant knew or was aware Defendant's actions facilitated, encouraged, offered, or solicited a prohibited sexual act involving Defendant or another person and a child.

"Child" means any individual under the age of 18.

[For the purposes of § 1112A of this Title, "child" shall also mean any individual intended by Defendant to appear to be 14 years of age or less.]

"Prohibited sexual act" includes: sexual intercourse; anal intercourse; masturbation; bestiality; sadism; masochism; fellatio; cunnilingus; nudity, if such nudity is depicted to sexually stimulate or gratify any individual who may view the depiction; sexual contact; lascivious exhibition of any child's genitals or pubic area; or any other act which is intended to be a depiction or simulation of any of the above.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 231(b, c), 762, and 1103(b, e**)**.

CRIMINAL NON-SUPPORT OF A MINOR CHILD

In order to find Defendant guilty of Criminal Non-Support of a Minor Child, you must find the State has proved the following two (2) elements beyond a reasonable doubt:

(1) Defendant **[**failed/refused/neglected**]** to provide the minimal requirements of **[**food/ clothing/shelter**]** for **[**child**]**, Defendant's minor child; and

(2) Defendant acted knowingly.

It is not a defense that the child subject to the benefit of the support order also received support from a source other than Defendant.

[*if applicable****]***

[You may infer the payment records maintained by **(**administrative agency/court**)**, through which the support order was payable, are proof of the support paid or unpaid and the accrued arrearages.**]**

[if applicable:]

In this case, Defendant has asserted the affirmative defense of Full Compliance with a Support Order to the charge of Criminal Non-Support. In order to establish this affirmative defense, Defendant must prove the following element by a preponderance of the evidence:

Defendant fully complied with a support order that was in effect for the benefit of **[**person**]** during the time period of the charged offense charged.

[if applicable:]

In this case, Defendant has asserted the affirmative defense of Inability to Pay or Provide Support to the charge of Criminal Non-Support. In order to establish this affirmative defense, Defendant must prove the following element by a preponderance of the evidence:

Due to circumstances over which Defendant had no control, Defendant was unable to pay or provide support during the time period charged in the offense.

Unemployment or under-employment, with a justifiable excuse, constitutes a defense. A justifiable excuse may be proved if Defendant was involuntarily terminated from Defendant's employment or otherwise had Defendant's income involuntarily reduced, and where Defendant was diligently and in good faith seeking reasonably appropriate employment under all the circumstances or was pursuing self-employment.

Proof by a preponderance of the evidence means proof something is more likely than not. It means certain evidence, when compared to the evidence opposed to it, has the more convincing force and makes you believe something is more likely true than not. Preponderance of the evidence does not depend on the number of witnesses. If the evidence supporting the existence of the defense is evenly balanced,

then Defendant has not proved the existence of the defense by a preponderance of the evidence, and you must find against Defendant on that point. The state has no burden to present any evidence on this matter.

If after considering all of the evidence, you find this affirmative defense is established by a preponderance of the evidence, then you must find Defendant not guilty of Criminal Non-Support. Even if Defendant has not met this burden of proof for this particular affirmative defense, you must find Defendant not guilty of Criminal Non-Support if you find the State has not met its burden of proving its case beyond a reasonable doubt.

"Child" means any child, whether over or under the age of majority, with respect to whom a support order exists.

"Minor child" means any child, natural or adopted, whether born in or out of wedlock, who is under the age of 18. The term also includes a child who is over the age of 18 but not yet 19, if such child is a student in high school and is likely to graduate.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 304 and 1113(c, d, (k)(1, 2)).

Through 77 Del. Laws June 30, 2010.

CRIMINAL NON-SUPPORT OF A MINOR CHILD

In order to find Defendant guilty of Aggravated Criminal Non-Support of a Minor Child, you must find the State has proved the following two (2) elements beyond a reasonable doubt:

(1) Defendant was subject to a support order for the benefit of **[**child**]**; and

(2) Defendant was delinquent in making timely and full payments under the support order for a period of at least 4 months' duration.

It is not a defense the **[**child/person**]** subject to the benefit of the support order also received support from a source other than Defendant.

[*if applicable****]***

[You may infer the payment records maintained by **(**administrative agency/court**)**, through which the support order was payable, are proof of the support paid or unpaid and the accrued arrearages.**]**

[if applicable:]

In this case, Defendant has asserted the affirmative defense of Full Compliance with a Support Order to the charge of Criminal Non-Support. In order to establish this affirmative defense, Defendant must prove the following element by a preponderance of the evidence:

Defendant fully complied with a support order that was in effect for the benefit of **[**person**]** during the time period of the charged offense charged.

[if applicable:]

In this case, Defendant has asserted the affirmative defense of Inability to Pay or Provide Support to the charge of Criminal Non-Support. In order to establish this affirmative defense, Defendant must prove the following element by a preponderance of the evidence:

Due to circumstances over which Defendant had no control, Defendant was unable to pay or provide support during the time period charged in the offense.

Unemployment or under-employment, with a justifiable excuse, constitutes a defense. A justifiable excuse may be proved if Defendant was involuntarily terminated from Defendant's employment or otherwise had Defendant's income involuntarily reduced, and where Defendant was diligently and in good faith seeking reasonably appropriate employment under all the circumstances or was pursuing self-employment.

Proof by a preponderance of the evidence means proof something is more likely than not. It means certain evidence, when compared to the evidence opposed to it, has the more convincing force and makes you believe something is more likely true than not. Preponderance of the evidence does not depend on the number of witnesses. If the evidence supporting the existence of the defense is evenly balanced,

then Defendant has not proved the existence of the defense by a preponderance of the evidence, and you must find against Defendant on that point. The state has no burden to present any evidence on this matter.

If after considering all of the evidence, you find this affirmative defense is established by a preponderance of the evidence, then you must find Defendant not guilty of Criminal Non-Support. Even if Defendant has not met this burden of proof for this particular affirmative defense, you must find Defendant not guilty of Criminal Non-Support if you find the State has not met its burden of proving its case beyond a reasonable doubt.

“Child” means any child, whether over or under the age of majority, with respect to whom a support order exists.

"Minor child" means any child, natural or adopted, whether born in or out of wedlock, who is under the age of 18. The term also includes a child who is over the age of 18 but not yet 19, if such child is a student in high school and is likely to graduate.

"Support order" means any judgment, decree or order, whether temporary, final or subject to modification, issued by a court or agency, for the benefit of a child, spouse, former spouse, or a parent. The order must require Defendant to provide monetary or medical support, health care, arrearages, or reimbursement. The order

may be in connection with a proceeding for divorce, judicial or legal separation, separate maintenance, paternity, guardianship, civil protection, or any other matter.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 304 and 1113(c, d, (k**)(**1, 2, 3)).

CRIMINAL NON-SUPPORT OF A MINOR CHILD

In order to find Defendant guilty of Aggravated Criminal Non-Support of a Minor Child, you must find the State has proved the following four (4) elements beyond a reasonable doubt:

(1) Defendant was subject to a support order for the benefit of **[**child**]**;

(2) Defendant was delinquent in making timely and full payments under the support order for a period of at least 4 months' duration;

(3) Defendant was previously convicted of aggravated criminal nonsupport; and

(4) Defendant acted knowingly.

It is not a defense the **[**child/person**]** subject to the benefit of the support order also received support from a source other than Defendant.

[*if applicable****]***

[You may infer the payment records maintained by **(**administrative agency/court**)**, through which the support order was payable, are proof of the support paid or unpaid and the accrued arrearages.**]**

[if applicable:]

In this case, Defendant has asserted the affirmative defense of Full Compliance with a Support Order to the charge of Criminal Non-Support. In order to establish this

affirmative defense, Defendant must prove the following element by a preponderance of the evidence:

Defendant fully complied with a support order that was in effect for the benefit of **[**person**]** during the time period of the charged offense charged.

[if applicable:]

In this case, Defendant has asserted the affirmative defense of Inability to Pay or Provide Support to the charge of Criminal Non-Support. In order to establish this affirmative defense, Defendant must prove the following element by a preponderance of the evidence:

Due to circumstances over which Defendant had no control, Defendant was unable to pay or provide support during the time period charged in the offense.

Unemployment or under-employment, with a justifiable excuse, constitutes a defense. A justifiable excuse may be proved if Defendant was involuntarily terminated from Defendant's employment or otherwise had Defendant's income involuntarily reduced, and where Defendant was diligently and in good faith seeking reasonably appropriate employment under all the circumstances or was pursuing self-employment.

Proof by a preponderance of the evidence means proof something is more likely than not. It means certain evidence, when compared to the evidence opposed to it, has the more convincing force and makes you believe something is more likely

true than not. Preponderance of the evidence does not depend on the number of witnesses. If the evidence supporting the existence of the defense is evenly balanced, then Defendant has not proved the existence of the defense by a preponderance of the evidence, and you must find against Defendant on that point. The state has no burden to present any evidence on this matter.

If after considering all of the evidence, you find this affirmative defense is established by a preponderance of the evidence, then you must find Defendant not guilty of Criminal Non-Support. Even if Defendant has not met this burden of proof for this particular affirmative defense, you must find Defendant not guilty of Criminal Non-Support if you find the State has not met its burden of proving its case beyond a reasonable doubt.

“Child” means any child, whether over or under the age of majority, with respect to whom a support order exists.

"Minor child" means any child, natural or adopted, whether born in or out of wedlock, who is under the age of 18. The term also includes a child who is over the age of 18 but not yet 19, if such child is a student in high school and is likely to graduate.

"Support order" means any judgment, decree or order, whether temporary, final or subject to modification, issued by a court or agency, for the benefit of a child,

spouse, former spouse, or a parent. The order must require Defendant to provide monetary or medical support, health care, arrearages, or reimbursement. The order may be in connection with a proceeding for divorce, judicial or legal separation, separate maintenance, paternity, guardianship, civil protection, or any other matter.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 304 and 1113(c, d, (k**)(**1, 2, 3)).

CRIMINAL NON-SUPPORT OF A MINOR CHILD

In order to find Defendant guilty of Aggravated Criminal Non-Support of a Minor Child, you must find the State has proved the following two (2) elements beyond a reasonable doubt:

(1) Defendant was subject to a support order for the benefit of **[**child**]**; and

(2) Defendant was delinquent in making timely and full payments under the support order for a period of at least 8 consecutive months' duration.

It is not a defense the **[**child/person**]** subject to the benefit of the support order also received support from a source other than Defendant.

[*if applicable****]***

[You may infer the payment records maintained by **(**administrative agency/court**)**, through which the support order was payable, are proof of the support paid or unpaid and the accrued arrearages.**]**

[if applicable:]

In this case, Defendant has asserted the affirmative defense of Full Compliance with a Support Order to the charge of Criminal Non-Support. In order to establish this affirmative defense, Defendant must prove the following element by a preponderance of the evidence:

Defendant fully complied with a support order that was in effect for the benefit of **[**person**]** during the time period of the charged offense charged.

[if applicable:]

In this case, Defendant has asserted the affirmative defense of Inability to Pay or Provide Support to the charge of Criminal Non-Support. In order to establish this affirmative defense, Defendant must prove the following element by a preponderance of the evidence:

Due to circumstances over which Defendant had no control, Defendant was unable to pay or provide support during the time period charged in the offense.

Unemployment or under-employment, with a justifiable excuse, constitutes a defense. A justifiable excuse may be proved if Defendant was involuntarily terminated from Defendant's employment or otherwise had Defendant's income involuntarily reduced, and where Defendant was diligently and in good faith seeking reasonably appropriate employment under all the circumstances or was pursuing self-employment.

Proof by a preponderance of the evidence means proof something is more likely than not. It means certain evidence, when compared to the evidence opposed to it, has the more convincing force and makes you believe something is more likely true than not. Preponderance of the evidence does not depend on the number of witnesses. If the evidence supporting the existence of the defense is evenly balanced,

then Defendant has not proved the existence of the defense by a preponderance of the evidence, and you must find against Defendant on that point. The state has no burden to present any evidence on this matter.

If after considering all of the evidence, you find this affirmative defense is established by a preponderance of the evidence, then you must find Defendant not guilty of Criminal Non-Support. Even if Defendant has not met this burden of proof for this particular affirmative defense, you must find Defendant not guilty of Criminal Non-Support if you find the State has not met its burden of proving its case beyond a reasonable doubt.

“Child” means any child, whether over or under the age of majority, with respect to whom a support order exists.

"Minor child" means any child, natural or adopted, whether born in or out of wedlock, who is under the age of 18. The term also includes a child who is over the age of 18 but not yet 19, if such child is a student in high school and is likely to graduate.

"Support order" means any judgment, decree or order, whether temporary, final or subject to modification, issued by a court or agency, for the benefit of a child, spouse, former spouse, or a parent. The order must require Defendant to provide monetary or medical support, health care, arrearages, or reimbursement. The order

may be in connection with a proceeding for divorce, judicial or legal separation, separate maintenance, paternity, guardianship, civil protection, or any other matter.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 304 and 1113(c, d, (k**)(**1, 2, 3)).

CRIMINAL NON-SUPPORT OF A MINOR CHILD

In order to find Defendant guilty of Aggravated Criminal Non-Support of a Minor Child, you must find the State has proved the following three (3) elements beyond a reasonable doubt:

(1) Defendant was subject to a support order for the benefit of **[**child**]**;

(2) Defendant was delinquent in making timely and full payments under the support order for a period of at least 4 months' duration; and

(3) Defendant's arrearage is $10,000 or more.

It is not a defense the **[**child/person**]** subject to the benefit of the support order also received support from a source other than Defendant.

[*if applicable****]***

[You may infer the payment records maintained by **(**administrative agency/court**)**, through which the support order was payable, are proof of the support paid or unpaid and the accrued arrearages.**]**

[if applicable:]

In this case, Defendant has asserted the affirmative defense of Full Compliance with a Support Order to the charge of Criminal Non-Support. In order to establish this affirmative defense, Defendant must prove the following element by a preponderance of the evidence:

Defendant fully complied with a support order that was in effect for the benefit of **[**person**]** during the time period of the charged offense charged.

[if applicable:]

In this case, Defendant has asserted the affirmative defense of Inability to Pay or Provide Support to the charge of Criminal Non-Support. In order to establish this affirmative defense, Defendant must prove the following element by a preponderance of the evidence:

Due to circumstances over which Defendant had no control, Defendant was unable to pay or provide support during the time period charged in the offense.

Unemployment or under-employment, with a justifiable excuse, constitutes a defense. A justifiable excuse may be proved if Defendant was involuntarily terminated from Defendant's employment or otherwise had Defendant's income involuntarily reduced, and where Defendant was diligently and in good faith seeking reasonably appropriate employment under all the circumstances or was pursuing self-employment.

Proof by a preponderance of the evidence means proof something is more likely than not. It means certain evidence, when compared to the evidence opposed to it, has the more convincing force and makes you believe something is more likely true than not. Preponderance of the evidence does not depend on the number of witnesses. If the evidence supporting the existence of the defense is evenly balanced,

then Defendant has not proved the existence of the defense by a preponderance of the evidence, and you must find against Defendant on that point. The state has no burden to present any evidence on this matter.

If after considering all of the evidence, you find this affirmative defense is established by a preponderance of the evidence, then you must find Defendant not guilty of Criminal Non-Support. Even if Defendant has not met this burden of proof for this particular affirmative defense, you must find Defendant not guilty of Criminal Non-Support if you find the State has not met its burden of proving its case beyond a reasonable doubt.

“Child” means any child, whether over or under the age of majority, with respect to whom a support order exists.

"Minor child" means any child, natural or adopted, whether born in or out of wedlock, who is under the age of 18. The term also includes a child who is over the age of 18 but not yet 19, if such child is a student in high school and is likely to graduate.

"Support order" means any judgment, decree or order, whether temporary, final or subject to modification, issued by a court or agency, for the benefit of a child, spouse, former spouse, or a parent. The order must require Defendant to provide monetary or medical support, health care, arrearages, or reimbursement. The order

may be in connection with a proceeding for divorce, judicial or legal separation, separate maintenance, paternity, guardianship, civil protection, or any other matter.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 304 and 1113(c, d, (k**)(**1, 2, 3)).

BODY-PIERCING, TATTOOING OR BRANDING CONSENT FOR MINORS

In order to find Defendant guilty of Body-Piercing, Tattooing or Branding without Consent of Minor's Parent or Legal Guardian, you must find the State has proved the following three (3) elements beyond a reasonable doubt:

(1) **[**Customer**]** was not yet 18 years of age at the time of the charged offense;

(2) **[**Customer**]**'s **[**parent over the age of 18 years of age/legal guardian**]** did not provide proper written consent to the specific act of **[**tattooing/branding/body-piercing**]**; and

(3) Defendant acted **[**knowingly/negligently**]**.

Consent forms are to be notarized.

This section does not apply to a person who does not regularly tattoo, brand or body pierce customers under the age of 18.

"Knowingly" means Defendant was aware Defendant was tattooing, branding or piercing customer's body.

"Negligently" means Defendant failed to exercise the standard of care a reasonable person would observe in the situation.

"Body-piercing" means the perforation of human tissue excluding the ear for a nonmedical purpose.

"Branding" means a permanent mark made on human tissue by burning with a hot iron or other instrument.

"Minor" means an individual under 18 years of age who is not emancipated.

"Tattoo" means an indelible mark made upon the body of another person by the insertion of a pigment under the skin or an indelible design made upon the body of another person by production of scars other than by branding.

Applicable Code Sections and Case Law:

11 *Del.C.* §§ 231(c, d) and 1114(c, f).

Body-piercing, Tattooing or Branding . . . . . 11.1114(b)

BODY-PIERCING, TATTOOING OR BRANDING

In order to find Defendant guilty of Body-Piercing, Tattooing or Branding, you must find the State has proved the following three (3) elements beyond a reasonable doubt:

(1) Defendant **[**tattooed/branded/body-pierced**] [**customer**]**;

(2) **[**Customer**]** was under the influence of **[**alcoholic beverages, being **(**beer/wine/spirits**)/** controlled substance**]**; and

(3) Defendant acted knowingly.

"Knowingly" means Defendant was aware Defendant was tattooing, branding or piercing customer's body.

"Body-piercing" means the perforation of human tissue excluding the ear for a nonmedical purpose.

"Branding" means a permanent mark made on human tissue by burning with a hot iron or other instrument.

"Controlled substance" means that term as defined in Chapter 47 of Title 16.

"Tattoo" means an indelible mark made upon the body of another person by the insertion of a pigment under the skin or an indelible design made upon the body of another person by production of scars other than by branding.

Applicable Code Sections and Case Law:

11*Del.C.* §§ 231(c) and 1114(f).

Tongue-splitting . . . . . 11.1114A(a)

TONGUE-SPLITTING

In order to find Defendant guilty of Tongue-splitting, you must find the State has proved the following three (3) elements beyond a reasonable doubt:

(1) Defendant performed an act of tongue-splitting on **[**person**]** within the State of Delaware;

(2) Defendant was not a **[**physician/dentist**]** holding a valid license under the laws of the State of Delaware at the time of the charged offense; and

(3) Defendant acted knowingly.

"Knowingly" means Defendant was aware Defendant was splitting another person's tongue.

"Tongue-splitting" means the surgical procedure of cutting a human tongue into 2 or more parts giving it a forked or multi-tipped appearance.

Applicable Code Sections and Case Law:

11 *Del.C.* §§ 231(c) and 1114A(g)

Tongue-splitting . . . . . 11.1114A(b)(1)

TONGUE-SPLITTING

In order to find Defendant guilty of Tongue-splitting, you must find the State has proved the following four (4) elements beyond a reasonable doubt:

(1) Defendant performed an act of tongue-splitting on **[**person**]** within the State of Delaware;

(2) Defendant was a **[**physician/dentist**]** at the time of the charged offense;

(3) **[**Person**]** was under the influence of **[**alcohol/a controlled substance**]**; and

(4) Defendant acted knowingly.

"Knowingly" means Defendant was aware Defendant was splitting another person's tongue.

"Tongue-splitting" means the surgical procedure of cutting a human tongue into 2 or more parts giving it a forked or multi-tipped appearance.

Applicable Code Sections and Case Law:

11 *Del.C.* §§ 231(c) and 1114A(g)

TONGUE-SPLITTING
CONSENT FOR MINORS

In order to find Defendant guilty of Tongue-splitting without consent of Minor's Adult Parent or Legal Guardian, you must find the State has proved the following five (5) elements beyond a reasonable doubt:

(1) Defendant performed an act of tongue-splitting on **[**person**]** another person within the State of Delaware;

(2) Defendant was a **[**physician/dentist**]** at the time of the charged offense;

(3) **[**Person**]** was under the age of 18 at the time of the charged offense;

(4) Defendant did not obtain proper written and notarized consent of **[**person's**] [**adult parent/ legal guardian**]**; and

(5) Defendant acted knowingly.

"Knowingly" means Defendant was aware Defendant was splitting another person's tongue.

"Tongue-splitting" means the surgical procedure of cutting a human tongue into 2 or more parts giving it a forked or multi-tipped appearance.

Applicable Code Sections and Case Law:

11 *Del.C.* §§ 231(c) and 1114A(g)

Sale or Distribution of Tobacco Products to Minors . . . . . 11.1116(a)

SALE OR DISTRIBUTION OF TOBACCO PRODUCTS TO MINORS

In order to find Defendant guilty of Sale or Distribution of Tobacco Products to a Minor, you must find the State has proved the following two (2) elements beyond a reasonable doubt:

(1) Defendant **[({**sold/distributed**}** any tobacco product to **(**person**)**/allowed **(**person**)** to purchase any tobacco product on behalf of **(**recipient**)]**; and

(2) **[**Person/recipient**]** was under the age of 18 at the time of the charged offense.

This section does not apply to the parent or guardian of person who has not yet attained the age of 18.

It shall be an affirmative defense that **[**person/recipient**]** who has not yet attained the age of 18 years presented Defendant with proof of age which set forth information that would lead a reasonable person to believe **[**person/recipient**]** was 18 years of age or older.

Applicable Code Sections and Case Law:

11 *Del.C.* §§ 251(b), 304 and 1122.

Distribution of Samples to Minors . . . . . 11.1118(a)

DISTRIBUTION OF SAMPLES TO MINORS

In order to find Defendant guilty of Distribution of Samples to Minors, you must find the State has proved the following two (2) elements beyond a reasonable doubt:

(1) Defendant distributed tobacco **[**samples/coupons for **(**free/discounted tobacco products**]** to **[**person**]**; and

(2) **[**Person**]** was under the age of 18 at the time of the charged offense.

It shall be an affirmative defense that **[**person/recipient**]** who has not yet attained the age of 18 years presented Defendant with proof of age which set forth information that would lead a reasonable person to believe **[**person/recipient**]** was 18 years of age or older.

Applicable Code Sections and Case Law:

11 *Del.C.* §§ 251(b), 304 and 1122.

DISTRIBUTION OF CIGARETTES THROUGH VENDING MACHINES

In order to find Defendant guilty of Distribution of Cigarettes through Vending Machines, you must find the State has proved the following two (2) elements beyond a reasonable doubt:

(1) Defendant **[**distributed/permitted to be distributed**]** tobacco products through the operation of a vending machine in a public place; and

(2) Defendant acted knowingly.

It is a defense that Defendant **[**distributed/permitted to be distributed**]** tobacco products through a vending machine in a **[**tavern/taproom/tobacco shop/other premises**]** where a person who has not yet attained the age of 18 years is prohibited by law from entering. Any tobacco vending machine must be operated a minimum of 25 feet from any entrance to the premises and must be directly visible to the owner of supervisor of the premises.

It shall be an affirmative defense that **[**person/recipient**]** who has not yet attained the age of 18 years presented Defendant with proof of age which set forth information that would lead a reasonable person to believe **[**person/recipient**]** was 18 years of age or older.

Applicable Code Sections and Case Law:

11 *Del.C.* §§ 251(b), 304 and 1122.

Distribution of Cigarettes through Vending Machines . . . . . 11.1119(c)

DISTRIBUTION OF CIGARETTES THROUGH VENDING MACHINES

In order to find Defendant guilty of Distribution of Cigarettes through Vending Machines, you must find the State has proved the following two (2) elements beyond a reasonable doubt:

(1) Defendant **[**distributed/permitted to be distributed**]** tobacco products through the operation of a vending machine in a public place; and

(2) Defendant acted knowingly.

It shall be an affirmative defense that **[**person/recipient**]** who has not yet attained the age of 18 years presented Defendant with proof of age which set forth information that would lead a reasonable person to believe **[**person/recipient**]** was 18 years of age or older.

Applicable Code Sections and Case Law:

11 *Del.C.* §§ 251(b), 304 and 1122.

Purchase or Receipt of Tobacco Products by Minors . . . . . 11.1124(a)

PURCHASE OR RECEIPT OF TOBACCO PRODUCTS BY MINORS

In order to find Defendant guilty of Purchase or Receipt of Tobacco Products by a Minor, you must find the State has proved the following two (2) elements beyond a reasonable doubt:

(1) Defendant **[**purchased a tobacco product/accepted receipt of a tobacco sample/exchanged a coupon for a tobacco product/**(**presented/offered**)** a purported proof of age which is **(**false/ fraudulent/not actually Defendant's own proof of age**)]** for the purpose of **[**purchasing/ receiving/exchanging a coupon**]** for tobacco products; and

(2) Defendant had not attained the age of 18 years of age.

Applicable Code Sections and Case Law:

11 *Del.C.* § 251(b).

BRIBERY

In order to find Defendant guilty of Bribery, you must find the State has proved the following four (4) elements beyond a reasonable doubt:

(1) Defendant offered, conferred, or agreed to confer a personal benefit upon a person;

(2) The person was a public servant at the time of the charged offense;

(3) Defendant and the person agreed or understood that the person's vote, opinion, judgment, action, decision or exercise of discretion as a public servant would be influenced; and

(4) Defendant acted intentionally or knowingly.

"Intentionally" means it was Defendant's conscious objective or purpose to engage in bribing a public servant.

"Knowingly" means Defendant knew or was aware Defendant was engaging in bribing a public servant.

"Personal benefit" means a personal gain or advantage for the recipient or anything the recipient considers to be a gain or advantage. The term includes a gain or advantage conferred on Defendant's behalf or at Defendant's request upon a third person.

"Public servant" means any officer or employee of the State or any political subdivision of the State. The term includes legislators, judges, jurors, advisors or consultants performing governmental functions, candidates for office or candidates who have been elected but have not yet assumed office. The term does not include witnesses.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 231(b, c), 251(b) and 1209(3, 4).

BRIBERY

In order to find Defendant guilty of Bribery, you must find the State has proved the following three (3) elements beyond a reasonable doubt:

(1) Defendant offered, conferred, or agreed to confer a personal benefit upon a public servant or party officer;

(2) Defendant and the other person agreed or understood that a third person would or might be appointed, designated or nominated as a candidate for public office; and

(3) Defendant acted intentionally or knowingly.

"Intentionally" means it was Defendant's conscious objective or purpose to engage in bribing a public servant or party official.

"Knowingly" means Defendant knew or was aware Defendant was engaging in bribing a public servant or party official.

"Public servant" means any officer or employee of the State or any political subdivision of the State. The term includes legislators, judges, jurors, advisors or consultants performing governmental functions, candidates for office or candidates who have been elected but have not yet assumed office. The term does not include witnesses.

"Party officer" means any person who holds any position or office in a political party, whether by election, appointment or otherwise.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 231(b, c), 251(b) and 1209(2, 4).

BRIBERY

In order to find Defendant guilty of Bribery, you must find the State has proved the following three (3) elements beyond a reasonable doubt:

(1) Defendant offered, conferred, or agreed to confer a personal benefit upon a public servant;

(2) Defendant and the public servant agreed or understood the personal benefit to be conferred for the public servant's violation of the duty as a public servant; and

(3) Defendant acted intentionally or knowingly.

"Intentionally" means it was Defendant's conscious objective or purpose to engage in bribing a public servant.

"Knowingly" means Defendant knew or was aware Defendant was engaging in bribery of a public servant.

"Personal benefit" means a personal gain or advantage for the recipient or anything the recipient considers to be a gain or advantage. The term includes a gain or advantage conferred on the recipient's behalf or at the recipient's request upon a third person.

"Public servant" means any officer or employee of the State or any political subdivision of the State. The term includes legislators, judges, jurors, advisors or consultant performing governmental functions, candidates for office or candidates who have been elected but have not yet assumed office. The term does not include witnesses.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 231(b, c), 251(b) and 1209(3, 4).

BRIBERY [STATUTORY DEFENSE, NON-AFFIRMATIVE]

In this case, Defendant has raised the defense of **[**theft/coercion/attempted theft/attempted coercion**]** to the charge of Bribery.

In order to assert this defense, Defendant must show Defendant **[**offered/conferred/agreed to confer**]** upon **[**person**]**, a **[**public servant/party officer**]**, a benefit that constituted **[**theft/coercion/ attempted theft/attempted coercion**]**.

"Theft" means a person took, exercised control over, or obtained another person's property intending to deprive that person of it, or appropriate it.

"Coercion" means a person compelled or induced Defendant to do something, which Defendant had a legal right not to do; or compelled or induced Defendant to not do something that Defendant had a legal right to do. The person acted by means of instilling in Defendant a fear that, if the demand was not complied with, the person or another would:

(1) Cause physical injury to someone;

(2) Cause damage to property;

(3) Engage in conduct constituting a crime;

(4) Accuse someone of a crime or cause criminal charges to be instituted against someone;

(5) Expose a secret or publicize an asserted fact, whether true or false, tending to subject someone to hatred, contempt or ridicule;

(6) Testify or provide information or withhold testimony or information with respect to another's legal claim or defense;

(7) Use or abuse Defendant's position as a public servant by performing some act within or related to Defendant's official duties, or by failing or refusing to perform an official duty in such a manner as to adversely affect someone; or

(8) Perform any other act which is calculated to harm another person materially with respect to that person's health, safety, business, calling, career, financial condition, reputation or personal relationships.

"Public servant" means any officer or employee of the State or any political subdivision of the State. The term includes legislators, judges, jurors, advisors or consultant performing governmental functions, candidates for office or candidates who have been elected but have not yet assumed office. The term does not include witnesses.

[*Comment: This defense is available only for a prosecution under 11* Del. C. *§ 1201(1)* ***(****influencing vote, etc.****)****.***]***

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 791, 841(a, b), and 1209(4).

RECEIVING A BRIBE

In order to find Defendant guilty of Receiving a Bribe, you must find the State has proved the following four (4) elements beyond a reasonable doubt:

(1) Defendant was a public servant at the time of the charged offense;

(2) Defendant solicited, accepted, or agreed to accept a personal benefit from another person;

(3) Defendant and the person agreed or understood Defendant's vote, opinion, judgment, action, decision, or exercise of discretion as a public servant would be influenced; and

(4) Defendant acted intentionally or knowingly.

"Intentionally" means it was Defendant's conscious objective or purpose to engage in bribery of a public servant.

"Knowingly" means Defendant knew or was aware Defendant was engaging in bribing a public servant.

"Personal benefit" means a personal gain or advantage for the recipient or anything the recipient considers to be a gain or advantage. The term includes a gain or advantage conferred on Defendant's behalf or at Defendant's request upon a third person.

"Public servant" means any officer or employee of the State or any political subdivision of the State. The term includes legislators, judges, jurors, advisors or consultant performing governmental functions, candidates for office or candidates who have been elected but have not yet assumed office. The term does not include witnesses.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 231(b, c), 251(b), and 1209(3, 4).

Receiving a Bribe . . . . . 11.1203(b)

RECEIVING A BRIBE

In order to find Defendant guilty of Receiving a Bribe, you must find the State has proved the following four (4) elements beyond a reasonable doubt:

(1) Defendant was a public servant or party officer at the time of the offense;

(2) Defendant solicited, accepted, or agreed to accept a personal benefit from another person;

(3) Defendant and the person agreed or understood that some person would or might be appointed, designated, or nominated as a candidate for public office; and

(4) Defendant acted intentionally or knowingly.

"Intentionally" means it was Defendant's conscious objective or purpose to engage in receipt of a bribe.

"Knowingly" means Defendant knew or was aware Defendant was engaging in receiving a bribe.

"Personal benefit" means a personal gain or advantage for the recipient or anything the recipient considers to be a gain or advantage. The term includes a

gain or advantage conferred on Defendant's behalf or at Defendant's request upon a third person.

"Public servant" means any officer or employee of the State or any political subdivision of the State. The term includes legislators, judges, jurors, advisors or consultant performing governmental functions, candidates for office or candidates who have been elected but have not yet assumed office. The term does not include witnesses.

"Party officer" means any person who holds any position or office in a political party, whether by election, appointment or otherwise.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 231(b, c), 251(b), and 1209(2, 3, 4).

RECEIVING A BRIBE

In order to find Defendant guilty of Receiving a Bribe, you must find the State has proved the following three (3) elements beyond a reasonable doubt:

(1) Defendant was a public servant at the time of the charged offense;

(2) Defendant solicited, accepted, or agreed to accept a personal benefit from another person for Defendant's violation of Defendant's duty as a public servant; and

(3) Defendant acted intentionally or knowingly.

"Intentionally" means it was Defendant's conscious objective or purpose to engage in receipt of a bribe.

"Knowingly" means Defendant knew or was aware Defendant was engaging in receiving a bribe.

"Personal benefit" means a personal gain or advantage for the recipient or anything the recipient considers to be a gain or advantage. The term includes a gain or advantage conferred on Defendant's behalf or at Defendant's request upon a third person.

"Public servant" means any officer or employee of the State or any political subdivision of the State. The term includes legislators, judges, jurors, advisors or

consultant performing governmental functions, candidates for office or candidates who have been elected but have not yet assumed office. The term does not include witnesses.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 231(b, c), 251(b), and 1209(3, 4).

Theft or Coercion to Receiving Bribe 11.1204

THEFT OR COERCION NO DEFENSE

It is no defense to prosecution for receiving a bribe that the conduct charged to constitute the offense of bribery also constituted theft or coercion.

Applicable Code Sections and Case Law:

GIVING UNLAWFUL GRATUITIES

In order to find Defendant guilty of Giving Unlawful Gratuities, you must find the State has proved the following four (4) elements beyond a reasonable doubt:

(1) Defendant offered, conferred, or agreed to confer a personal benefit upon another person;

(2) The person was a public servant at the time;

(3) The personal benefit offered or conferred was for conduct the public servant was required or authorized to perform, and for which the public servant was not entitled to any special or additional compensation; and

(4) Defendant acted knowingly.

"Knowingly" means Defendant knew or was aware Defendant was engaging in giving unlawful gratuities.

"Personal benefit" means a personal gain or advantage for the recipient or anything the recipient considers to be a gain or advantage. The term includes a gain or advantage conferred on the recipient's behalf or at the recipient's request upon a third person.

"Public servant" means any officer or employee of the State or any political subdivision of the State. The term includes legislators, judges, jurors, advisors or consultant performing governmental functions, candidates for office or candidates who have been elected but have not yet assumed office. The term does not include witnesses.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 231(c) and 1209(3, 4).

RECEIVING UNLAWFUL GRATUITIES

In order to find Defendant guilty of Receiving Unlawful Gratuities, you must find the State has proved the following four (4) elements beyond a reasonable doubt:

(1) Defendant was a public servant at the time of the charged offense;

(2) Defendant solicited, accepted, or agreed to accept a personal benefit for official conduct Defendant was required or authorized to perform;

(3) Defendant was not entitled to any special or additional compensation for the official conduct; and

(4) Defendant acted intentionally or knowingly.

"Intentionally" means it was Defendant's conscious objective or purpose to engage in receipt of unlawful gratuities.

"Knowingly" means Defendant knew or was aware Defendant was engaging in receiving unlawful gratuities.

"Personal benefit" means a personal gain or advantage for the recipient or anything the recipient considers to be a gain or advantage. The term includes a gain or advantage conferred on Defendant's behalf or at Defendant's request upon a third person.

"Public servant" means any officer or employee of the State or any political subdivision of the State. The term includes legislators, judges, jurors, advisors or consultant performing governmental functions, candidates for office or candidates who have been elected but have not yet assumed office. The term does not include witnesses.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 231(b, c), 251(b), and 1209(3, 4).

Through 77 Del. Laws June 30, 2010.

Improper Influence . . . . . 11.1207(1)

IMPROPER INFLUENCE

In order to find Defendant guilty of Improper Influence, you must find the State has proved the following three (3) elements beyond a reasonable doubt:

(1) Defendant threatened unlawful harm to a person;

(2) Defendant meant to influence the person's decision, opinion, recommendation, vote or other exercise of discretion, as a public servant or party officer, or voter; and

(3) Defendant acted intentionally.

"Intentionally" means it was Defendant's conscious objective or purpose to engage in improper influence.

"Harm" means any loss, disadvantage, or injury not sanctioned by law. The term includes any loss, disadvantage, or injury to a third person.

"Public servant" means any officer or employee of the State or any political subdivision of the State. The term includes legislators, judges, jurors, advisors or consultant performing governmental functions, candidates for office or candidates who have been elected but have not yet assumed office. The term does not include witnesses.

"Party officer" means any person who holds any position or office in a political party, whether by election, appointment or otherwise.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 231(b, c) and 1209(1, 2, 4).

IMPROPER INFLUENCE

In order to find Defendant guilty of Improper Influence, you must find the State has proved the following two (2) elements beyond a reasonable doubt:

(1) Defendant threatened unlawful harm to a person;

(2) Defendant meant to influence the person to violate the person's duty as a public servant or party officer; and

(3) Defendant acted intentionally.

"Intentionally" means it was Defendant's conscious objective or purpose to engage in improper influence.

"Harm" means any loss, disadvantage, or injury not sanctioned by law. The term includes any loss, disadvantage, or injury to a third person.

"Public servant" means any officer or employee of the State or any political subdivision of the State. The term includes legislators, judges, jurors, advisors or consultant performing governmental functions, candidates for office or candidates who have been elected but have not yet assumed office. The term does not include witnesses.

"Party officer" means any person who holds any position or office in a political party, whether by election, appointment or otherwise.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 231(b, c) and 1209(1, 2, 4).

Defect in Office No Defense 11.1208

DEFECT IN OFFICE [NO DEFENSE]

It is no defense that **(**person**)** was not qualified to act in the desired way because Defendant had **(**not yet assumed office/lacked jurisdiction/any other reason**)**.

Applicable Code Sections and Case Law:

Harm [Definition] . . . . . 11.1209(1)

HARM [DEFINITION]

"Harm" means loss, disadvantage or injury, or anything so regarded by the person affected. Harm includes loss, disadvantage or injury to any other person in whose welfare the person is interested.

Applicable Code Sections and Case Law:

Party Officer [Definition] . . . . . 11.1209(2)

PARTY OFFICER [DEFINITION]

"Party officer" means a person who holds any position or office in a political party, whether by election, appointment or otherwise.

Applicable Code Sections and Case Law:

Personal Benefit [Definition] . . . . . 11.1209(3)

PERSONAL BENEFIT [DEFINITION]

"Personal benefit" means gain or advantage to the recipient personally or anything regarded by the recipient as a gain or advantage. "Personal benefit" includes any gain or advantage conferred upon another person, in whose welfare the person seeking the benefit is interested. "Personal benefit" does not include any gain or advantage promised generally to a group or class of voters, as a consequence of public measures which a candidate engages to support or oppose.

Applicable Code Sections and Case Law:

Public Servant [Definition] . . . . . 11.1209(4)

PUBLIC SERVANT [DEFINITION]

"Public servant" means any officer or employee of the State or any political subdivision thereof, including legislators and judges, and any person participating as a juror, advisor or consultant in performing a governmental function. The term does not include witnesses. This definition includes persons who are candidates for office or who have been elected to office but who have not yet assumed office.

Applicable Code Sections and Case Law:

OFFICIAL MISCONDUCT

In order to find Defendant guilty of Official Misconduct, you must find the State has proved the following four (4) elements beyond a reasonable doubt:

(1) Defendant was a public servant at the time of the charged offense;

(2) Defendant obtained a personal benefit from, or caused harm to, a person;

(3) Defendant committed an unauthorized exercise of an official function; and

(4) Defendant acted intentionally or knowingly.

"Intentionally" means it was Defendant's conscious objective or purpose to engage in official misconduct.

"Knowingly" means Defendant knew or was aware Defendant was engaging in official misconduct.

"Harm" means loss, disadvantage or injury, or anything so regarded by the person affected. Harm includes loss, disadvantage or injury to any third person in whose welfare the person is interested.

"Personal benefit" means a personal gain or advantage for the recipient or anything the recipient considers to be a gain or advantage. The term includes a

gain or advantage conferred on Defendant's behalf or at Defendant's request upon a third person.

"Public servant" means any officer or employee of the State or any political subdivision of the State. The term includes legislators, judges, jurors, advisors or consultant performing governmental functions, candidates for office or candidates who have been elected but have not yet assumed office. The term does not include witnesses.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 231(b, c) and 1209(1, 2, 4).

OFFICIAL MISCONDUCT

In order to find Defendant guilty of Official Misconduct, you must find the State has proved the following four (4) elements beyond a reasonable doubt:

(1) Defendant was a public servant at the time of the offense;

(2) Defendant obtained personal benefit from, or caused harm to, a person;

(3) Defendant refrained from performing a duty imposed by law, or clearly inherent in the nature of the office; and

(4) Defendant acted intentionally or knowingly.

"Intentionally" means it was Defendant's conscious objective or purpose to engage in official misconduct.

"Knowingly" means Defendant knew or was aware Defendant was engaging in official misconduct.

"Harm" means any loss, disadvantage, or injury not sanctioned by law. The term includes any loss, disadvantage, or injury not sanctioned by law to a third person.

"Personal benefit" means a personal gain or advantage for the recipient or anything the recipient considers to be a gain or advantage. The term includes a

gain or advantage conferred on Defendant's behalf or at Defendant's request upon a third person.

"Public servant" means any officer or employee of the State or any political subdivision of the State. The term includes legislators, judges, jurors, advisors or consultant performing governmental functions, candidates for office or candidates who have been elected but have not yet assumed office. The term does not include witnesses.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 231(b, c) and 1209(1, 2, 4).

OFFICIAL MISCONDUCT

In order to find Defendant guilty of Official Misconduct, you must find the State has proved the following four (4) elements beyond a reasonable doubt:

(1) Defendant was a public servant at the time of the offense;

(2) Defendant obtained personal benefit from, or caused harm to, a person;

(3) Defendant performed an official function in a way intended to benefit Defendant's own property or financial interests, under circumstances in which Defendant's actions were not reasonably justified; and

(4) Defendant acted intentionally.

"Intentionally" means it was Defendant's conscious objective or purpose to engage in official misconduct.

"Harm" means any loss, disadvantage, or injury not sanctioned by law. The term includes any loss, disadvantage, or injury not sanctioned by law to a third person.

"Personal benefit" means a personal gain or advantage for the recipient or anything the recipient considers to be a gain or advantage. The term includes a gain or advantage conferred on Defendant's behalf or at Defendant's request upon a third person.

"Public servant" means any officer or employee of the State or any political subdivision of the State. The term includes legislators, judges, jurors, advisors or consultant performing governmental functions, candidates for office or candidates who have been elected but have not yet assumed office. The term does not include witnesses.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 231(b) and 1209(1, 2, 4).

OFFICIAL MISCONDUCT

In order to find Defendant guilty of Official Misconduct, you must find the State has proved the following three (3) elements beyond a reasonable doubt:

(1) Defendant was a public servant at the time of the offense;

(2) Defendant performed an official function in a way that discriminated on the basis of race, creed, color, sex, age, handicapped status, or national origin; and

(3) Defendant acted intentionally or knowingly.

"Intentionally" means it was Defendant's conscious objective or purpose to engage in official misconduct.

"Knowingly" means Defendant knew or was aware Defendant was engaging in official misconduct.

"Public servant" means any officer or employee of the State or any political subdivision of the State. The term includes legislators, judges, jurors, advisors or consultant performing governmental functions, candidates for office or candidates who have been elected but have not yet assumed office. The term does not include witnesses.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 231(b, c) and 1209(1, 2, 4).

PROFITEERING

In order to find Defendant guilty of Profiteering, you must find the State has proved the following four (4) elements beyond a reasonable doubt:

(1) Defendant was a public servant at the time of the offense;

(2) Defendant acted in **[**contemplation of **(**Defendant's/governmental entity's**)** official action/ reliance on information to which Defendant had access in an official capacity and had not been made public**]**;

(3) Defendant acquired a monetary interest in a **[**property/transaction/enterprise**]**, which **[**was/might be**]** affected by **[**official action/information**]**; and

(4) Defendant acted intentionally or knowingly.

"Intentionally" means it was Defendant's conscious objective or purpose to engage in profiteering.

"Knowingly" means Defendant knew or was aware Defendant was engaging in profiteering.

"Public servant" means any officer or employee of the State or any political subdivision of the State. The term includes legislators, judges, jurors, advisors or consultant performing governmental functions, candidates for office or candidates

who have been elected but have not yet assumed office. The term does not include witnesses.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 231(b, c), 251(b), and 1209(4).

Profiteering . . . . . 11.1212(2)

PROFITEERING

In order to find Defendant guilty of Profiteering, you must find the State has proved the following four (4) elements beyond a reasonable doubt:

(1) Defendant was a public servant at the time of the offense;

(2) Defendant acted in **[**contemplation of **(**Defendant's/governmental entity**)** official action/ reliance on information to which Defendant had access in an official capacity and which had not been made public**]**;

(3) Defendant **[**speculated/wagered**]** on the basis of official **[**action/information**]**; and

(4) Defendant acted intentionally or knowingly.

"Intentionally" means it was Defendant's conscious objective or purpose to engage in profiteering.

"Knowingly" means Defendant knew or was aware Defendant was engaging in profiteering.

"Public servant" means any officer or employee of the State or any political subdivision of the State. The term includes legislators, judges, jurors, advisors or consultant performing governmental functions, candidates for office or candidates

who have been elected but have not yet assumed office. The term does not include witnesses.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 231(b, c), 251(b), and 1209(4).

PROFITEERING

In order to find Defendant guilty of Profiteering, you must find the State has proved the following four (4) elements beyond a reasonable doubt:

(1) Defendant was a public servant at the time of the offense;

(2) Defendant acted in **[**contemplation of **(**Defendant's/governmental entity**)** official action/ reliance on information to which Defendant had access in an official capacity and which had not been made public**]**;

(3) Defendant aided another person to **[**acquire a monetary interest in **(**property/transaction/ enterprise**)/(**wager or speculate**)]** on the basis of official **[**action/information**]** with the intention of gaining a personal benefit; and

(4) Defendant acted intentionally or knowingly.

"Intentionally" means it was Defendant's conscious objective or purpose to engage in profiteering.

"Knowingly" means Defendant knew or was aware Defendant was engaging in profiteering.

"Personal benefit" means a personal gain or advantage for the recipient or anything the recipient considers to be a gain or advantage. The term includes a

gain or advantage conferred on Defendant's behalf or at Defendant's request upon a third person.

"Public servant" means any officer or employee of the State or any political subdivision of the State. The term includes legislators, judges, jurors, advisors or consultant performing governmental functions, candidates for office or candidates who have been elected but have not yet assumed office. The term does not include witnesses.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 231(b, c), 251(b) and 1209(3, 4).

Perjury in the Third Degree 11.1221

PERJURY IN THE THIRD DEGREE

In order to find Defendant guilty of Perjury in the Third Degree, you must find the State has proved the following element beyond a reasonable doubt:

Defendant swore falsely on the occasion of **[**identify circumstances**]**.

Applicable Code Sections and Case Law:

11 *Del.C.* § 251(b).

PERJURY IN THE SECOND DEGREE

In order to find Defendant guilty of Perjury in the Second Degree, you must find the State has proved the following four (4) elements beyond a reasonable doubt:

(1) Defendant swore falsely on the occasion of **[**identify circumstances**]**;

(2) The false statement occurred in a written instrument for which an oath is required by law;

(3) Defendant intended to mislead a public servant in the performance of an official function; and

(4) The false statement was material to the **[**action/proceeding/matter**]** involved.

"Material statement" means a statement of such importance to a particular matter that the statement could affect the matter's course or outcome.

"Oath" is any method authorized by law of swearing a statement is true. The term includes an affirmation. "Oath required by law" means a statute or regulation requires a certain type of statement must be sworn to under oath in order to have legal effect.

"Public servant" means any officer or employee of the State or any political subdivision of the State, including legislators, judges, and any person participating as juror, advisor or consultant performing governmental functions, candidate for office or candidate who have been elected but not yet assumed office. The term does not include witnesses.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 251(b), 1209(4) and 1238(a, b).

PERJURY IN THE FIRST DEGREE

In order to find the defendant guilty of Perjury in the First Degree, you must find the State has proved the following two (2) elements have been established beyond a reasonable doubt:

(1) The defendant swore falsely on the occasion of **[**state circumstances**]**; and

(2) The false statement consisted of testimony material to a**[**n**]** **[**action/proceeding/matter**]** in which it was made.

"Material statement" means a statement of such importance to a particular matter that the statement could affect the matter's course or outcome.

Applicable Code Sections and Case Law:

11 *Del.C.* § 251(b).

Swear Falsely 11.1224

SWEAR FALSELY [DEFINITION]

"Swears falsely" means a person intentionally makes a false statement or affirms the truth of a false statement previously made. The person must know or believe the statement is false, while giving the testimony or under oath in a written instrument or document. A false swearing in a written instrument or document is not complete until the instrument or document is delivered by the person who prepared it, or by someone acting on Defendant's behalf, to another person, with the intent it be accepted as true. A person knowingly swears falsely if the person is aware the statement is false.

Applicable Code Sections and Case Law:

RETRACTION OF FALSE STATEMENT [AFFIRMATIVE DEFENSE]

In this case, Defendant has asserted the affirmative defense of Retraction of a False Statement to the charge of Perjury. In order to establish this affirmative defense, Defendant must prove each of the following three (3) elements by a preponderance of the evidence:

(1) Defendant retracted the false statement in the course of the proceeding in which it was made;

(2) Defendant retracted before the false statement substantially affected the proceeding; and

(3) The retraction occurred before it had become obvious the falsity of the statement was or would have been exposed.

Proof by a preponderance of the evidence means proof something is more likely than not. It means certain evidence, when compared to the evidence opposed to it, has the more convincing force and makes you believe something is more likely true than not. Preponderance of the evidence does not depend on the number of witnesses. If the evidence supporting the existence of the defense is evenly balanced, then Defendant has not proved the existence of the defense by a

preponderance of the evidence, and you must find against Defendant on that point. The state has no burden to present any evidence on this matter.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 302 and 304.

COMPETENCY, MISTAKEN BELIEF, DEFECTIVE SWEARING, OR LACK OF JURISDICTION [NO DEFENSE IN PERJURY PROSECUTION]

It is not a defense to the charge of Perjury that:

(1) Defendant was not competent to make the false statements alleged; or

(2) Defendant mistakenly believed the false statement to be immaterial; or

(3) A document purportedly signed under oath and published or signed by Defendant was not in fact made under oath; or

(4) Court in which the offense allegedly occurred lacked jurisdiction over Defendant or over the subject matter.

Applicable Code Sections and Case Law:

Making a False Written Statement 11.1233

MAKING A FALSE WRITTEN STATEMENT

In order to find Defendant guilty of Making a False Written Statement, you must find the State has proved the following three (3) elements beyond a reasonable doubt:

(1) Defendant made a false statement in a written document;

(2) The written instrument contained a notice, authorized by law, that any false statements made within the instrument would be punishable by law; and

(3) Defendant knew the statement was false or did not believe the statement to be true.

Applicable Code Sections and Case Law:

Through 77 Del. Laws June 30, 2010.

Wearing a Disguise During the Commission of a Felony . . . . . 11.1239(a)

WEARING A DISGUISE DURING THE COMMISSION OF A FELONY

In order to find Defendant guilty of Wearing a Disguise During the Commission of a Felony, you must find the State has proved the following three (3) elements beyond a reasonable doubt:

(1) Defendant committed **[**felony**]**;

(2) Defendant wore a **[**hood/mask/disguise**]** during the commission of **[**felony**]** ; and

(3) Defendant acted **[**intentionally/knowingly**]**.

"Knowingly" means Defendant was aware Defendant was wearing a **[**hood/mask/disguise**]**.

"Intentionally" means it was Defendant's conscious objective or purpose to wear a **[**hood/mask/disguise**]** during the commission of a felony.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 231(b, c) and 251(b).

TERRORISTIC THREATENING OF PUBLIC OFFICIALS

In order to find Defendant guilty of Threats to Public Officials, you must find the State has proved the following four (4) elements beyond a reasonable doubt:

(1) Defendant threatened **[**the life of/serious physical injury to**] [**person**]**;

(2) **[**Person**]** was a **[**public official/public servant**]** at the time of the charged offense;

(3) Threat made **[**during/because of**] [**person's**]** exercise of **[**person's**]** official functions; and

(4) Defendant acted **[**intentionally/knowingly**]**.

"Public official or public servant" includes any elected official, appointed official, officer or employee of the State or any political subdivision thereof, any judge or other judicial officer, any person participating as a juror, or any person acting as an advisor, contractor or consultant in performing a governmental function. "Public official or public servant" shall include persons who are candidates for office or who have been elected to office, but who have not yet assumed office. For the purposes of this section "public official or public servant"

also includes any person who formerly held a position as a public official or public servant.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 251(b) and 1240(b).

REFUSING TO AID A POLICE OFFICER

In order to find Defendant guilty of Refusing to Aid a Police Officer, you must find the State has proved the following three (3) elements beyond a reasonable doubt:

(1) Defendant was commanded by a police officer, to aid the officer in **[**making an arrest of/preventing the commission of any crime by**]** another person;

(2) Defendant unreasonably **[**failed/refused**]** to aid the officer; and

(3) Defendant acted **[**intentionally/knowingly**]**.

"Intentionally" means it was Defendant's conscious objective or purpose to **[**fail/refuse**]** to aid **[**officer**]**

"Knowingly" means Defendant was aware Defendant was **[**failing/refusing**]** to aid **[**officer**]**.

Defendant was "unreasonable" in **[**failing/refusing**]** to aid **[**officer**]** if, under the same circumstances, a reasonable, ordinary person would provide the aid requested.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 231(b, c) and 251(b).

OBSTRUCTING FIRE-FIGHTING OPERATIONS

In order to find Defendant guilty of Obstructing Fire-Fighting Operations, you must find the State has proved the following three (3) elements beyond a reasonable doubt:

(1) Defendant **[**obstructed the efforts of firefighting operations in extinguishing/ **(**prevented/dissuaded**)** another person**]** from **[**extinguishing/helping to extinguish**]** a fire;

(2) Defendant acted intentionally; and

(3) Defendant acted unreasonably.

"Intentionally" means it was Defendant's conscious objective or purpose to **[**obstruct/prevent/dissuade**]** the efforts of firefighting operations in **[**extinguishing/helping to extinguish**]** a fire.

Defendant was "unreasonable" in obstructing the efforts of firefighting operations in extinguishing a fire or **[**preventing/dissuading**]** another person from **[**extinguishing/helping to extinguish**]** a fire if, under the same circumstances, a reasonable, ordinary person would not have done so.

Applicable Code Sections and Case Law:

11 *Del. C.* § 231(b).

Hindering Prosecution . . . . . 11.1244(a)(1)

HINDERING PROSECUTION

In order to find Defendant guilty of Hindering Prosecution, you must find the State has proved the following four (4) elements beyond a reasonable doubt:

(1) Defendant **[**prevented/hindered/delayed**]** the **[**discovery/apprehension/charging with a criminal offense**]** of **[**person**]**;

(2) Defendant knew **[**person**] [**committed acts constituting a crime/was sought by law enforcement officers for the commission of a crime**]**;

(3) Defendant **[**harbored/concealed**] [**person**]**; and

(4) Defendant acted intentionally.

"Intentionally" means it was Defendant's conscious objective or purpose to prevent, hinder or delay the discovery or apprehension of, or the lodging of a criminal charge against **(**person**)**.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 231(b) and 251(b).

Hindering Prosecution . . . . . 11.1244(a)(2)

HINDERING PROSECUTION

In order to find Defendant guilty of Hindering Prosecution, you must find the State has proved the following four (4) elements beyond a reasonable doubt:

(1) Defendant **[**prevented/hindered/delayed**]** the **[**discovery/apprehension/charging with a criminal offense**]** of **[**person**]**;

(2) Defendant knew **[**person**] [**committed acts constituting a crime/was sought by law enforcement officers for the commission of a crime**]**;

(3) Defendant warned **[**person**]** of impending **[**discovery/apprehension**]**; and

(4) Defendant acted intentionally.

"Intentionally" means it was Defendant's conscious objective or purpose to prevent, hinder or delay the discovery or apprehension of, or the lodging of a criminal charge against **(**person**)**.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 231(b) and 251(b).

Hindering Prosecution . . . . . 11.1244(a)(3)

HINDERING PROSECUTION

In order to find Defendant guilty of Hindering Prosecution, you must find the State has proved the following four (4) elements beyond a reasonable doubt:

(1) Defendant **[**prevented/hindered/delayed**]** the **[**discovery/apprehension/charging with a criminal offense**]** of **[**person**]**;

(2) Defendant knew **[**person**] [**committed acts constituting a crime/was sought by law enforcement officers for the commission of a crime**]**;

(3) Defendant provided **[**person**]** with **[**money/transportation/weapon/disguise/other means of avoiding discovery/apprehension**]**; and

(4) Defendant acted intentionally.

"Intentionally" means it was Defendant's conscious objective or purpose to prevent, hinder or delay the discovery or apprehension of, or the lodging of a criminal charge against **(**person**)**.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 231(b) and 251(b).

Hindering Prosecution . . . . . 11.1244(a)(4)

HINDERING PROSECUTION

In order to find Defendant guilty of Hindering Prosecution, you must find the State has proved the following four (4) elements beyond a reasonable doubt:

(1) Defendant **[**prevented/hindered/delayed**]** the **[**discovery/apprehension/charging with a criminal offense**]** of **[**person**]**;

(2) Defendant knew **[**person**] [**committed acts constituting a crime/was sought by law enforcement officers for the commission of a crime**]**;

(3) Defendant **[**prevented/obstructed**]**, by **[**force/violence/intimidation/deception**]**, anyone from performing an act which might aid in the **[**discovery of/apprehension of/charging of a criminal offense against**] [**person**]**; and

(4) Defendant acted intentionally.

"Intentionally" means it was Defendant's conscious objective or purpose to prevent, hinder or delay the discovery or apprehension of, or the lodging of a criminal charge against **(**person**)**.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 231(b) and 251(b).

Through 77 Del. Laws June 30, 2010.

Hindering Prosecution . . . . . 11.1244(a)(5)

HINDERING PROSECUTION

In order to find Defendant guilty of Hindering Prosecution, you must find the State has proved the following four (4) elements beyond a reasonable doubt:

(1) Defendant **[**prevented/hindered/delayed**]** the **[**discovery/apprehension/charging with a criminal offense**]** of **[**person**]**;

(2) Defendant knew **[**person**] [**committed acts constituting a crime/was sought by law enforcement officers for the commission of a crime**]**;

(3) Defendant suppressed, by **[**concealment/alteration/destruction**]**, any physical evidence which might aid in the **[**discovery of/apprehension of/charging of a criminal offense against**] [**person**]**; and

(4) Defendant acted intentionally.

"Intentionally" means it was Defendant's conscious objective or purpose to prevent, hinder or delay the discovery or apprehension of, or the lodging of a criminal charge against **(**person**)**.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 231(b) and 251(b).

Hindering Prosecution . . . . . 11.1244(a)(6)

HINDERING PROSECUTION

In order to find Defendant guilty of Hindering Prosecution, you must find the State has proved the following four (4) elements beyond a reasonable doubt:

(1) Defendant **[**prevented/hindered/delayed**]** the **[**discovery/apprehension/charging with a criminal offense**]** of **[**person**]**;

(2) Defendant knew **[**person**] [**committed acts constituting a crime/was sought by law enforcement officers for the commission of a crime**]**;

(3) Defendant aided **[**person**]** to **[**protect/profit quickly from**]** a benefit gained from the crime; and

(4) Defendant acted intentionally.

"Intentionally" means it was Defendant's conscious objective or purpose to prevent, hinder or delay the discovery or apprehension of, or the lodging of a criminal charge against **(**person**)**.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 231(b) and 251(b).

Falsely Reporting an Incident . . . . . 11.1245(1)

FALSELY REPORTING AN INCIDENT

In order to find Defendant guilty of Falsely Reporting an Incident, you must find the State has proved the following three (3) elements beyond a reasonable doubt:

(1) Defendant **[**initiated/circulated**]** a false **[**report/warning/impending occurrence**]** of **[**fire/explosions/crime/catastrophe/emergency**]**;

(2) The **[**report/warning**]** would likely cause **[**public **(**alarm/inconvenience**)**/the calling of **(**fire-fighting equipment/ambulance/rescue vehicle**)]**; and

(3) Defendant acted knowingly.

"Knowingly" means Defendant knew or was aware the information **[**reported/conveyed/ circulated**]** was **[**false/baseless**]**.

Applicable Code Sections and Case Law:

11 *Del.C.* § 231(c).

Falsely Reporting an Incident . . . . . 11.1245(2)

FALSELY REPORTING AN INCIDENT

In order to find Defendant guilty of Falsely Reporting an Incident, you must find the State has proved the following four (4) elements beyond a reasonable doubt:

(1) Defendant reported by **[**word/action**]** an **[**alleged/impending**]** occurrence of a **[**fire/ explosion/other **(**catastrophe/emergency**)]**;

(2) Report was made to **[**agency/organization**]**, a**[**n**]** **[**official/quasi-official**]** **[**agency/ organization**]** having the function of dealing with emergencies involving danger to life or property;

(3) The reported occurrence did not in fact **[**occur/exist**]**; and

(4) Defendant acted knowingly.

"Knowingly" means Defendant knew or was aware the occurrence reported did not **[**exist/ occur**]**.

Applicable Code Sections and Case Law:

11 *Del.C.* § 231(c).

Falsely Reporting an Incident . . . . . 11.1245(3)a

FALSELY REPORTING AN INCIDENT

In order to find Defendant guilty of Falsely Reporting an Incident, you must find the State has proved the following three (3) elements beyond a reasonable doubt:

(1) Defendant reported an alleged occurrence of an **[**offense/incident**]** to a law-enforcement agency;

(2) The **[**offense/incident**]** did not occur; and

(3) Defendant acted knowingly.

"Knowingly" means Defendant knew or was aware the **[**offense/incident**]** reported did not occur.

Applicable Code Sections and Case Law:

11 *Del.C.* § 231(c).

Falsely Reporting an Incident . . . . . 11.1245(3)b

FALSELY REPORTING AN INCIDENT

In order to find Defendant guilty of Falsely Reporting an Incident, you must find the State has proved the following three (3) elements beyond a reasonable doubt:

(1) Defendant reported an alleged impending occurrence of an **[**offense/incident**]** to a law-enforcement agency;

(2) The **[**offense/incident**]** was not about to occur; and

(3) Defendant acted knowingly.

"Knowingly" means Defendant knew or was aware the **[**offense/incident**]** reported did not occur.

Applicable Code Sections and Case Law:

11 *Del.C.* § 231(c).

Falsely Reporting an Incident . . . . . 11.1245(3)c

FALSELY REPORTING AN INCIDENT

In order to find Defendant guilty of Falsely Reporting an Incident, you must find the State has proved the following three (3) elements beyond a reasonable doubt:

(1) Defendant reported false information to a law-enforcement agency;

(2) The reported information concerned an actual **[**offense/incident**]**; and

(3) Defendant acted knowingly.

"Knowingly" means Defendant knew or was aware the reported information was false.

Applicable Code Sections and Case Law:

11 *Del.C.* § 231(c).

Falsely Reporting an Incident . . . . . 11.1245(3)d

FALSELY REPORTING AN INCIDENT

In order to find Defendant guilty of Falsely Reporting an Incident, you must find the State has proved the following four (4) elements beyond a reasonable doubt:

(1) Defendant reported an alleged abduction of a child to a law-enforcement agency;

(2) The report of the alleged abduction generated activation of state-wide and interstate alert response and law enforcement broadcast;

(3) The alleged abduction did not occur; and

(4) Defendant acted knowingly.

"Knowingly" means Defendant knew or was aware the reported alleged abduction did not occur.

Applicable Code Sections and Case Law:

11 *Del.C.* § 231(c).

Falsely Reporting an Incident . . . . . 11.1245(4)

FALSELY REPORTING AN INCIDENT

In order to find Defendant guilty of Falsely Reporting an Incident, you must find the State has proved the following two (2) elements beyond a reasonable doubt:

(1) Defendant **[**called/summoned**]** by **[**telephone/fire alarm system/other means**]** any **[**fire-fighting equipment/ambulance/rescue truck**]** without just cause; and

(2) Defendant acted knowingly.

"Knowingly" means Defendant knew or was aware the request was without just cause.

Applicable Code Sections and Case Law:

11 *Del.C.* § 231(c).

Compounding a Crime . . . . . 11.1246(1)

COMPOUNDING A CRIME

In order to find Defendant guilty of Compounding a Crime, you must find the State has proved the following two (2) elements beyond a reasonable doubt:

(1) Defendant **[**solicited/accepted/agreed to accept**]** a benefit from **[**person**]**; and

(2) Defendant **[**solicited/accepted/agreed to accept**]** the benefit by **[**representing/pretending/ promising to exert pretended influence**]** to **[**person**]** criminal prosecution would be **[(**dropped/withheld/abandoned**)/**the sentence for a charged crime would be reduced**]**.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 231 and 251(b).

Compounding a Crime . . . . . 11.1246(2)

COMPOUNDING A CRIME

In order to find Defendant guilty of Compounding a Crime, you must find the State proved the following two (2) elements beyond a reasonable doubt:

(1) Defendant offered, conferred, or agreed to confer a benefit upon another person; and

(2) Defendant and the person agreed or understood that the person would refrain from initiating prosecution of a crime.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 231 and 251(b).

COMPOUNDING A CRIME
[AFFIRMATIVE DEFENSE]

In this case, Defendant has asserted the affirmative defense of **[**Restitution/Indemnification**]** to the charge of Compounding a Crime. In order to establish this affirmative defense, Defendant must prove the following element by a preponderance of the evidence:

The benefit did not exceed the amount Defendant believed to be due as **[**restitution/ indemnification**]** for the harm caused by the crime.

Proof by a preponderance of the evidence means proof something is more likely than not. It means certain evidence, when compared to the evidence opposed to it, has the more convincing force and makes you believe something is more likely true than not. Preponderance of the evidence does not depend on the number of witnesses. If the evidence supporting the existence of the defense is evenly balanced, then Defendant has not proved the existence of the defense by a preponderance of the evidence, and you must find against Defendant on that point. The state has no burden to present any evidence on this matter.

Applicable Code Sections and Case Law:

11 *Del.C.* § 304.

Obstructing the Control and Suppression of Rabies . . . . . 11.1248(a)

OBSTRUCTING THE CONTROL AND SUPPRESSION OF RABIES

In order to find Defendant guilty of Obstructing the Control and Suppression of Rabies, you must find the State has proved the following two (2) elements beyond a reasonable doubt:

(1) Defendant **[**violated/**(**prevented/dissuaded**)** another person from complying with**]** any lawful order; and

(2) The orders were from authorized state employees, or their agents, in the enforcement of laws to control and suppress rabies.

Applicable Code Sections and Case Law:

11 *Del.C.* § 251(b).

Abetting the Violation of Driver's License Restrictions . . . . . 11.1249(a)

ABETTING THE VIOLATION OF DRIVER"S LICENSE RESTRICTIONS

In order to find Defendant guilty of Abetting the Violation of Driver's License Restrictions, you must find the State has proved the following two (2) elements beyond a reasonable doubt:

(1) Defendant **[**blew into an ignition interlock device/started a motor vehicle equipped with an ignition interlock device**]**; and

(2) Defendant acted to provide an operating vehicle to person whose driving record was restricted at the time of the offense.

Applicable Code Sections and Case Law:

Abetting the Violation of Driver's License Restrictions . . . . . 11.1249(a)

ABETTING THE VIOLATION OF DRIVER"S LICENSE RESTRICTIONS

In order to find Defendant guilty of Abetting the Violation of Driver's License Restrictions, you must find the State has proved the following two (2) elements beyond a reasonable doubt:

(1) Defendant **[**requested/solicited**]** any other person to **[**blow into an ignition interlock device/start a motor vehicle equipped with an ignition interlock device**]**; and

(2) The purpose of starting the vehicle was to provide **[**Defendant/another person**]**, whose driving privileges were restricted, with an operable motor vehicle.

Applicable Code Sections and Case Law:

Abetting the Violation of Driver's License Restrictions . . . . . 11.1249(a)

ABETTING THE VIOLATION OF DRIVER'S LICENSE RESTRICTIONS

In order to find Defendant guilty of Abetting the Violation of Driver's License Restrictions, you must find the State has proved beyond a reasonable doub thatt:

Defendant unlawfully **[**tampered with/circumvented**]** the operation of any ignition device.

"Unlawfully" means contrary to law or not permitted by law.

Applicable Code Sections and Case Law:

11 *Del.C.* § 222(28).

OFFENSES AGAINST LAW-ENFORCEMENT ANIMALS
IN THE SECOND DEGREE
HARASSMENT OF LAW-ENFORCEMENT ANIMALS

In order to find Defendant guilty of Harassment of Law-Enforcement Animals, you must find the State has proved the following three (3) elements beyond a reasonable doubt:

(1) Defendant **[**harassed/taunted/menaced/challenged/alarmed**]** a law-enforcement animal in such a manner likely to provoke from the animal a **[**violent/defensive/threatening**]** response;

(2) the animal's response caused **[**alarm/distress/fear/risk of physical injury**]** to **[**any person/law-enforcement animal**]**; and

(3) Defendant acted intentionally.

"Physical injury" means any impairment of physical condition or substantial pain.

"Intentionally" means it was Defendant's conscious objective or purpose to create a substantial risk of physical injury or death to **[**animal**]**.

"Law-enforcement animal" means any animal utilized by any **[**law-enforcement officer/correction officer**]** in the performance of law enforcement duties.

[Comment: The law-enforcement animal's violent, defensive, or threatening response can include lunging, baring of teeth, kicking, spinning or jumping.]

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 222(24), 231(b) and 1250(d).

ASSAULT AGAINST LAW-ENFORCEMENT ANIMALS IN THE SECOND DEGREE

In order to find Defendant guilty of Assault Against Law-Enforcement Animals in the Second Degree, you must find the State has proved the following two (2) elements beyond a reasonable doubt:

(1) Defendant engaged in conduct that created a substantial risk of **[**physical injury/death**]** to a law-enforcement animal; and

(2) Defendant acted **[**intentionally/recklessly**]**.

"Physical injury" means any impairment of physical condition or substantial pain, including, but not limited to, beating, poisoning or torturing of a law-enforcement animal.

"Intentionally" means it was Defendant's conscious objective or purpose to create a substantial risk of physical injury or death to the animal.

"Recklessly" means Defendant was aware of and consciously disregarded a substantial and unjustifiable risk physical injury would be caused to the animal. The State must demonstrate the risk was of such a nature and degree Defendant's disregard of the risk was a gross deviation from the standard of conduct a reasonable person would observe under the same circumstances.

"Law-enforcement animal" means any animal utilized by any **[**law-enforcement officer/correction officer**]** in the performance of the officer's duties.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 222(24), 231(b, e**)** and 1250(d).

ASSAULT AGAINST LAW-ENFORCEMENT ANIMALS IN THE FIRST DEGREE

In order to find Defendant guilty of Assault Against Law-Enforcement Animals in the First Degree, you must find the State has proved the following two (2) elements beyond a reasonable doubt:

(1) Defendant caused **[**serious physical injury to/the death of**]** a **[**law-enforcement animal**]**; and

(2) Defendant acted **[**intentionally/recklessly**]**.

"Serious physical injury" means any physical injury which creates a substantial risk of death, or which causes serious and prolonged disfigurement, prolonged impairment of health, or prolonged loss or impairment of the function of any bodily organ.

"Intentionally" means it was Defendant's conscious objective or purpose to create a substantial risk of serious physical injury or death to the animal.

"Recklessly" means Defendant was aware of and consciously disregarded a substantial and unjustifiable risk serious physical injury would be caused to the animal. The State must demonstrate the risk was of such a nature and degree

Defendant's disregard of it was a gross deviation from the standard of conduct a reasonable person would observe under the same circumstances.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 222(24) and 231(b, e**)**, 1250(d).

Escape in the Third Degree 11.1251

ESCAPE IN THE THIRD DEGREE

In order to find Defendant guilty of Escape in the Third Degree, you must find the State has proved the following two (2) elements beyond a reasonable doubt:

(1) Defendant escaped from **[**identify place**]** where Defendant was **[**held/detained**]**; and

(2) Defendant knew Defendant's departure was not permitted.

"Escape" means Defendant departed from custody knowing Defendant was not free to leave.

"Custody" means any restraint pursuant to arrest, detention or court order.

[Comment: Custody includes placement in nonsecure facilities by the Division of Youth Rehabilitative Serves.]

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 1209(4) and 1258(2, 4).

Escape in the Second Degree 11.1252

ESCAPE IN THE SECOND DEGREE

In order to find Defendant guilty of Escape in the Second Degree, you must find the State has proved the following two (2) elements beyond a reasonable doubt:

(1) Defendant escaped from a detention facility, where Defendant was **[**held/detained**]** by the **[**Department of Health and Social Services/Department of Correction**]**; and

(2) Defendant knew Defendant's departure was not permitted.

"Escape" means Defendant departed from custody knowing Defendant was not free to leave.

"Custody" means any restraint pursuant to arrest, detention or court order.

"Detention facility" means any place used for the confinement of a person **[**charged with an offense/charged with being a delinquent child/held for extradition or as a material witness/otherwise confined pursuant to an order of the court**]**.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 1209(4) and 1258(2, 3, 4).

ESCAPE AFTER CONVICTION

In order to find Defendant guilty of Escape after Conviction, you must find the State has proved the following **[**three/four **[**(3)/(4)**]** elements beyond a reasonable doubt:

(1) Defendant **[**pled guilty to/was convicted of**]** a crime in a court of law;

(2) Defendant escaped from **[**identify place**]**, where Defendant was **[**held/detained**]** by the **[**Department of Health and Social Services/Department of Correction**]**; and

(3) Defendant knew Defendant's departure was not permitted;

if applicable **[**and

(4) Defendant **({**used force against another person/threatened force against another person/ possessed a deadly weapon**}** at the time of the escape/injured another person **{**during the escape/from the time of the escape until Defendant was again placed in custody**})**.**]**

"Deadly weapon" includes: firearm, bomb, knife of any sort **(**other than an ordinary pocket knife carried in a closed position**)**, switchblade knife, billy, blackjack, bludgeon, metal knuckles, slingshot, razor, bicycle chain, ice pick or any

dangerous instrument which a person used, or tried to use, to cause death or serious physical injury. For the purpose of this definition, an ordinary pocket knife is a folding knife with a blade no longer than 3 inches.

“Escape” means Defendant departed from custody knowing Defendant was not free to leave.

"Custody" means any restraint pursuant to arrest, detention or court order.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 222(5), 1209(4), and 1258(2, 4).

*Assault in a Detention Facility **[**Physical Injury**]*** . . . . . 11.1254(a)

ASSAULT IN A DETENTION FACILITY [PHYSICAL INJURY]

In order to find Defendant guilty of Assault in a Detention Facility **(**with physical injury**)**, you must find the State has proved the following three (3) elements beyond a reasonable doubt:

(1) Defendant was confined to a detention facility at the time of the charged offense;

(2) Defendant caused physical injury to **[**a correctional officer/a state employee of a detention facility acting in the lawful performance of duties/any person **(**at/confined in**)** a **(**detention facility/place having custody of such person**)]**; and

(3) Defendant acted intentionally.

"Physical injury" means any impairment of physical condition or substantial pain.

“Intentionally” means it was Defendant’s conscious objective or purpose to cause physical injury.

"Detention facility" means any place used for the confinement of a person who has been **[**charged with or convicted of an offense/charged with being a

delinquent child/held for extradition/held as a material witness/confined pursuant to a court order**]**.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 222(24), 231(b), and 1258(3).

ASSAULT IN A DETENTION FACILITY [SERIOUS PHYSICAL INJURY]

In order to find Defendant guilty of Assault in a Detention Facility **(**with serious physical injury**)**, you must find the State has proved the following three (3) elements beyond a reasonable doubt:

(1) Defendant was confined to a detention facility at the time of the charged offense;

(2) Defendant caused serious physical injury to **[**a correctional officer/a state employee of a detention facility acting in the lawful performance of duties/any person **(**at/confined in**)** a **(**detention facility/place having custody of the person**)]**; and

(3) Defendant acted intentionally.

"Serious physical injury" means physical injury which creates a substantial risk of death, or which causes serious and prolonged disfigurement, prolonged impairment of health, or prolonged loss or impairment of the function of any bodily organ or which causes the unlawful termination of a pregnancy without he consent of the pregnant female.

“Intentionally” means it was Defendant’s conscious objective or purpose to cause physical injury.

"Detention facility" means any place used for the confinement of a person who has been **[**charged with or convicted of an offense/charged with being a delinquent child/held for extradition/ held as a material witness/confined pursuant to a court order**]**.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 222(25), 231(b), and 1258(4).

ASSAULT IN A DETENTION FACILITY [STRIKING WITH BODILY FLUIDS]

In order to find Defendant guilty of Assault in a Detention Facility **[**striking with bodily fluids**]**, you must find the State has proved the following three (3) elements beyond a reasonable doubt:

(1) Defendant was confined to a detention facility at the time of the offense;

(2) Defendant struck a **[**correctional officer/state employee of a detention facility acting in the lawful performance of duties/another person at a **(**detention facility/other place of having custody of such person**)** with **[**bodily fluid**]**; and

(3) Defendant acted intentionally.

"Intentionally" means it was Defendant's conscious objective or purpose to strike the person with a bodily fluid.

"Detention facility" means any place used for the confinement of a person who has been **[**charged with or convicted of an offense/charged with being a delinquent child/held for extradition/ held as a material witness/confined pursuant to a court order**]**.

[Comment: "Bodily fluid" includes urine and feces.]

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 231(c**)** and 1258(d).

PROMOTING PRISON CONTRABAND

In order to find Defendant guilty of Promoting Prison Contraband, you must find the State has proved the following two (2) elements beyond a reasonable doubt:

(1) Defendant introduced contraband into a detention facility; and

(2) Defendant acted knowingly and unlawfully.

"Unlawfully" means contrary to law or not permitted by law.

"Knowingly" means Defendant knew or was aware Defendant was **[**introducing contraband into a detention facility/**(**made/obtained/possessed**)** contraband in a detention facility**]**.

"Contraband" means any intoxicating liquor or prohibited drug, except as prescribed by a physician for medical treatment, any money without the knowledge or consent of the Department of Correction, any deadly weapon or part thereof or any instrument or article which may be used to escape.

"Detention facility" means any place used for the confinement of a person who has been **[**charged with or convicted of an offense/charged with being a delinquent child/held for extradition/held as a material witness/confined pursuant to a court order**]**.

Defendant "possessed" the contraband if it was consciously within Defendant's dominion or control.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 222(28**)**, 231(c**)**, 1258(1, 3); *McNulty v. State*, 655 A.2d 1214, 1217 (Del. 1995) (holding that where the State chooses to pursue a theory of constructive possession, it must produce evidence of a defendant's "dominion and control" over the substance**)**.

PROMOTING PRISON CONTRABAND

In order to find Defendant guilty of Promoting Prison Contraband, you must find the State has proved the following two (2) elements beyond a reasonable doubt:

(1) Defendant possessed with intent to deliver any contraband to any person confined within a detention facility; and

(2) Defendant acted knowingly and unlawfully.

"Unlawfully" means contrary to law or not permitted by law.

"Knowingly" means Defendant knew or was aware Defendant was **[**introducing contraband into a detention facility/**(**made/obtained/possessed**)** contraband in a detention facility**]**.

"Contraband" means any intoxicating liquor or prohibited drug, except as prescribed by a physician for medical treatment, any money without the knowledge or consent of the Department of Correction, any deadly weapon or part thereof or any instrument or article which may be used to escape.

"Detention facility" means any place used for the confinement of a person who has been **[**charged with or convicted of an offense/charged with being a

delinquent child/held for extradition/held as a material witness/confined pursuant to a court order**]**.

Defendant "possessed" the contraband if it was consciously within Defendant's dominion or control.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 222(28**)**, 231(c**)**, 1258(1, 3); *McNulty v. State*, 655 A.2d 1214, 1217 (Del. 1995) (holding that where the State chooses to pursue a theory of constructive possession, it must produce evidence of a defendant's "dominion and control" over the substance**)**.

PROMOTING PRISON CONTRABAND

In order to find Defendant guilty of Promoting Prison Contraband, you must find the State has proved the following three (3) elements beyond a reasonable doubt:

(1) Defendant **[**made/obtained/possessed**]** contraband;

(2) Defendant was confined in a detention facility at the time of the charged offense; and

(2) Defendant acted knowingly and unlawfully.

"Unlawfully" means contrary to law or not permitted by law.

"Knowingly" means Defendant knew or was aware Defendant was **[**introducing contraband into a detention facility/**(**made/obtained/possessed**)** contraband in a detention facility**]**.

"Contraband" means any intoxicating liquor or prohibited drug, except as prescribed by a physician for medical treatment, any money without the knowledge or consent of the Department of Correction, any deadly weapon or part thereof or any instrument or article which may be used to escape.

"Detention facility" means any place used for the confinement of a person who has been **[**charged with or convicted of an offense/charged with being a

delinquent child/held for extradition/held as a material witness/confined pursuant to a court order**]**.

Defendant "possessed" the contraband if it was consciously within Defendant's dominion or control.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 222(28**)**, 231(c**)**, 1258(1, 3); *McNulty v. State*, 655 A.2d 1214, 1217 (Del. 1995) (holding that where the State chooses to pursue a theory of constructive possession, it must produce evidence of a defendant's "dominion and control" over the substance**)**.

Resisting Arrest with Force or Violence . . . . . 11.1257(a)(1)

RESISTING ARREST WITH FORCE OR VIOLENCE

In order to find Defendant guilty of Resisting Arrest, you must find the State has proved the following three (3) elements beyond a reasonable doubt:

(1) Defendant **[**prevented/attempted to prevent**] [**officer**]**, a peace officer, from **[**arresting/ detaining**] [**Defendant/another person**]**

(2) Defendant used force or violence; and

(3) Defendant acted intentionally.

"Intentionally" means it was Defendant's conscious objective or purpose to prevent, attempt to prevent, or flee from arrest.

"Arrest" means taking a person into custody.

"Detain" means the stopping of any person, by a peace officer, abroad or in a public place.

The Committee notes the definitions of "arrest" and "detention" in this Instruction (cited in 11. Del. C. §§ 1901(a) and 1902(a)) are referenced in the Commentary to the Delaware Criminal Code.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 231(b), 1901(a), 1902(a); Delaware Criminal Code *Commentary* (1973), at 182.

Resisting Arrest . . . . . 11.1257(a)(2)

RESISTING ARREST WITH FORCE OR VIOLENCE

In order to find Defendant guilty of Resisting Arrest, you must find the State has proved the following three (3) elements beyond a reasonable doubt:

(1) Defendant fled from a peace officer, who was attempting to arrest Defendant;

(2) Defendant used force or violence towards the officer; and

(3) Defendant acted intentionally.

"Intentionally" means it was Defendant's conscious objective or purpose to prevent or attempt to prevent arrest.

"Arrest" means taking a person into custody.

"Detain" means the stopping of any person, by a peace officer, abroad or in a public place.

The Committee notes the definitions of "arrest" and "detention" in this Instruction (cited in 11. Del. C. §§ 1901(a) and 1902(a)) are referenced in the Commentary to the Delaware Criminal Code.

The Committee notes "fleeing" from "detention" may not be an act prohibited by 11 Del.C. § 1257.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 231(b), 1901(a), 1902(a); Delaware Criminal Code *Commentary* (1973), at 182.

Resisting Arrest . . . . . 11.1257(a)(3)

RESISTING ARREST WITH FORCE OR VIOLENCE

In order to find Defendant guilty of Resisting Arrest, you must find the State has proved the following three (3) elements beyond a reasonable doubt:

(1) Defendant struggled with a peace officer, who was attempting to arrest Defendant;

(2) the officer was injured; and

(3) Defendant acted intentionally.

"Intentionally" means it was Defendant's conscious objective or purpose to flee from arrest.

"Arrest" means taking a person into custody.

"Detain" means the stopping of any person, by a peace officer, abroad or in a public place.

The Committee notes the definitions of "arrest" and "detention" in this Instruction (cited in 11. Del. C. §§ 1901(a) and 1902(a)) are referenced in the Commentary to the Delaware Criminal Code.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 231(b), 1901(a), 1902(a); Delaware Criminal Code *Commentary* (1973), at 182.

Resisting Arrest with Force or Violence . . . . . 11.1257(b)

RESISTING ARREST WITH FORCE OR VIOLENCE

In order to find Defendant guilty of Resisting Arrest with Force or Violence, you must find the State has proved the following two (2) elements beyond a reasonable doubt:

(1) Defendant **[(**prevented/attempted to prevent**)** a peace officer from effecting **(**an arrest/detention**)** of Defendant/fled from a peace officer who is effecting an arrest**]**; and

(2) Defendant acted intentionally.

"Intentionally" means it was Defendant's conscious objective or purpose to prevent, attempt to prevent, or flee from the officer effecting an arrest.

Applicable Code Sections and Case Law:

11 *Del.C.* § 231(b).

Use of an Animal to Avoid Capture . . . . . 11.1257A(a)

USE OF AN ANIMAL TO AVOID CAPTURE

In order to find Defendant guilty of Use of an Animal to Avoid Capture, you must find the State has proved the following three (3) elements beyond a reasonable doubt:

(1) Defendant released any animal against a**[**n**]** **[**law-enforcement officer/person authorized to make arrests under Delaware law**]**;

(2) Defendant attempted to **[**prevent/hinder/delay**]** the apprehension of **[**Defendant/any wanted person**]**; and

(3) Defendant acted intentionally.

"Intentionally" means Defendant was aware Defendant was releasing the animal to **[**prevent/ hinder/delay**]** the capture of any wanted person, including Defendant.

Applicable Code Sections and Case Law:

11 *Del.C.* § 231(b).

Use of an Animal to Avoid Capture . . . . . 11.1257A(b)(1)

USE OF AN ANIMAL TO AVOID CAPTURE

In order to find Defendant guilty of Use of an Animal to Avoid Capture, you must find the State has proved the following four (4) elements beyond a reasonable doubt:

(1) Defendant released any animal against a **[**law-enforcement officer/person authorized to make arrests under Delaware law**]**;

(2) Defendant attempted to **[(**prevent/hinder/delay**)** the **(**discover/apprehension**)**/lodging of criminal charge against**] [**Defendant/any wanted person**]**;

(3) Defendant knew **[**Defendant/any wanted person**] [**committed a felony/was being sought for commission of a felony by law enforcement officers**]**; and

(4) Defendant acted intentionally.

"Intentionally" means Defendant was aware Defendant was releasing the animal to **[**prevent/ hinder/delay**]** the capture of any wanted person, including Defendant.

Applicable Code Sections and Case Law:

11 *Del.C.* § 231(b).

Use of an Animal to Avoid Capture . . . . . 11.1257A(b)(2)

USE OF AN ANIMAL TO AVOID CAPTURE

In order to find Defendant guilty of Use of an Animal to Avoid Capture, you must find the State has proved the following three (3) elements beyond a reasonable doubt:

(1) Defendant released any animal against a **[**law-enforcement officer/person authorized to make arrests under Delaware law**]**;

(2) Defendant attempted to **[(**prevent/hinder/delay**)** the **(**discover/apprehension**)**/lodging of criminal charge against**] [**Defendant/any wanted person**]**;

(3) The animal injured a law-enforcement officer; and

(4) Defendant acted intentionally.

"Intentionally" means Defendant was aware Defendant was releasing the animal to prevent, hinder, or delay the capture of any wanted person, including Defendant.

Applicable Code Sections and Case Law:

11 *Del.C.* § 231(b).

SEXUAL RELATIONS IN A DETENTION FACILITY

In order to find Defendant guilty of Sexual Relations in a Detention Facility, you must find the State has proved the following three (3) elements beyond a reasonable doubt:

(1) Defendant was **[**an employee working/contractor/employee of a contractor/volunteer**]** at a detention facility at the time of the offense;

(2) Defendant engaged in consensual sexual intercourse with a person in custody on the premises of the detention facility; and

(3) Defendant acted intentionally or knowingly**.**

"Intentionally" means it was Defendant's conscious objective or purpose to have sexual intercourse on the premises of a detention facility.

"Knowingly" means Defendant knew or was aware Defendant was having sexual intercourse on the premises of a detention facility.

"Custody" means any restraint pursuant to arrest, detention or court order.

"Detention facility" means any place used for the confinement of a person who has been **[**charged with or convicted of an offense/charged with being a delinquent child/held for extradition/held as a material witness/confined pursuant to a court order**]**.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 231(b, c), 251(b) and 1258(2, 3).

MISUSE OF PRISONER MAIL

In order to find Defendant guilty of Misuse of Prisoner Mail, you must find the State has proved the following three (3) elements beyond a reasonable doubt:

(1) Defendant was in custody at **[**a State detention facility/the Department of Health and Social Services/the Department of Correction**]** at the time of the charged offense;

(2) Defendant intentionally communicated by mail with a person not in custody; and

(3) Defendant knew the communication was likely to cause inconvenience, annoyance or alarm.

"Intentionally" means it was Defendant's conscious objective or purpose to misuse prisoner mail.

"Knowingly" means Defendant knew or was aware Defendant was misusing prisoner mail.

"Custody" means any restraint pursuant to arrest, detention or court order.

"Detention facility" means any place used for the confinement of a person who has been **[**charged with or convicted of an offense/charged with being a

delinquent child/held for extradition/held as a material witness/confined pursuant to a court order**]**.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 231(b, c), 251(b) and 1258(2, 3).

MISUSE OF PRISONER MAIL

In order to find Defendant guilty of Misuse of Prisoner Mail, you must find the State has proved the following four (4) elements beyond a reasonable doubt:

(1) Defendant was in custody at **[**a State detention facility/the Department of Health and Social Services/the Department of Correction**]** at the time of the charged offense;

(2) Defendant designated a written communication as legal mail;

(3) Defendant knew the communication was wholly unrelated to any legal matter or to the administration of justice; and

(4) Defendant acted intentionally.

"Intentionally" means it was Defendant's conscious objective or purpose to misuse prisoner mail.

"Knowingly" means Defendant knew or was aware Defendant was misusing prisoner mail.

"Custody" means any restraint pursuant to arrest, detention or court order.

"Detention facility" means any place used for the confinement of a person who has been **[**charged with or convicted of an offense/charged with being a

delinquent child/held for extradition/held as a material witness/confined pursuant to a court order**]**.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 231(b, c), 1258(2, 3).

BRIBING A WITNESS

In order to find Defendant guilty of Bribing a Witness, you must find the State has proved the following three (3) elements beyond a reasonable doubt:

(1) Defendant offered, conferred or agreed to confer any benefit upon a witness;

(2) Defendant had an agreement or understanding with the witness that the witness's testimony in an official proceeding would be influenced; and

(3) Defendant acted intentionally or knowingly.

"Intentionally" means it was Defendant's conscious objective or purpose to engage in bribing a witness.

"Knowingly" means Defendant knew or was aware Defendant was engaging in bribing a witness.

"Witness" means any natural person who: (a) has knowledge of the existence or nonexistence of facts relating to any crime; or (b) has made a sworn declaration that is received, or has been received, as evidence for any purpose; or (c**)** has reported any crime to any peace officer, prosecuting agency, law enforcement officer, probation officer, parole officer, correctional officer or judicial officer; or (d) has been served with a subpoena issued under the authority of any court of this

State, of any other state or of the United States; or (e) any reasonable person would believe to be an individual described in any of the above paragraphs.

"Benefit" means a gain or advantage for the recipient or anything the recipient considers to be a gain or advantage. The term includes a gain or advantage conferred on the recipient's behalf or at the recipient's request upon a third person.

"Official proceeding" means any action or proceeding conducted by or before a legally constituted judicial, legislative, administrative or other governmental agency or official, in which evidence or testimony of witnesses may properly be received.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 231(b, c), 251(b), 1274(1, 2), and 3531(3).

BRIBING A WITNESS

In order to find Defendant guilty of Bribing a Witness, you must find the State has proved the following three (3) elements beyond a reasonable doubt:

(1) Defendant offered, conferred or agreed to offer any benefit upon a witness;

(2) Defendant had an agreement or understanding with the witness that the witness would be absent from, avoid or seek to avoid appearing or testifying in an official proceeding; and

(3) Defendant acted intentionally or knowingly.

"Intentionally" means it was Defendant's conscious objective or purpose to engage in bribing a witness.

"Knowingly" means Defendant knew or was aware Defendant was engaging in bribing a witness.

"Benefit" means a gain or advantage for the recipient or anything the recipient considers to be a gain or advantage. The term includes a gain or advantage conferred on the recipient's behalf, or at recipient's request upon a third person.

"Official proceeding" means any action or proceeding conducted by or before a legally constituted judicial, legislative, administrative or other governmental agency or official, in which evidence or testimony of witnesses may properly be received.

“Witness” means any natural person who: (a) has knowledge of the existence or nonexistence of facts relating to any crime; or (b) has made a sworn declaration that is received, or has been received, as evidence for any purpose; or (c**)** has reported any crime to any peace officer, prosecuting agency, law enforcement officer, probation officer, parole officer, correctional officer or judicial officer; or (d) has been served with a subpoena issued under the authority of any court of this State, of any other state or of the United States; or (e) any reasonable person would believe to be an individual described in any of the above paragraphs.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 231(b, c), 251(b), 1274(1, 2), and 3531(3).

BRIBE RECEIVING BY A WITNESS

In order to find Defendant guilty of Bribe Receiving by a Witness, you must find the State has proved the following three (3) elements beyond a reasonable doubt:

(1) Defendant, a witness in an official proceeding, solicited, accepted or agreed to accept a benefit from another person;

(2) Defendant had an agreement or understanding with the other person that Defendant's testimony would be influenced; and

(3) Defendant acted intentionally or knowingly.

"Intentionally" means it was Defendant's conscious objective or purpose to engage in receiving a bribe as a witness.

"Knowingly" means Defendant knew or was aware Defendant was engaging in receiving a bribe as a witness.

"Benefit" means a gain or advantage for the recipient or anything the recipient considers to be a gain or advantage. The term includes a gain or advantage conferred on Defendant's behalf, or at Defendant's request upon a third person.

"Official proceeding" means any action or proceeding conducted by or before a legally constituted judicial, legislative, administrative or other governmental agency or official, in which evidence or testimony of witnesses may properly be received.

“Witness” means any natural person who: (a) has knowledge of the existence or nonexistence of facts relating to any crime; or (b) has made a sworn declaration that is received, or has been received, as evidence for any purpose; or (c**)** has reported any crime to any peace officer, prosecuting agency, law enforcement officer, probation officer, parole officer, correctional officer or judicial officer; or (d) has been served with a subpoena issued under the authority of any court of this State, of any other state or of the United States; or (e) any reasonable person would believe to be an individual described in any of the above paragraphs.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 231(b, c), 251(b), 1274(1, 2), and 3531(3).

BRIBE RECEIVING BY A WITNESS

In order to find Defendant guilty of Bribe Receiving by a Witness, you must find the State has proved the following three (3) elements beyond a reasonable doubt:

(1) Defendant, a witness in an official proceeding, solicited, accepted or agreed to accept a benefit from another person;

(2) Defendant had an agreement or understanding with the other person that Defendant would be absent from, avoid or seek to avoid appearing or testifying at the official proceeding; and

(3) Defendant acted intentionally or knowingly.

"Intentionally" means it was Defendant's conscious objective or purpose to engage in receiving a bribe as a witness.

"Knowingly" means Defendant knew or was aware Defendant was engaging in receiving a bribe as a witness.

"Benefit" means a gain or advantage for the recipient or anything the recipient considers to be a gain or advantage. The term includes a gain or advantage conferred on Defendant's behalf or at Defendant's request upon a third person.

"Official proceeding" means any action or proceeding conducted by or before a legally constituted judicial, legislative, administrative or other governmental agency or official, in which evidence or testimony of witnesses may properly be received.

“Witness” means any natural person who: (a) has knowledge of the existence or nonexistence of facts relating to any crime; or (b) has made a sworn declaration that is received, or has been received, as evidence for any purpose; or (c**)** has reported any crime to any peace officer, prosecuting agency, law enforcement officer, probation officer, parole officer, correctional officer or judicial officer; or (d) has been served with a subpoena issued under the authority of any court of this State, of any other state or of the United States; or (e) any reasonable person would believe to be an individual described in any of the above paragraphs.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 231(b, c), 251(b), 1274(1, 2), and 3531(3).

Through 77 Del. Laws June 30, 2010.

TAMPERING WITH A WITNESS

In order to find Defendant guilty of Tampering with a Witness, you must find the State has proved the following three (3) elements beyond a reasonable doubt:

(1) Defendant **[**induced/influenced/impeded**] [**person**]** a **[**witness/victim**]** in an official proceeding, by **[**false statement/fraud/deceit**]**;

(2) Defendant acted to affect **[**witness's/victim's**] [**testimony/availability**]** in the official proceeding; and

(3) Defendant acted intentionally or knowingly.

"Intentionally" means it was Defendant's conscious objective or purpose to engage in tampering with a witness.

"Knowingly" means Defendant knew or was aware Defendant was engaging in tampering with a witness.

"Benefit" means a gain or advantage for the recipient or anything the recipient considers to be a gain or advantage. The term includes a gain or advantage conferred on the recipient's behalf or at the recipient's request upon a third person.

"Official proceeding" means any action or proceeding conducted by or before a legally constituted judicial, legislative, administrative or other governmental agency or official, in which evidence or testimony of witnesses may properly be received.

“Witness” means any natural person who: (a) has knowledge of the existence or nonexistence of facts relating to any crime; or (b) has made a sworn declaration that is received, or has been received, as evidence for any purpose; or (c**)** has reported any crime to any peace officer, prosecuting agency, law enforcement officer, probation officer, parole officer, correctional officer or judicial officer; or (d) has been served with a subpoena issued under the authority of any court of this State, of any other state or of the United States; or (e) any reasonable person would believe to be an individual described in any of the above paragraphs.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 231(b, c), 1274(1, 2), and 3531(3); *see also* 11 *Del. C.* § 1244 (Hindering Prosecution**)**.

TAMPERING WITH A WITNESS

In order to find Defendant guilty of Tampering with a Witness, you must find the State has proved the following three (3) elements beyond a reasonable doubt:

(1) Defendant caused **[**physical injury to/damage to the property of**]** **[**person**]**, a **[**party/witness**]** in an official proceeding;

(2) Defendant's actions were due to **[**person's**]** **[**past/present/future**]** **[**attendance/future testimony**]** in **[**proceeding**]**; and

(3) Defendant acted intentionally.

"Intentionally" means it was Defendant's conscious objective or purpose to engage in tampering with a witness.

"Benefit" means a gain or advantage for the recipient or anything the recipient considers to be a gain or advantage. The term includes a gain or advantage conferred on the recipient's behalf or at the recipient's request upon a third person.

"Official proceeding" means any action or proceeding conducted by or before a legally constituted judicial, legislative, administrative or other

governmental agency or official, in which evidence or testimony of witnesses may properly be received.

"Witness" means any natural person who: (a) has knowledge of the existence or nonexistence of facts relating to any crime; or (b) has made a sworn declaration that is received, or has been received, as evidence for any purpose; or (c) has reported any crime to any peace officer, prosecuting agency, law enforcement officer, probation officer, parole officer, correctional officer or judicial officer; or (d) has been served with a subpoena issued under the authority of any court of this State, of any other state or of the United States; or (e) any reasonable person would believe to be an individual described in any of the above paragraphs.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 231(b), 1274(1, 2) and 3531(3); *see also* 11 *Del. C.* § 1244 (Hindering Prosecution).

TAMPERING WITH A WITNESS

In order to find Defendant guilty of Tampering with a Witness, you must find the State has proved the following **[**three/four**] [**(3)/(4)**]** elements beyond a reasonable doubt:

(1) Defendant intimidated or attempted to intimidate a person from attending or giving testimony in an official proceeding;

(2) Defendant acted knowingly; and

(3) Defendant acted with malice.

{if aggravated intimidation is charged}

[(4) Defendant's intimidation of (person) **(** included the express or implied threat of **{**force/or violence**}** against **{**person/person's property/third person**}**/was in furtherance of a conspiracy/was committed by someone previously convicted of intimidation/was committed for **{**monetary gain/other benefit**}** by any person acting at the request of another person**).]**

"Knowingly" means Defendant knew or was aware Defendant was engaging in tampering with a witness.

"Benefit" means a gain or advantage for the recipient or anything the recipient considers to be a gain or advantage. The term includes a gain or

advantage conferred on the recipient's behalf or at the recipient's request upon a third person.

"Official proceeding" means any action or proceeding conducted by or before a legally constituted judicial, legislative, administrative or other governmental agency or official, in which evidence or testimony of witnesses may properly be received.

"Malice" means an intent to vex, annoy, harm or injure in any way another person, or to thwart or interfere in any manner with the orderly administration of justice.

"Witness" means any natural person who: (a) has knowledge of the existence or nonexistence of facts relating to any crime; or (b) has made a sworn declaration that is received, or has been received, as evidence for any purpose; or (c) has reported any crime to any peace officer, prosecuting agency, law enforcement officer, probation officer, parole officer, correctional officer or judicial officer; or (d) has been served with a subpoena issued under the authority of any court of this State, of any other state or of the United States; or (e) any reasonable person would believe to be an individual described in any of the above paragraphs.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 231(b), 1274(1, 2), and 3531(1, 3); *see also* 11 *Del. C.* § 1244 (Hindering Prosecution).

Interfering with a Child Witness . . . . . 11.1263A(a)(1)

INTERFERING WITH A CHILD WITNESS

In order to find Defendant guilty of Interfering with a Child Witness, you must find the State has proved the following three (3) elements beyond a reasonable doubt:

(1) Defendant interfered with or prevented the prosecution of any person;

(2) Defendant removed a child from the child's county of residence knowing that the child was, or was likely to become, a witness in a criminal case in that county; and

(3) Defendant acted intentionally or knowingly**.**

"Intentionally" means it was Defendant's conscious objective or purpose to engage in interfering with a child witness.

"Knowingly" means Defendant knew or was aware Defendant was engaging in interfering with a child witness.

"Child's county of residence" means the county in which the child resides at the time of the commission of the offense being prosecuted in this criminal case, in which the child is the witness.

A criminal case is "pending" in a court if an indictment, information, or complaint has been filed with or presented to the court.

"Witness" means any natural person who: (a) has knowledge of the existence or nonexistence of facts relating to any crime; (b) has made a sworn declaration that is received, or has been received, as evidence for any purpose; or (c**)** has reported any crime to any peace officer, prosecuting agency, law enforcement officer, probation officer, parole officer, correctional officer or judicial officer; or (d) has been served with a subpoena issued under the authority of any court of this State, of any other state or of the United States; or (e) any reasonable person would believe to be an individual described in any of the above paragraphs.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 231(b, c), and 1263A (b, c).

Interfering with a Child Witness . . . . . 11.1263A(a)(2)

INTERFERING WITH A CHILD WITNESS

In order to find Defendant guilty of Interfering with a Child Witness, you must find the State has proved the following three (3) elements beyond a reasonable doubt:

(1) Defendant interfered with or prevented the prosecution of any person;

(2) Defendant refused or failed to produce a child in Defendant's custody before a court, in which there was pending a criminal case, in which the child is a witness; and

(3) Defendant acted intentionally or knowingly.

"Intentionally" means it was Defendant's conscious objective or purpose to engage in interfering with a child witness.

"Knowingly" means Defendant knew or was aware Defendant was engaging in interfering with a child witness.

A child is in a person's "custody" if the person is a parent or guardian, acting in place of the child's parent or guardian, or exercising control over the child's location or supervision.

A criminal case is "pending" in a court if an indictment, information, or complaint has been filed with or presented to the court.

"Witness" means any natural person who: (a) has knowledge of the existence or nonexistence of facts relating to any crime; (b) has made a sworn declaration that is received, or has been received, as evidence for any purpose; or (c**)** has reported any crime to any peace officer, prosecuting agency, law enforcement officer, probation officer, parole officer, correctional officer or judicial officer; or (d) has been served with a subpoena issued under the authority of any court of this State, of any other state or of the United States; or (e) any reasonable person would believe to be an individual described in any of the above paragraphs.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 231(b, c), and 1263A (b, c).

Interfering with a Child Witness . . . . . 11.1263A(a)(3)a

INTERFERING WITH A CHILD WITNESS

In order to find Defendant guilty of Interfering with a Child Witness, you must find the State has proved the following three (3) elements beyond a reasonable doubt:

(1) Defendant interfered with or prevented the prosecution of any person;

(2) Defendant conferred, or agreed to confer, a benefit upon another person to cause the child to be removed from the child's county of residence knowing that the child is, or is likely to become, a witness in a criminal case in the county of residence; and

(3) Defendant acted intentionally or knowingly.

"Intentionally" means it was Defendant's conscious objective or purpose to engage in interfering with a child witness.

"Knowingly" means Defendant knew or was aware Defendant was engaging in interfering with a child witness.

A child is in a person's "custody" if the person is a parent or guardian, acting in place of the child's parent or guardian, or exercising control over the child's location or supervision.

“Child’s county of residence” means the county in which the child resides at the time of the commission of the offense being prosecuted in the criminal case in which the child is the witness.

A criminal case is "pending" in a court if an indictment, information, or complaint has been filed with or presented to the court.

“Witness” means any natural person who: (a) has knowledge of the existence or nonexistence of facts relating to any crime; (b) has made a sworn declaration that is received, or has been received, as evidence for any purpose; or (c**)** has reported any crime to any peace officer, prosecuting agency, law enforcement officer, probation officer, parole officer, correctional officer or judicial officer; or (d) has been served with a subpoena issued under the authority of any court of this State, of any other state or of the United States; or (e) any reasonable person would believe to be an individual described in any of the above paragraphs.

"Benefit" means a gain or advantage for the recipient or anything the recipient considers to be a gain or advantage. The term includes a gain or advantage conferred on the recipient’s behalf or at the recipient’s request upon a third person.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 231(b, c), 1263A (b, c), and 1274(1).

Through 77 Del. Laws June 30, 2010.

Interfering with a Child Witness . . . . . 11.1263A(a)(3)b

INTERFERING WITH A CHILD WITNESS

In order to find Defendant guilty of Interfering with a Child Witness, you must find the State has proved the following two (2) elements beyond a reasonable doubt:

(1) Defendant interfered with or prevented the prosecution of any person;

(2) Defendant caused a person having custody of a child to refuse, or fail to produce the child before a court in which there was pending a criminal case, in which the child was a witness; and

(3) Defendant acted intentionally or knowingly.

"Intentionally" means it was Defendant's conscious objective or purpose to engage in interfering with a child witness.

"Knowingly" means Defendant knew or was aware Defendant was engaging in interfering with a child witness.

A child is in a person's "custody" if the person is a parent or guardian, acting in place of the parent or guardian of a child, or exercising control over the child's location or supervision.

“Child’s county of residence” means the county in which the child resides at the time of the commission of the offense being prosecuted in the criminal case in which the child is the witness.

A criminal case is "pending" in a court if an indictment, information, or complaint has been filed with or presented to the court.

“Witness” means any natural person who: (a) has knowledge of the existence or nonexistence of facts relating to any crime; (b) has made a sworn declaration that is received, or has been received, as evidence for any purpose; or (c**)** has reported any crime to any peace officer, prosecuting agency, law enforcement officer, probation officer, parole officer, correctional officer or judicial officer; or (d) has been served with a subpoena issued under the authority of any court of this State, of any other state or of the United States; or (e) any reasonable person would believe to be an individual described in any of the above paragraphs.

"Benefit" means a gain or advantage for the recipient or anything the recipient considers to be a gain or advantage. The term includes a gain or advantage conferred on the recipient’s behalf or at the recipient’s request upon a third person.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 231(b, c), 1263A (b, c), and 1274(1).

Through 77 Del. Laws June 30, 2010.

Interfering with a Child Witness . . . . . 11.1263A(a)(4)a

INTERFERING WITH A CHILD WITNESS

In order to find Defendant guilty of Interfering with a Child Witness, you must find the State has proved the following two (2) elements beyond a reasonable doubt:

(1) Defendant harmed, or threatened to harm to a person, in order to cause a child to be removed from the county of residence;

(2) the child was or was likely to become a witness in a criminal case in the child's county of residence; and

(3) Defendant acted intentionally or knowingly.

"Intentionally" means it was Defendant's conscious objective or purpose to engage in interfering with a child witness.

"Knowingly" means Defendant knew or was aware Defendant was engaging in interfering with a child witness.

"Child's county of residence" means the county in which the child resides at the time of the commission of the offense being prosecuted in the criminal case in which the child is the witness.

A criminal case is "pending" in a court if an indictment, information, or complaint has been filed with or presented to the court.

"Witness" means any natural person who: (a) has knowledge of the existence or nonexistence of facts relating to any crime; or (b) has made a sworn declaration that is received, or has been received, as evidence for any purpose; or (c**)** has reported any crime to any peace officer, prosecuting agency, law enforcement officer, probation officer, parole officer, correctional officer or judicial officer; or (d) has been served with a subpoena issued under the authority of any court of this State, of any other state or of the United States; or (e) any reasonable person would believe to be an individual described in any of the above paragraphs.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 231(b, c), and 1263A (b, c).

Interfering with a Child Witness . . . . . 11.1263A(a)(4)b

INTERFERING WITH A CHILD WITNESS

In order to find Defendant guilty of Interfering with a Child Witness, you must find the State has proved the following two (2) elements beyond a reasonable doubt:

(1) Defendant harmed, or threatened to harm, a person, in order to cause the person having custody of a child to refuse to produce the child before a court in which there was pending a criminal case, in which the child was a witness; and

(2) Defendant acted intentionally or knowingly.

"Intentionally" means it was Defendant's conscious objective or purpose to engage in interfering with a child witness.

"Knowingly" means Defendant knew or was aware Defendant was engaging in interfering with a child witness.

A child is in a person's "custody" if the person is a parent or guardian, acting in place of a parent or guardian of the child, or exercising control over the child's location or supervision.

“Child’s county of residence” means the county in which the child resides at the time of the commission of the offense being prosecuted in the criminal case in which the child is a witness.

A criminal case is "pending" in a court if an indictment, information, or complaint has been filed with or presented to the court.

“Witness” means any natural person who: (a) has knowledge of the existence or nonexistence of facts relating to any crime; or (b) has made a sworn declaration that is received, or has been received, as evidence for any purpose; or ©**)** has reported any crime to any peace officer, prosecuting agency, law enforcement officer, probation officer, parole officer, correctional officer or judicial officer; or (d) has been served with a subpoena issued under the authority of any court of this State, of any other state or of the United States; or (e) any reasonable person would believe to be an individual described in any of the above paragraphs.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 231(b, c), and 1263A (b ,c).

BRIBING A JUROR

In order to find Defendant guilty of Bribing a Juror, you must find the State has proved the following three (3) elements beyond a reasonable doubt:

(1) Defendant offered, conferred, or agreed to confer a benefit upon a juror;

(2) Defendant had an agreement or understanding with the juror that the juror's vote, opinion, judgment, decision or other action as a juror would be influenced; and

(3) Defendant acted intentionally or knowingly.

"Intentionally" means it was Defendant's conscious objective or purpose to engage in bribing a juror.

"Knowingly" means Defendant knew or was aware Defendant was engaging in bribing a juror.

"Juror" means any person who has received notice of a summons to appear for jury service.

"Benefit" means a gain or advantage for the recipient or anything the recipient considers to be a gain or advantage. The term includes a gain or advantage conferred on the recipient's behalf or at the recipient's request upon a third person.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 231(b, c), 251(b), 1266, 1274(1).

BRIBE RECEIVING BY A JUROR

In order to find Defendant guilty of Bribe Receiving by a Juror, you must find the State has proved the following two (2) elements beyond a reasonable doubt:

(1) Defendant, a juror, solicited, accepted or agreed to accept a benefit from another person;

(2) Defendant had an agreement or understanding with the other person that Defendant's vote, opinion, judgment, decision or other action as a juror would be influenced; and

(3) Defendant acted intentionally or knowingly.

"Intentionally" means it was Defendant's conscious objective or purpose to engage in receipt of a bribe as a juror.

"Knowingly" means Defendant knew or was aware Defendant was engaging in receiving a bribe as a juror.

"Juror" means any person who has received notice of a summons to appear for jury service.

"Benefit" means a gain or advantage for the recipient or anything the recipient considers to be a gain or advantage. The term includes a gain or

advantage conferred on the recipient's behalf or at the recipient's request upon a third person.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 231(b, c), 251(b), 1266, 1274(1).

TAMPERING WITH A JUROR

In order to find Defendant guilty of Tampering with a Juror, you must find the State has proved the following three (3) elements beyond a reasonable doubt:

(1) Defendant communicated with a juror in an official proceeding;

(2) Defendant meant to influence the outcome of the official proceeding by such communication; and

(3) Defendant acted intentionally or knowingly.

"Intentionally" means it was Defendant's conscious objective or purpose to engage in tampering with a juror.

"Knowingly" means Defendant knew or was aware Defendant was engaging in tampering with a juror.

"Juror" means any person who has received notice of a summons to appear for jury service.

"Official proceeding" means any action or proceeding conducted by or before a legally constituted judicial, legislative, administrative or other governmental agency or official, in which evidence or testimony of witnesses may properly be received.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 231(b, c), 251(b), 1266, 1268, and 1274(2).

TAMPERING WITH A JUROR

In order to find Defendant guilty of Tampering with a Juror, you must find the State has proved the following four (4) elements beyond a reasonable doubt:

(1) Defendant communicated with a juror in a pending or anticipated official proceeding;

(2) Defendant offered, negotiated, conferred, or agreed to confer, a payment or benefit to the juror;

(3) Defendant acted in exchange for receiving information from the juror about the juror's jury service; and

(4) Defendant acted intentionally or knowingly.

"Intentionally" means it was Defendant's conscious objective or purpose to engage in tampering with a juror.

"Knowingly" means Defendant knew or was aware Defendant was engaging in tampering with a juror.

"Juror" means any person who has received notice of a summons to appear for jury service.

"Official proceeding" means any action or proceeding conducted by or before a legally constituted judicial, legislative, administrative or other

governmental agency or official, in which evidence or testimony of witnesses may properly be received.

"Benefit" means a gain or advantage for the recipient or anything the recipient considers to be a gain or advantage. The term includes a gain or advantage conferred on the recipient's behalf or at the recipient's request upon a third person.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 231(b, c), 1266, 1268, 1274(1, 2).

MISCONDUCT BY A JUROR

In order to find Defendant guilty of Misconduct by a Juror, you must find the State has proved the following three (3) elements beyond a reasonable doubt:

(1) Defendant was a juror in a pending or anticipated official proceeding;

(2) Defendant made an agreement with another person to give Defendant's vote**,** opinion, judgment, decision or report for or against a party to the official proceeding; and

(3) Defendant acted intentionally or knowingly.

"Intentionally" means it was Defendant's conscious objective or purpose to engage in misconduct as a juror.

"Knowingly" means Defendant knew or was aware Defendant was engaging in misconduct as a juror.

"Juror" means any person who has received notice of a summons to appear for jury service.

"Official proceeding" means any action or proceeding conducted by or before a legally constituted judicial, legislative, administrative or other governmental agency or official, in which evidence or testimony of witnesses may properly be received.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 231(b, c), 251(b), 1266, 1268, and 1274(2).

MISCONDUCT BY A JUROR

In order to find Defendant guilty of Misconduct by a Juror, you must find the State has proved the following three (3) elements beyond a reasonable doubt:

(1) Defendant was a juror in a pending or anticipated official proceeding;

(2) Defendant solicited, negotiated, accepted, or agreed to accept, a payment or benefit in exchange for supplying information depicting Defendant's service; and

(3) Defendant acted intentionally or knowingly.

"Intentionally" means it was Defendant's conscious objective or purpose to engage in misconduct as a juror.

"Knowingly" means Defendant knew or was aware Defendant was engaging in misconduct as a juror.

"Juror" means any person who has received notice of a summons to appear for jury service.

"Official proceeding" means any action or proceeding conducted by or before a legally constituted judicial, legislative, administrative or other governmental agency or official, in which evidence or testimony of witnesses may properly be received.

"Benefit" means a gain or advantage for the recipient or anything the recipient considers to be a gain or advantage. The term includes a gain or advantage conferred on the recipient's behalf or at the recipient's request upon a third person.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 231(b, c), 251(b), 1266, 1268, 1274(2).

Tampering with Physical Evidence . . . . . 11.1269(1)a

TAMPERING WITH PHYSICAL EVIDENCE

In order to find Defendant guilty of Tampering with Physical Evidence, you must find the State has proved the following three (3) elements beyond a reasonable doubt:

(1) Defendant intended that physical evidence be used or introduced in a pending or anticipated official proceeding;

(2) Defendant made, devised, altered or prepared false physical evidence; and

(3) Defendant acted knowingly.

"Knowingly" means Defendant knew or was aware Defendant was engaging in tampering with physical evidence.

"Official proceeding" means any action or proceeding conducted by or before a legally constituted judicial, legislative, administrative or other governmental agency or official, in which evidence or testimony of witnesses may properly be received.

"Physical evidence" means any article, object, document, record or other thing of physical substance which is, or is about to be, produced or used as evidence in an official proceeding.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 231(c) and 1274(2, 3).

TAMPERING WITH PHYSICAL EVIDENCE

11 *Del.C.* § 1269(1)b

In order to find Defendant guilty of Tampering with Physical Evidence, you must find the State has proved the following three (3) elements beyond a reasonable doubt:

(1) Defendant intended that physical evidence be used or introduced in a pending or anticipated official proceeding;

(2) Defendant produced or offered false physical evidence at a proceeding; and

(3) Defendant acted intentionally.

"Intentionally" means it was Defendant's conscious objective or purpose to produce or offer false physical evidence in the official proceeding.

"Official proceeding" means any action or proceeding conducted by or before a legally constituted judicial, legislative, administrative or other governmental agency or official, in which evidence or testimony of witnesses may properly be received.

"Physical evidence" means any article, object, document, record or other thing of physical substance which is, or about to be, produced or used as evidence in an official proceeding.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 231(c) and 1274(2, 3).

TAMPERING WITH PHYSICAL EVIDENCE

In order to find Defendant guilty of Tampering with Physical Evidence, you must find the State has proved the following three (3) elements beyond a reasonable doubt:

(1) Defendant believed physical evidence was about to be produced or used in a pending or anticipated official proceeding;

(2) Defendant suppressed the physical evidence by concealment, alteration, destruction; or by employing force, intimidation or deception against any person; and

(3) Defendant intended to prevent production or use of the physical evidence.

"Intentionally" means it was Defendant's conscious objective or purpose to engage in tampering with physical evidence.

"Official proceeding" means any action or proceeding conducted by or before a legally constituted judicial, legislative, administrative or other governmental agency or official, in which evidence or testimony of witnesses may properly be received.

"Physical evidence" means any article, object, document, record or other thing of physical substance which is, or about to be, produced or used as evidence in an official proceeding.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 231(b) and 1274(2, 3).

Criminal Contempt . . . . . 11.1271(1)

CRIMINAL CONTEMPT

In order to find Defendant guilty of Criminal Contempt, you must find the State has proved the following two (2) elements beyond a reasonable doubt:

(1) Defendant engaged in disorderly, contemptuous or insolent behavior during the sitting of a court or in the court's immediate view and presence, directly interrupting court proceedings and impairing the respect due the court's authority; and

(2) Defendant acted intentionally or knowingly.

"Intentionally" means it was Defendant's conscious objective or purpose to engage in criminal contempt.

"Knowingly" means Defendant knew or was aware Defendant was engaging in criminal contempt.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 231(b), 251(b), and 1274(2); *See also Pitts v. State*, 421 A.2d 901 (Del. 1980).

Criminal Contempt . . . . . 11.1271(2)

CRIMINAL CONTEMPT

In order to find Defendant guilty of Criminal Contempt, you must find the State has proved the following two (2) elements beyond a reasonable doubt:

(1) Defendant acted to directly interrupt the court's proceedings by causing a breach the peace, noise, or other disturbance; and

(2) Defendant acted intentionally or knowingly.

"Intentionally" means it was Defendant's conscious objective or purpose to engage in criminal contempt.

"Knowingly" means Defendant knew or was aware Defendant was engaging in criminal contempt.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 231(b, c), 251(b), and 1274(2).

Criminal Contempt . . . . . 11.1271(3)

CRIMINAL CONTEMPT

In order to find Defendant guilty of Criminal Contempt, you must find the State has proved the following two (2) elements beyond a reasonable doubt:

(1) Defendant disobeyed or resisted the court's process, injunction or mandate; and

(2) Defendant acted intentionally.

"Intentionally" means it was Defendant's conscious objective or purpose to engage in criminal contempt.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 231(b), 251(b), and 1274(2).

Criminal Contempt . . . . . 11.1271(4)

CRIMINAL CONTEMPT

In order to find Defendant guilty of Criminal Contempt, you must find the State has proved the following two (2) elements beyond a reasonable doubt:

(1) Defendant contemptuously refused to be sworn as a witness in a court proceeding, or to answer a proper question or interrogatory after being properly sworn; and

(2) Defendant acted intentionally or knowingly.

"Intentionally" means it was Defendant's conscious objective or purpose to engage in criminal contempt.

"Knowingly" means Defendant knew or was aware Defendant was engaging in criminal contempt.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 231(b, c), 251(b), and 1274(2).

Criminal Contempt . . . . . 11.1271(5)

CRIMINAL CONTEMPT

In order to find Defendant guilty of Criminal Contempt, you must find the State has proved the following two (2) elements beyond a reasonable doubt:

(1) Defendant published a false or grossly inaccurate report of the court's proceedings; and

(2) Defendant acted knowingly.

"Knowingly" means Defendant knew or was aware Defendant was engaging in criminal contempt.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 231(b, c), 251(b), and 1274(2).

Criminal Contempt . . . . . 11.1271(6)

CRIMINAL CONTEMPT

In order to find Defendant guilty of Criminal Contempt, you must find the State has proved the following two (2) elements beyond a reasonable doubt:

(1) Defendant refused to serve as a juror; and

(2) Defendant acted intentionally.

"Intentionally" means it was Defendant's conscious objective or purpose to engage in criminal contempt.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 231(b) and 251(b).

Criminal Contempt . . . . . 11.1271(7)

CRIMINAL CONTEMPT

In order to find Defendant guilty of Criminal Contempt, you must find the State has proved the following two (2) elements beyond a reasonable doubt:

(1) Defendant without excuse failed to attend trial after being selected to serve on a jury; and

(2) Defendant acted intentionally.

"Intentionally" means it was Defendant's conscious objective or purpose to engage in criminal contempt.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 231(b) and 251(b).

Criminal Contempt . . . . . 11.1271(8)

CRIMINAL CONTEMPT

In order to find Defendant guilty of Criminal Contempt, you must find the State has proved the following three (3) elements beyond a reasonable doubt:

(1) Defendant was released by court order upon the condition Defendant subsequently appear personally in connection with a criminal proceeding;

(2) Defendant failed to appear on the required date; and

(3) Defendant acted intentionally.

"Intentionally" means it was Defendant's conscious objective or purpose to engage in criminal contempt.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 231(b), 251(b), and 1274(2).

CRIMINAL CONTEMPT OF DOMESTIC VIOLENCE PROTECTION ORDER

In order to find Defendant guilty of Criminal Contempt of a Domestic Violence Protection Order, you must find the State has proved each of the following three (3) elements beyond a reasonable doubt:

(1) Defendant violated or failed to obey any provision of a protective order issued by **[**the Family Court/a court of any **(**state/territory/Indian nation**)]** in the United States;

(2) The violation or failure to obey occurred in Delaware; and

(3) Defendant acted intentionally or knowingly.

"Intentionally" means it was Defendant's conscious objective or purpose to engage in criminal contempt of a domestic violence protection order.

"Knowingly" means Defendant knew or was aware Defendant was engaging in criminal contempt of a domestic violence protection order.

Applicable Code Sections and Case Law:

11 *Del.C.* §§ 231(b, c) and 251(b).

CRIMINAL CONTEMPT OF DOMESTIC VIOLENCE PROTECTION ORDER

In order to find Defendant guilty of Felony Criminal Contempt of a Domestic Violence Protection Order, you must find the State has proved each of the following four (4) elements beyond a reasonable doubt:

(1) Defendant violated or failed to obey any provision of a protective order issued by **[**the Family Court/a court of any **(**state/territory/Indian nation**)]** in the United States;

(2) The violation or failure to obey occurred in Delaware;

(3) The violation or failure to obey resulted in physical injury; and

(4) Defendant acted intentionally or knowingly.

"Intentionally" means it was Defendant's conscious objective or purpose to engage in criminal contempt of domestic violence protection order.

"Knowingly" means Defendant knew or was aware Defendant was engaging in criminal contempt of domestic violence protection order.

Applicable Code Sections and Case Law:

11 *Del.C.* §§ 231(b, c) and 251(b).

CRIMINAL CONTEMPT OF DOMESTIC VIOLENCE PROTECTION ORDER

In order to find Defendant guilty of Felony Criminal Contempt of a Domestic Violence Protection Order, you must find the State has proved each of the following four (4) elements beyond a reasonable doubt:

(1) Defendant violated or failed to obey any provision of a protective order issued by **[**the Family Court/a court of any **(**state/territory/Indian nation**)]** in the United States;

(2) The violation or failure to obey occurred in Delaware;

(3) The violation or failure to obey involved the use, or threatened use, of a deadly weapon; and

(4) Defendant acted intentionally or knowingly.

"Intentionally" means it was Defendant's conscious objective or purpose to engage in criminal contempt of domestic violence protection order.

"Knowingly" means Defendant knew or was aware Defendant was engaging in criminal contempt of domestic violence protection order.

"Deadly weapon" includes: firearm, bomb, knife of any sort **(**other than an ordinary pocket knife carried in a closed position**)**, switchblade knife, billy,

blackjack, bludgeon, metal knuckles, slingshot, razor, bicycle chain, ice pick or any dangerous instrument which a person used, or tried to use, to cause death or serious physical injury. For the purpose of this definition, an ordinary pocket knife is a folding knife with a blade no longer than 3 inches.

Applicable Code Sections and Case Law:

11 *Del.C.* §§ 231(b, c) and 251(b).

Unlawful Grand Jury Disclosure 11.1273

UNLAWFUL GRAND JURY DISCLOSURE

In order to find Defendant guilty of Unlawful Grand Jury Disclosure, you must find the State has proved the following three (3) elements beyond a reasonable doubt:

(1) Defendant had official duties in or around the grand jury room or proceedings;

(2) Defendant disclosed to another person the nature or substance of the grand jury testimony, decision, result, or other matter relating to a grand jury proceeding, which is required by law to be kept secret; and

(3) Defendant acted intentionally.

"Intentionally" means it was Defendant's conscious objective or purpose to engage in unlawful grand jury disclosure.

Applicable Code Sections and Case Law:

11 *Del. C.* § 231(b) and 251(b).

Disorderly Conduct . . . . . 11.1302(1)a

DISORDERLY CONDUCT

In order to find Defendant guilty of Disorderly Conduct, you must find the State has proved the following three (3) elements beyond a reasonable doubt:

(1) Defendant caused, or created the risk of causing, public inconvenience, annoyance or alarm;

(2) Defendant engaging in fighting, violent or threatening behavior; and

(3) Defendant acted intentionally.

"Intentionally" means it was Defendant's conscious objective or purpose to engage in disorderly conduct.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 231(b).

Disorderly Conduct . . . . . 11.1301(1)b

DISORDERLY CONDUCT

In order to find Defendant guilty of Disorderly Conduct, you must find the State has proved the following three (3) elements beyond a reasonable doubt:

(1) Defendant caused, or created the risk of causing, public inconvenience, annoyance or alarm;

(2) Defendant made an unreasonable noise or offensive utterance, gesture or display, or used abusive language; and

(3) Defendant acted intentionally.

"Intentionally" means it was Defendant's conscious objective or purpose to engage in disorderly conduct.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 231(b).

Disorderly Conduct . . . . . 11.1301(1)c

DISORDERLY CONDUCT

In order to find Defendant guilty of Disorderly Conduct, you must find the State has proved the following three (3) elements beyond a reasonable doubt:

(1) Defendant caused, or created the risk of causing, public inconvenience, annoyance or alarm;

(2) Defendant disturbed a lawful assembly or meeting, without lawful authority; and

(3) Defendant acted intentionally.

"Intentionally" means it was Defendant's conscious objective or purpose to engage in disorderly conduct.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 231(b).

Disorderly Conduct . . . . . 11.1301(1)d

DISORDERLY CONDUCT

In order to find Defendant guilty of Disorderly Conduct, you must find the State has proved the following three (3) elements beyond a reasonable doubt:

(1) Defendant caused, or created the risk of causing, public inconvenience, annoyance or alarm;

(2) Defendant obstructed vehicular or pedestrian traffic; and

(3) Defendant acted intentionally.

"Intentionally" means it was Defendant's conscious objective or purpose to engage in disorderly conduct.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 231(b).

Disorderly Conduct . . . . . 11.1301(1)e

DISORDERLY CONDUCT

In order to find Defendant guilty of Disorderly Conduct, you must find the State has proved the following three (3) elements beyond a reasonable doubt:

(1) Defendant caused, or created the risk of causing, public inconvenience, annoyance or alarm;

(2) Defendant gathered with others in a public place and refused to comply with a lawful order of the police to disperse; and

(3) Defendant acted intentionally.

"Intentionally" means it was Defendant's conscious objective or purpose to engage in disorderly conduct.

"Public place" means any place is not purely private.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 231(b); *Lofland v. State*, 83 A. 1033 (Del. Super. 1912) (defining "public place"**)**.

Disorderly Conduct . . . . . 11.1301(1)f

DISORDERLY CONDUCT

In order to find Defendant guilty of Disorderly Conduct, you must find the State has proved the following three (3) elements beyond a reasonable doubt:

(1) Defendant caused, or created the risk of causing, public inconvenience, annoyance or alarm;

(2) Defendant created a hazardous or physically offensive condition, which served no legitimate purpose; and

(3) Defendant acted intentionally.

"Intentionally" means it was Defendant's conscious objective or purpose to engage in disorderly conduct.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 231(b).

Disorderly Conduct . . . . . 11.1301(1)g

DISORDERLY CONDUCT

In order to find Defendant guilty of Disorderly Conduct, you must find the State has proved the following three (3) elements beyond a reasonable doubt:

(1) Defendant caused, or created the risk of causing, public inconvenience, annoyance or alarm;

(2) Defendant gathered with others in a public place while wearing masks, hoods or garments that rendered their faces unrecognizable; and the disguises were for the purpose of subjecting any person to the deprivation of any rights, privileges, or immunities secured by the Constitution or laws of the United States of America; and

(3) Defendant acted intentionally.

"Intentionally" means it was Defendant's conscious objective or purpose to engage in disorderly conduct.

"Public place" means any place that is not purely private.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 231(b); *Lofland v. State*, 83 A. 1033 (Del. Super. 1912) (defining "public place"**)**.

Through 77 Del. Laws June 30, 2010.

DISORDERLY CONDUCT

In order to find Defendant guilty of Disorderly Conduct, you must find the State has proved the following three (3) elements beyond a reasonable doubt:

(1) Defendant engaged in conduct likely to cause substantial harm, or serious inconvenience, annoyance or alarm;

(2) Defendant and at least one other person **[**engaged in **(**fighting/**{**violent/ tumultuous/ threatening**}** behavior**)/(**made an **{**unreasonable noise/offensive **(**utterance/comment/display**)})**/used abusive language towards any person present/disturbed a lawful **(**assembly/meeting**)** without lawful authority/obstructed **(**vehicular/pedestrian**)** traffic/gathered with others in a public place and refused to comply with a lawful order of the police to disperse/created a **(**hazardous/physically offensive**)** condition serving no legitimate purpose/gathered with others in a public place while wearing **(**masks/ hoods/garments**)** rendering their faces unrecognizable for the purpose and in a manner likely to imminently subject any person to the deprivation of any rights, privileges, and immunities secured by the Constitution or laws of the United States of America**)]**;

(3) Defendant refused, or knowingly failed, to obey an order to disperse made by a peace officer.

"Intentionally" means it was Defendant's conscious objective or purpose to engage in disorderly conduct.

"Knowingly" means Defendant knew or was aware Defendant was engaging in disorderly conduct.

"Public place" means any place that is not purely private.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 231(b, c), 251(b), and 1301(1); *Lofland v. State*, 83 A. 1033 (Del. Super. 1912) (defining "public place"**)**.

Riot . . . . . 11.1302(1)

RIOT

In order to find Defendant guilty of Riot, you must find the State has proved the following three (3) elements beyond a reasonable doubt:

(1) Defendant participated with at least two (2) other persons in a course of disorderly conduct; and

(2) Defendant committed, or facilitated the commission of, a felony or misdemeanor; and

(3) Defendant acted intentionally.

"Intentionally" means it was Defendant's conscious objective or purpose to engage in participating in a riot.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 231(b) and 1301.

Riot . . . . . 11.1302(2)

RIOT

In order to find Defendant guilty of Riot, you must find the State has proved the following three (3) elements beyond a reasonable doubt:

(1) Defendant participated with at least two (2) other persons in a course of disorderly conduct; and

(2) Defendant prevented or coerced official action; and

(3) Defendant acted intentionally.

"Intentionally" means it was Defendant's conscious objective or purpose to engage in participating in a riot.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 222(5), 231(b, c) and 1301.

RIOT

In order to find Defendant guilty of Riot, you must find the State has proved the following three (3) elements beyond a reasonable doubt:

(1) Defendant participated with at least two (2) other persons in a course of disorderly conduct;

(2) Defendant or any other participant used, or planned to use, a firearm or deadly weapon; and

(3) Defendant acted knowingly, or any other participant acted with Defendant's knowledge.

"Deadly weapon" includes: firearm, bomb, knife of any sort **(**other than an ordinary pocket knife carried in a closed position**)**, switchblade knife, billy, blackjack, bludgeon, metal knuckles, slingshot, razor, bicycle chain, ice pick or any dangerous instrument which a person used, or tried to use, to cause death or serious physical injury. For the purpose of this definition, an ordinary pocket knife is a folding knife with a blade no longer than 3 inches.

"Knowingly" means Defendant knew or was aware Defendant was engaging in a riot.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 222(5), 231(c) and 1301.

Disorderly conduct; Funeral or Memorial Service . . . . . 11.1303(a)(1)

DISORDERLY CONDUCT; FUNERAL OR MEMORIAL SERVICE

In order to find Defendant guilty of Disorderly Conduct at a Funeral or Memorial Service, you must find the State has proved the following two (2) elements:

(1) Defendant directed abusive epithets or made a threatening gesture;

(2) Defendant knew or reasonably should have known that the behavior would likely result in a violent reaction by another;

(3) Defendant was within 300 feet of the location where a funeral or memorial service was being conducted; or was within 1,000 feet of a funeral procession or burial; and

(4) Defendant acted knowingly.

"Knowingly" means Defendant knew or was aware behavior was likely to result in violent reaction by another.

[Commentary: This section is applicable 1 hour preceding, during and within 2 hours after a funeral, memorial service, funeral procession or burial.]

Applicable Code Sections and Case Law:

11 *Del.C.* § 231(c).

Disorderly conduct; Funeral or Memorial Service . . . . . 11.1303(a)(1)

DISORDERLY CONDUCT; FUNERAL OR MEMORIAL SERVICE

In order to find Defendant guilty of Disorderly Conduct at a Funeral or Memorial Service, you must find the State has proved the following two (2) elements:

(1) Defendant directed abusive epithets or made a threatening gesture;

(2) Defendant knew or reasonably should have known that the behavior would likely result in a violent reaction by another;

(3) Defendant was within 300 feet of the location where a funeral or memorial service was being conducted; or was within 1,000 feet of a funeral procession or burial; and

(4) Defendant acted knowingly.

"Knowingly" means Defendant knew or was aware behavior was likely to result in violent reaction.

[Commentary: This section is applicable 1 hour preceding, during and within 2 hours after a funeral, memorial service, funeral procession or burial.]

Applicable Code Sections and Case Law:

11 *Del.C.* § 231(c).

[NAME OF CRIME] AS A HATE CRIME

In order to find Defendant committed **[**name of crime and lesser included offenses**]** as a Hate Crime, you must find the State has proved the following three (3) elements beyond a reasonable doubt:

(1) Defendant committed **[**name of crime and lesser included offenses**]**, as previously defined; and

(2) Defendant committed or attempted to commit **[**crime**]** for the purpose of interfering with a person's free exercise or enjoyment of any right, privilege or immunity protected by the First Amendment to the United State Constitution; and

(3) Defendant acted intentionally.

"Intentionally" means it was Defendant's conscious objective or purpose to engage in a hate crime.

Applicable Code Sections and Case Law:

11 *Del. C.* § 231(b).

[NAME OF CRIME] AS A HATE CRIME

In order to find Defendant committed **[**name of crime and lesser included offenses**]** as a Hate Crime, you must find the State has proved the following three (3) elements beyond a reasonable doubt:

(1) Defendant committed **[**name of crime and lesser included offenses**]**, as previously defined; and

(2) Defendant selected **[**victim**]** because of **[**victim's**]** **[**race/religion/color/disability/sexual orientation/national origin/ancestry**]**; and

(3) Defendant acted intentionally.

"Intentionally" means it was Defendant's conscious objective or purpose to engage in a hate crime.

"Sexual orientation" means heterosexuality, bisexuality or homosexuality.

Applicable Code Sections and Case Law:

11 *Del.C.* § 231(b).

Harassment . . . . . 11.1311(a)(1)

HARASSMENT

In order to find Defendant guilty of Harassment, you must find the State has proved the following four (4) elements beyond a reasonable doubt:

(1) Defendant intended to harass, annoy or alarm;

(2) Defendant engaged in insulting, taunting, challenging, alarming or distressing conduct, which served no legitimate purpose;

(3) Defendant knew Defendant's conduct was likely to cause fear, distress or alarm, or was likely to provoke a disorderly or violent response; and

(4) Defendant acted knowingly.

"Intentionally" means it was Defendant's conscious objective or purpose to engage in harassment.

"Knowingly" means Defendant knew or was aware Defendant was engaging in harassment.

Applicable Code Sections and Case Law:

11 *Del. C.* § 231(b, c).

Harassment . . . . . 11.1311(a)(2)

HARASSMENT

In order to find Defendant guilty of Harassment, you must find the State has proved the following four (4) elements beyond a reasonable doubt:

(1) Defendant intended to harass, annoy or alarm;

(2) Defendant communicated with a person by telephone, telegraph, mail, or another form of communication; and

(3) Defendant knew Defendant's conduct was likely to cause annoyance or alarm; and

(4) Defendant acted knowingly.

Means of communications include, but are not limited to, intrastate telephone calls initiated by vendors for the purpose of selling goods and services.

"Intentionally" means it was Defendant's conscious objective or purpose to engage in harassment.

"Knowingly" means Defendant knew or was aware Defendant was engaging in harassment.

Applicable Code Sections and Case Law:

11 *Del. C.* § 231(b, c).

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Harassment . . . . . 11.1311(a)(3)

HARASSMENT

In order to find Defendant guilty of Harassment, you must find the State has proved the following four (4) elements beyond a reasonable doubt:

(1) Defendant intended to harass, annoy or alarm;

(2) Defendant knowingly permitted a telephone under Defendant's control to be used for **[**prohibited use**]**; and

(3) Defendant knew Defendant's conduct was likely to cause fear, distress or alarm; or was likely to provoke a disorderly or violent response; and

(4) Defendant acted knowingly.

"Intentionally" means it was Defendant's conscious objective or purpose to engage in harassment.

"Knowingly" means Defendant knew or was aware Defendant was engaging in harassment.

Applicable Code Sections and Case Law:

11 *Del. C.* § 231(b, c).

Harassment . . . . . 11.311(a)(4)

HARASSMENT

In order to find Defendant guilty of Harassment, you must find the State has proved the following four (4) elements beyond a reasonable doubt:

(1) Defendant intended to harass, annoy or alarm;

(2) Defendant used [obscene language/language suggesting that **(**victim**)** engage with **(**Defendant/another person**)** in sexual relations**]**, during a telephone call; and

(3) Defendant knew Defendant's conduct was likely to cause fear, distress or alarm; or was likely to provoke a disorderly or violent response; and

(4) Defendant acted knowingly.

"Intentionally" means it was Defendant's conscious objective or purpose to engage in harassment.

"Knowingly" means Defendant knew or was aware Defendant was engaging in harassment.

Applicable Code Sections and Case Law:

11 *Del. C.* § 231(b, c).

Harassment . . . . . 11.1311(a)(5)

HARASSMENT

In order to find Defendant guilty of Harassment, you must find the State has proved the following four (4) elements beyond a reasonable doubt:

(1) Defendant intended to harass, annoy or alarm;

(2) Defendant made repeated or anonymous telephone calls; and

(3) Defendant knew Defendant's conduct was likely to cause fear, distress or alarm; or was likely to provoke a disorderly or violent response; and

(4) Defendant acted knowingly.

"Intentionally" means it was Defendant's conscious objective or purpose to engage in harassment.

"Knowingly" means Defendant knew or was aware Defendant was engaging in harassment.

Applicable Code Sections and Case Law:

11 *Del. C.* § 231(b, c).

Stalking . . . . . 11.1312(a)(1)

STALKING

In order to find Defendant guilty of Stalking, you must find the State has proved the following four (4) elements beyond a reasonable doubt:

(1) Defendant engaged in a course of conduct directed at a person;

(2) Defendant's conduct would cause a reasonable person to fear physical injury to themself or to another person;

(3) Defendant's conduct caused fear or suffering; and

(4) Defendant acted intentionally.

"Physical injury" means any impairment of physical condition or substantial pain.

"Intentionally" means it was Defendant's conscious objective or purpose to engage in stalking.

"Course of conduct" means repeatedly maintaining a visual or physical proximity to a person, repeatedly conveying verbal or written threats or threats implied by conduct, or repeatedly committing acts constituting any criminal offense.

"Reasonable person" means a reasonable person in the alleged victim's circumstances.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 222(24), 231(b), and 1312(e).

Stalking . . . . . 11.1312(a)(2)

STALKING

In order to find Defendant guilty of Stalking, you must find the State has proved the following three (3) elements beyond a reasonable doubt:

(1) Defendant engaged in a course of conduct directed at a person;

(2) Defendant's conduct would cause a reasonable person to suffer significant mental anguish or distress, that may require medical or other professional treatment or counseling;

(3) Defendant's conduct caused fear or suffering; and

(4) Defendant acted intentionally.

"Intentionally" means it was Defendant's conscious objective or purpose to engage in stalking.

"Course of conduct" means repeatedly maintaining a visual or physical proximity to a person, repeatedly conveying verbal or written threats or threats implied by conduct, or repeatedly committing acts constituting any criminal offense.

"Reasonable person" means a reasonable person in the alleged victim's circumstances.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 222((24), 231(b), and 1312(e)(1).

STALKING [AFFIRMATIVE DEFENSE]

In this case, Defendant has asserted the affirmative defense of Picketing to the charge of Stalking. In order to establish this affirmative defense, the defendant must prove the following element by a preponderance of the evidence:

At the time of the charged offense, the defendant was engaged in lawful picketing.

Proof by a preponderance of the evidence means proof that something is more likely than not. It means that certain evidence, when compared to the evidence opposed to it, has the more convincing force and makes you believe that something is more likely true than not. Preponderance of the evidence does not depend on the number of witnesses. If the evidence supporting the defense is evenly balanced, then the defendant has not proved the defense by a preponderance of the evidence, and you must find against the defendant on that point. The state has no burden to present any evidence on this matter.

[Commentary: This affirmative defense is applicable to prosecutions under § 1312.]

Applicable Code Sections and Case Law:

MALICIOUS INTERFERENCE OF EMERGENCY COMMUNICATIONS

In order to find Defendant guilty of Malicious Interference of Emergency Communications, you must find the State has proved the following two (2) elements beyond a reasonable doubt:

(1) Defendant prevented or hindered the initiation, making or completion of an emergency communication by another person; and

(2) Defendant acted intentionally.

"Intentionally" means it was Defendant's conscious objective or purpose to refuse to relinquish the communication device immediately when informed it was needed for an emergency call.

"Emergency communication" means any telephone call or any other form of communication made, transmitted or facilitated by radio, computer or any other electronic device which is intended by its maker to provide warning or information pertaining to any crime, fire, accident, disaster or risk of injury or damage to any person or property.

Applicable Code Sections and Case Law:

11 *Del. C.* § 231(b) and 1313(a)(1).

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MALICIOUS INTERFERENCE OF EMERGENCY COMMUNICATIONS

In order to find Defendant guilty of Malicious Interference of Emergency Communications, you must find the State has proved the following three (3) elements beyond a reasonable doubt:

(1) Defendant made repeated nonemergency communications to any 911 or other emergency communications center;

(2) Defendant knew the nonemergency communications would likely disrupt the operations of such emergency communications center; and

(2) Defendant acted intentionally.

"Emergency communications center" means any public or private facility or entity which accepts emergency communications for the purpose of notifying, dispatching, directing, or coordinating law enforcement, fire, medical, paramedic, ambulance, utility, or other public safety personnel.

Applicable Code Sections and Case Law:

11 *Del. C.* § 231(b) and 1313(a)(1, 2).

PUBLIC INTOXICATION

In order to find Defendant guilty of Public Intoxication, you must find the State has proved the following two (2) elements beyond a reasonable doubt:

(1) Defendant appeared in a public place; and

(2) Defendant was under the influence of **[**alcohol/narcotics/drug not **(**administered/prescribed**)** by a physician**]** to the degree that would place Defendant in danger, or would endanger or annoy another person in the vicinity.

"Public place" means any place that is not purely private.

Applicable Code Sections and Case Law:

Lofland v. State, 83 A. 1033 (Del. Super. 1912) (defining "public place"**)**.

LOITERING ON PROPERTY OF A STATE-SUPPORTED SCHOOL, COLLEGE OR UNIVERSITY

In order to find Defendant guilty of Loitering on Property of a State-Supported **[**School/College/University**]**, you must find the State has proved the following three (3) elements beyond a reasonable doubt:

(1) Defendant loitered in or remained on or around the buildings or grounds of state-supported **[**school/college/university**]**;

(2) Defendant did not have custody of or responsibility for a student; or did not have any specific, legitimate reason for being there; and

(3) Defendant did not have written permission from anyone authorized to grant permission.

"State-supported" means state-funded in whole or in part.

Applicable Code Sections and Case Law:

11 *Del.C.* § 251(b).

Loitering . . . . . 11.1321(1)

LOITERING

In order to find Defendant guilty of Loitering, you must find the State has proved the following element beyond a reasonable doubt:

Defendant failed or refused to move when lawfully ordered to do so by any police officer.

Applicable Code Sections and Case Law:

11 *Del. C.* § 251(b).

Loitering . . . . . 11.1321(2)

LOITERING

In order to find Defendant guilty of Loitering, you must find the State has proved the following three (3) elements beyond a reasonable doubt:

(1) Defendant stood or sat idling on a pavement, sidewalk, crosswalk, doorstep, or street open to the public;

(2) Defendant obstructed or hindered the free and convenient passage of persons walking, riding or driving; and

(3) Defendant failed to make way, move or pass after a reasonable request from any person.

Applicable Code Sections and Case Law:

11 *Del.C.* § 251(b).

Loitering . . . . . 11.1321(3)

LOITERING

In order to find Defendant guilty of Loitering, you must find the State has proved the following element beyond a reasonable doubt:

Defendant loitered or remained in or around school building or grounds, not having custody of or responsibility for a student, or any other specific or legitimate reason for being there, without written permission from the principal.

Applicable Code Sections and Case Law:

11 *Del.C.* § 251(b).

Loitering . . . . . 11.1321(4)

LOITERING

In order to find Defendant guilty of Loitering, you must find the State has proved the following element beyond a reasonable doubt:

Defendant loitered, remained or wandered about in a public place for the purpose of begging.

Applicable Code Sections and Case Law:

11 *Del.C.* § 251(b).

Loitering . . . . . 11.1321(5)

LOITERING

In order to find Defendant guilty of Loitering, you must find the State has proved the following element beyond a reasonable doubt:

Defendant loitered or remained in a public place for the purpose of engaging, or soliciting another person to engage in, sexual intercourse.

Applicable Code Sections and Case Law:

11 *Del.C.* § 251(b).

Loitering . . . . . 111321(6)

LOITERING

In order to find Defendant guilty of Loitering, you must find the State has proved the following element beyond a reasonable doubt:

Defendant loitered, congregated with others, or prowled in a place or at a time or in a manner not usual for law-abiding individuals, and under circumstances that warrant alarm for the safety of persons or property in the vicinity, especially in light of the crime rate.

Applicable Code Sections and Case Law:

11 *Del.C.* § 251(b).

CRIMINAL NUISANCE

In order to find Defendant guilty of Criminal Nuisance, you must find the State has proved the following four (4) elements beyond a reasonable doubt:

(1) Defendant created or maintained **[**condition**]**;

(2) **[**condition**]** endangered the safety or health of a person;

(3) Defendant's conduct was unlawful or unreasonable under all of the circumstances; and

(4) Defendant acted knowingly or recklessly.

"Unlawful" means contrary to law or not permitted by law.

"Recklessly" means Defendant was aware of and consciously disregarded a substantial and unjustifiable risk that the condition created or maintained by Defendant, would endanger the health and safety of others. The State must demonstrate the risk was of such a nature and degree Defendant's disregard of it was a gross deviation from the standard of conduct a reasonable person would observe under the same circumstances.

"Knowingly" means Defendant knew or was aware Defendant was engaging in criminal nuisance.

Applicable Code Sections and Case Law:

11 *Del.C.* §§ 222(28) and 231(c, e).

Criminal Nuisance . . . . . 11.1322(2)

CRIMINAL NUISANCE

In order to find Defendant guilty of Criminal Nuisance, you must find the State has proved the following three (3) elements beyond a reasonable doubt:

(1) Defendant maintained **[**place**]**;

(2) **[**place**]** was a place where persons gathered for the purpose of engaging in unlawful conduct; and

(3) Defendant acted knowingly.

"Unlawful" means contrary to law or not permitted by law.

"Knowingly" means Defendant knew or was aware Defendant was engaging in criminal nuisance.

Applicable Code Sections and Case Law:

11 *Del.C.* §§ 222(28) and 231(c).

OBSTRUCTING PUBLIC PASSAGES

In order to find Defendant guilty of obstructing public passages, you must find the State has proved the following three (3) elements beyond a reasonable doubt:

(1) Defendant, alone or with other persons**,** rendered a public passage inconvenient or hazardous, or entered upon or tampered with any public utility right-of-way;

(2) Defendant had no legal right to obstruct the public passage or utility right-of-way; and

(3) Defendant acted intentionally or recklessly.

"Intentionally" means it was Defendant's conscious objective or purpose to obstruct the public passage or utility right-of way.

"Recklessly" means Defendant was aware of and consciously disregarded a substantial and unjustifiable risk that obstruction of the public passage or utility right-of way would endanger the health and safety of others. The State must demonstrate the risk was of such a nature and degree that Defendant's disregard of the risk was a gross deviation from the standard of conduct a reasonable person would observe under the same circumstances.

Applicable Code Sections and Case Law:

11 *Del.C.* § 231(b, e).

OBSTRUCTING INGRESS TO OR EGRESS FROM PUBLIC BUILDINGS

In order to find Defendant guilty of Obstructing Ingress to or Egress from Public Buildings, you must find the State has proved the following two (2) elements beyond a reasonable doubt:

(1) Defendant prevented a person from entering or leaving a public building; and

(2) Defendant acted knowingly.

"Knowingly" means Defendant knew or was aware Defendant was engaging in preventing any person from entering or leaving a public building.

Applicable Code Sections and Case Law:

11 *Del.C.* § 231(c).

CRUELTY TO ANIMALS

In order to find Defendant guilty of Cruelty to Animals, you must find the State proved the following two (2) elements beyond a reasonable doubt:

(1) Defendant subjected **[**animal**]** to cruel mistreatment; and

(2) Defendant acted **[**intentionally/recklessly**]**.

"Intentionally" means it was Defendant's conscious objective or purpose to engage in cruelty to animals.

"Recklessly" means Defendant was aware of and consciously disregarded a substantial and unjustifiable risk that **[**animal**]** would be **[**neglected/mistreated, etc.**]** as the result of Defendant's conduct. The State must demonstrate the risk was of such a nature and degree Defendant's disregard of it was a gross deviation from the standard of conduct a reasonable person would observe under the same circumstances.

"Animal" does not include fish, crustacea or mollusca.

"Cruel mistreatment" means any treatment where unnecessary or unjustifiable physical pain or suffering is caused or permitted.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 231(b, e) and 1325(a**)(**2, 4).

CRUELTY TO ANIMALS

In order to find Defendant guilty of Cruelty to Animals, you must find the State proved the following three (3) elements beyond a reasonable doubt:

(1) Defendant subjected **[**animal**]** to cruel neglect;

(2) Defendant had custody of **[**animal**]**; and

(3) Defendant acted **[**intentionally/recklessly**]**.

"Intentionally" means it was Defendant's conscious objective or purpose to engage in cruelty to animals.

"Recklessly" means Defendant was aware of and consciously disregarded a substantial and unjustifiable risk that **[**animal**]** would be **[**neglected/mistreated, etc.**]** as the result of Defendant's conduct. The State must demonstrate the risk was of such a nature and degree Defendant's disregard of it was a gross deviation from the standard of conduct a reasonable person would observe under the same circumstances.

"Animal" does not include fish, crustacea or mollusca.

"Cruel mistreatment" means any treatment where unnecessary or unjustifiable physical pain or suffering is caused or permitted.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 231(b, e) and 1325(a**)(**2, 4).

CRUELTY TO ANIMALS

In order to find Defendant guilty of Cruelty to Animals, you must find the State proved the following three (3) elements beyond a reasonable doubt:

(1) Defendant **[**killed/injured**]** **[**animal**]**; belonging to another person;

(2) Defendant acted without **[**legal privilege/consent of the owner**]**; and

(3) Defendant acted **[**intentionally/recklessly**]**.

"Intentionally" means it was Defendant's conscious objective or purpose to engage in cruelty to animals.

"Recklessly" means Defendant was aware of and consciously disregarded a substantial and unjustifiable risk that **[**animal**]** would be **[**neglected/mistreated, etc.**]** as the result of Defendant's conduct. The State must demonstrate the risk was of such a nature and degree Defendant's disregard of it was a gross deviation from the standard of conduct a reasonable person would observe under the same circumstances.

"Animal" does not include fish, crustacea or mollusca.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 231(b, e) and 1325(a**)(**2).

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CRUELTY TO ANIMALS

In order to find Defendant guilty of Cruelty to Animals, you must find the State proved the following two (2) elements beyond a reasonable doubt:

(1) Defendant **[**cruelly/unnecessarily**] [**killed/injured**] [**animal**]**: and

(2) Defendant acted **[**intentionally/recklessly**]**.

Defendant acted unnecessarily if the act is not required to terminate an animal's suffering, to protect the life or property of Defendant or another person, or if other means of disposing of an animal existed which would not impair the health or well-being of that animal.

"Intentionally" means it was Defendant's conscious objective or purpose to engage in cruelty to animals.

"Recklessly" means Defendant was aware of and consciously disregarded a substantial and unjustifiable risk that **[**animal**]** would be **[**neglected/mistreated, etc.**]** as the result of Defendant's conduct. The State must demonstrate the risk was of such a nature and degree Defendant's disregard of it was a gross deviation from the standard of conduct a reasonable person would observe under the same circumstances.

"Animal" does not include fish, crustacea or mollusca.

"Cruel mistreatment" means any treatment where unnecessary or unjustifiable physical pain or suffering is caused or permitted.

[Commentary: This section does not apply to the killing of any animal normally or commonly raised as food for human consumption, provided the killing is not cruel.]

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 231(b, e) and 1325(a**)(**2, 4).

CRUELTY TO ANIMALS

In order to find Defendant guilty of Cruelty to Animals, you must find the State proved the following three (3) elements beyond a reasonable doubt:

(1) Defendant **[**captured/detained/transported/removed/delivered**] [**animal**]**, known to be a **[**domestic farm animal/pet/companion animal/animal of **(**scientific/environmental/economic/cultural**)** value**]**, under false pretenses to any **[**public/private**] [**animal shelter/veterinary clinic/other facility**]**, or made another to do so, through acts of **[**deception/misrepresentation**]**;

(2) Defendant caused the disposition of **[**animal**]**; and

(3) Defendant acted **[**intentionally/recklessly**]**.

"Intentionally" means it was Defendant's conscious objective or purpose to engage in cruelty to animals.

"Recklessly" means Defendant was aware of and consciously disregarded a substantial and unjustifiable risk that **[**animal**]** would be **[**neglected/mistreated, etc.**]** as the result of Defendant's conduct. The State must demonstrate the risk was of such a nature and degree Defendant's disregard of it was a gross deviation

from the standard of conduct a reasonable person would observe under the same circumstances.

"Animal" does not include fish, crustacea or mollusca.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 231(b, e) and 1325(a**)(**2).

UNLAWFUL TRADE IN DOG OR CAT BY-PRODUCTS

In order to find Defendant guilty of the Unlawful Trade in **[**Dog/Cat**]** By-Products, you must find the State proved the following two (2) elements beyond a reasonable doubt:

(1) Defendant **[**sold/bartered/**(**offered for **(**sale/barter**)]** **[**the **(**fur/hair)/any product made in **(**whole/part**)** from the **(**fur/hair**)]** of a domestic **[**dog/cat**]**; and

(2) Defendant acted **[**knowingly/recklessly**]**.

"Knowingly" means Defendant knew or was aware Defendant was engaging in dealing domesticated **[**dog/cat**]** **[**fur/hair**]**.

"Recklessly" means Defendant was aware of and consciously disregarded the **[**sale/barter**]** **[**dog/cat**]** **[**fur/hair**]** could endanger the health and safety of others. The State must demonstrate the risk was of such a nature and degree Defendant's disregard of it was a gross deviation from the standard of conduct a reasonable person would observe under the same circumstances.

Applicable Code Sections and Case Law:

11 *Del.C.* § 231(c, e).

UNLAWFUL TRADE IN DOG OR CAT BY-PRODUCTS

In order to find Defendant guilty of the Unlawful Trade in **[**Dog/Cat**]** By-Products, you must find the State proved the following two (2) elements beyond a reasonable doubt:

(1) Defendant **[**sold/bartered/**(**offered for **(**sale/barter**)]** **[**the flesh/any product made in **(**whole/part**)** from the flesh**]** of a domestic **[**dog/cat**]**; and

(2) Defendant acted **[**knowingly/recklessly**]**.

"Knowingly" means Defendant knew or was aware Defendant was engaging in dealing domesticated **[**dog/cat**]** flesh.

"Recklessly" means Defendant was aware of and consciously disregarded the **[**sale/barter**]** of domesticated **[**dog/cat**]** flesh could endanger the health and safety of others. The State must demonstrate the risk was of such a nature and degree Defendant's disregard of it was a gross deviation from the standard of conduct a reasonable person would observe under the same circumstances.

Applicable Code Sections and Case Law:

11 *Del.C.* § 231(c, e).

ANIMALS FIGHTING OR BAITING

In order to find Defendant guilty of Felony Fighting or Baiting Animals, you must find the State proved the following two (2) elements beyond a reasonable doubt:

(1) Defendant **[(**owned/possessed/kept/trained/used**) (**animal**)** for the purpose of fighting or baiting/was party **(**to/caused**) (**fighting/baiting**)** of **(**animal**)/(**rented/obtained the use of**)** a **(**building/ shed/room/yard/ground/premises**)** for the purpose of fighting or baiting**(**animal**)**/knowingly permitted use of a **(**building/shed/room/yard/ground/premises**) (**belonging to the defendant/under Defendant's control**)** for the purpose of **(**fighting/baiting**) (**animal**)]**; and

(2) Defendant acted **[**intentionally/knowingly**]**.

"Animal" means any bull, bear, dog, cock, or other animal or fowl kept for the purpose of fighting or baiting.

.

"Intentionally" means it was Defendant's conscious objective or purpose to engage in conduct involving animal fighting or baiting.

"Knowingly" means Defendant was aware Defendant was engaged conduct involving animal fighting or baiting.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 231(b, c) and 251(b); 16 *Del. C.* § 4701(defining "possession"**)**.

Animals [Fighting or Baiting] . . . . . 11.1326(b)

ANIMALS FIGHTING OR BAITING

In order to find Defendant guilty of Felony Fighting or Baiting Animals, you must find the State proved the following two (2) elements beyond a reasonable doubt:

(1) Defendant was present at a **[**building/shed/room/yard/ground/premises**]** where presentations were made of exhibition of **[**fighting/baiting**]** of **[**animal**]**; and

(2) Defendant acted **[**intentionally/.knowingly**]**.

"Animal" means any bull, bear, dog, cock, or other animal or fowl kept for the purpose of fighting or baiting.

.

"Intentionally" means it was Defendant's conscious objective or purpose to engage in conduct involving animal fighting or baiting.

"Knowingly" means Defendant was aware Defendant was engaged conduct involving animal fighting or baiting.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 231 (b, c) and 251(b).

Animals ***[****Fighting or Baiting****]*** . . . . . 11.1326(c)

ANIMALS FIGHTING OR BAITING

In order to find Defendant guilty of Felony Fighting or Baiting Animals, you must find the State proved the following two (2) elements beyond a reasonable doubt:

(1) Defendant gambled on the outcome of an exhibition the **[**fighting/baiting**]** of **[**animal**]**; and

(2) Defendant acted **[**intentionally/knowingly**]**.

"Animal" means any bull, bear, dog, cock, or other animal or fowl kept for the purpose of fighting or baiting.

.

"Intentionally" means it was Defendant's conscious objective or purpose to engage in conduct involving animal fighting or baiting.

"Knowingly" means Defendant was aware Defendant was engaged conduct involving animal fighting or baiting.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 231(b, c) and 251(b).

MAINTAINING A DANGEROUS ANIMAL

In order to find Defendant guilty of Maintaining a Dangerous Animal, you must find the State proved the following two (2) elements beyond a reasonable doubt:

(1) Defendant **[**owned/controlled/had custody of**] [**animal**]**, a dangerous animal;

(2) **[**Animal**]** caused **[(**death/serious physical injury/physical injury**)** to **(**victim**),** another person/death/serious injury**]** to another animal;

(3) Defendant acted **[**knowingly/recklessly**]**.

[if applicable]

[In order to establish this affirmative defense, Defendant must prove the following two (2) elements by a preponderance of the evidence: (1) **(**Physical injury/serious physical injury/death**)** was inflicted upon **(**Victim**),** a person; and (2) **(**Victim**)** was in the course of **(**committing **{**criminal trespass/any violent felony as set forth in Title 11**}/{**attempting to commit **{**criminal trespass/any violent felony as set forth in Title 11**})]**.

[If applicable]

[In order to establish this affirmative defense, Defendant must prove the following two (2) elements by a preponderance of the evidence: (1) **(**Physical injury/serious physical injury/death**)** was inflicted upon **(**Victim**),** a person; and (2) **(**Victim**)** provoked the attack by **(**committing cruelty to animals as defined in 11 *Del.C.* § 1325/inflicting physical injury upon **(**animal**)]**.

[If applicable]

[In order to establish this affirmative defense, Defendant must prove the following two (2) elements by a preponderance of the evidence: (1) **(**Physical injury/serious physical injury/death**)** was inflicted upon **(**Victim**),** a person; and (2) Defendant, the **(**owner/ custodian**)** of the dangerous animal was in full compliance with the applicable provisions of subchapter III of Chapter 17 of Title 7, including the requirements pertaining to confinement, restraint and muzzling.**]**

[If applicable]

[In order to establish this affirmative defense, Defendant must prove the following two (2) elements by a preponderance of the evidence: (1) **(**Physical injury/death**)** was inflicted upon (animal); and (2) **(**animal**)** which was **(**injured/killed**)** had entered onto the real property of Defendant, the **(**owner/custodian**)** of the dangerous animal without permission.**]**

[If applicable]

[In order to establish this affirmative defense, Defendant must prove the following two (2) elements by a preponderance of the evidence: (1) **(**Physical injury/death**)** was inflicted upon (animal); and (2) **(**animal**)** which was **(**injured/killed**)** provoked the attack by **(**menacing/biting/attacking**) (**Defendant/the dangerous animal/**{**owner/custodian**}** of the dangerous animal**)].**

[If applicable]

[In order to establish this affirmative defense, Defendant must prove the following two (2) elements by a preponderance of the evidence: (1) **(**Physical injury/death**)** was inflicted upon (animal); and (2) Defendant, the **(**owner/custodian**)** of the dangerous animal was in full compliance with the applicable provisions of subchapter III of Chapter 17 of Title 7, including the requirements pertaining to confinement, restraint and muzzling.**]**

"Knowingly" means Defendant knew or was aware Defendant was **[**owned/controlled/had custody of**]** a dangerous animal.

"Recklessly" means Defendant was aware of and consciously disregarded a substantial and unjustifiable Defendant's **[**ownership/control/custody**]** of **[**animal**]**, a dangerous animal, would endanger the health and safety of others. The State must demonstrate the risk was of such a nature and degree Defendant's disregard

of it was a gross deviation from the standard of conduct a reasonable person would observe under the same circumstances.

"Dangerous animal" means any dog or other animal which: **[**has been declared dangerous or potentially dangerous by the Dog Control Panel pursuant to subchapter III of Chapter 17 of Title 7/**(**has been trained for dog fighting/has been used **{**primarily/occasionally**}** for animal fighting/has been intentionally trained to increase its **{**viciousness/dangerousness/potential for unprovoked attacks**}** upon **{**human beings/other animals**}**/has an individualized and known **(**propensity/tendency/ disposition**)**, specific to the individual dog, for **(**viciousness/dangerousness/unprovoked attacks upon **{**human beings/other animals**})]**

Proof by a preponderance of the evidence means proof that something is more likely than not. It means that certain evidence, when compared to the evidence opposed to it, has the more convincing force and makes you believe that something is more likely true than not. Preponderance of the evidence does not depend on the number of witnesses. If the evidence supporting the existence of the defense is evenly balanced, then the defendant has not proved the existence of the defense by a preponderance of the evidence, and you must find against the

defendant on that point. The state has no burden to present any evidence on this matter.

[Commentary: This section does not apply to any dog or other animal trained, owned, or used by any law enforcement agency or any person, company, agency, or entity licensed pursuant to Chapter 13 of Title 24.]

Applicable Code Sections and Case Law:

11 *Del.C.* §§ 231(c, e)

Smoking on Trolleys and Buses 11.1330

SMOKING ON TROLLEYS AND BUSES

In order to find Defendant guilty of Smoking on Trolleys or Buses, you must find the State proved the following two (2) elements beyond a reasonable doubt:

(1) Defendant was in any **[**trackless trolley/**(**gasoline/diesel-engine-powered**)** bus**]**;

(2) **(**Trolley/Bus**]** was bring used as a public conveyance for carrying passengers within Delaware;

(3) Defendant **[**smoked/carried a lighted **(**cigarette/cigar/pipe**)]**.

Applicable Code Sections and Case Law:

11 *Del.C.* § 251(b).

DESECRATION

In order to find Defendant guilty of Desecration, you must find the State proved the following three (3) elements beyond a reasonable doubt:

(1) Defendant **[**defaced/damaged/polluted/physically mistreated/vandalized**]** a **[**public **(**monument/structure**)**/place of worship/national flag/any other object of public veneration**]** in **[**place**]**, a public place;

(2) Defendant acted in a way Defendant knew would outrage sensibilities of persons likely to **[**observe/discover**]** the actions; and

(3) Defendant acted intentionally and knowingly.

"Intentionally" means it was Defendant's conscious objective or purpose to engage in behavior to, at least substantially, deface, damage, pollute, physically mistreat or vandalize a public monument, structure, place of worship, national flag, or other object of public veneration to outrage the sensibilities of others who would see the results of Defendant's actions.

"Knowingly" means Defendant knew or was aware Defendant's actions would outrage the sensibilities of persons likely to observe or discover the results of Defendant's actions.

"Public place" means a place to which the public or a substantial group of persons has access and includes highways, transportation facilities, schools, places of amusement, parks, playgrounds, prisons and hallways, lobbies and other portions of apartment houses and hotels not constituting rooms or apartments designed for actual residence.

Commentary: Desecration, defiance, disrespect, or misuse of the national flag of the United States may be protected under the First Amendment as a form of political expression. See Texas v. Johnson, 491 U.S. 397, 109 S. Ct. 2533 (1989).

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 231(b, c), 251(b) and 1337(b).

ABUSING A CORPSE

In order to find Defendant guilty of Abusing a Corpse, you must find the State proved the following four (4) elements beyond a reasonable doubt:

(1) Defendant **[**act**]** to a corpse;

(2) **[**Act**]** was of a nature a reasonable person knew it would outrage ordinary family sensibilities;

(3) Defendant's treatment of the corpse was not authorized by law; and

(4) Defendant acted knowingly.

"Knowingly" means Defendant knew or was aware Defendant was engaging in abusing a corpse.

[Commentary: *Corpse refers to a human corpse.]*

Applicable Code Sections and Case Law:

11 *Del. C.* § 231(c).

TRADING IN HUMAN REMAINS AND ASSOCIATED FUNERARY OBJECTS

In order to find Defendant guilty of Trading in Human Remains and Associated Funerary Objects, you must find the State proved the following three (3) elements beyond a reasonable doubt:

(1) Defendant **[**sold/bought/transported for sale or profit/offered to buy, sell or transport for sale or profit**]** within the State **[**human remains/associated funerary objects**]**;

(2) The **[**human remains/associated funerary objects**]** **[**sold/bought/transported for sale or profit/offered to buy, sell or transport for sale or profit**]** by Defendant were unlawfully removed from the burial site; and

(3) Defendant acted knowingly.

"Unlawful" means contrary to law or not permitted by law.

"Knowingly" means Defendant knew or was aware Defendant was engaging in the purchase, sale, or transport for sale or profit or offered to buy, sell, or transport for sale or profit any unlawfully removed human remains or any associated funerary objects.

"Associated funerary objects" means a manufactured or natural item that is intentionally buried with human remains or added later to the burial site as a part of a cultural, religious or group death rite or ceremony. Such objects include gravestones, monuments, tombs or any other structure in or directly associated with a burial site.

[Commentary: This section does not apply to any person acting in the course of medical, archaeological, educational or scientific study authorized by an accredited educational institution or government entity, a licensed mortician or other professional who transports human remains in the course of carrying out the individual's professional duties and responsibilities.

[Commentary: This section is not to be construed to interfere with the normal operation and maintenance of a public or private cemetery including the correction of improper burial siting, and, with the consent of any person who would qualify as an heir of the deceased, moving the remains within a public or private cemetery.]

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 222(28), 231(c) and 1333(a)(1).

Violation of Privacy . . . . . 11.1335(a)(1)

VIOLATION OF PRIVACY

In order to find Defendant guilty of Violation of Privacy, you must find the State proved the following three (3) elements beyond a reasonable doubt:

(1) Defendant trespassed on the **[**private property**]** of **[**victim**]**;

(2) Defendant meant to subject **[**victim**]** to **[**eavesdropping/surveillance**]** in a private place; and

(3) Defendant acted intentionally.

"Intentionally" means it was Defendant's conscious objective or purpose to trespass to eavesdrop or other surveillance to violate another's privacy.

"Private place" means a place where one may reasonably expect to be safe from casual or hostile intrusion or surveillance, but does not include a place to which the public or a substantial portion of the public has access and in which there is no reasonable expectation of privacy.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 231(b, c), 251(b), and 1337(a); *See Barbieri v. News Journal Co.*, 189 A.2d 773, 774-75 (Del. 1963) (outlining the basic elements for a civil claim in tort for invasion of privacy and defining parameters of "privacy"**)**.

VIOLATION OF PRIVACY

In order to find Defendant guilty of Violation of Privacy, you must find the State proved the following three (3) elements beyond a reasonable doubt:

(1) Defendant installed **[**device**]** for **[**observing/photographing/recording/amplifying/ broadcasting**]** **[**sounds/events**]** occurring in **[**victim's**]** **[**private place**]**;

(2) Defendant did not have **[**victim's**]** consent to place **[**device**]** for **[**observing/ photographing/recording/amplifying/broadcasting**]** in **[**place**]**, where **[**victim**]** was entitled to privacy; and

(3) Defendant acted **[**intentionally/knowingly**]**.

"Intentionally" means it was Defendant's conscious objective or purpose to install the device to violate another's privacy.

"Knowingly" means Defendant knew or was aware Defendant was engaging in violation of another's privacy.

"Private place" means a place where one may reasonably expect to be safe from casual or hostile intrusion or surveillance, but does not include a place to which the public or a substantial portion of the public has access and in which there is no reasonable expectation of privacy.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 231(b, c), 251(b), and 1337(a). *See Barbieri v. News Journal Co.*, 189 A.2d 773, 774-75 (Del. 1963) (outlining the basic elements for a civil claim in tort for invasion of privacy and defining parameters of "privacy"**)**.

Violation of Privacy . . . . . 11.1335(a)(3)

VIOLATION OF PRIVACY

In order to find Defendant guilty of Violation of Privacy, you must find the State proved the following three (3) elements beyond a reasonable doubt:

(1) Defendant **[**installed/used**]** outside of **[**victim's**]** **[**private place**]** **[**device**]** for **[**hearing/ recording/amplifying/broadcasting**]** sounds originating in **[**private place**]**;

(2) Defendant did not have **[**victim's**]** consent to make such a **[**recording/amplifying/ broadcasting**]** of sounds originating in **[**place**]**, where **[**victim**]** was entitled to privacy; and

(3) Defendant acted **[**intentionally/knowingly**]**.

"Intentionally" means it was Defendant's conscious objective or purpose to engage in violating another's privacy.

"Knowingly" means Defendant knew or was aware Defendant was engaging in violation of another's privacy.

"Private place" means a place where one may reasonably expect to be safe from casual or hostile intrusion or surveillance, but does not include a place to which the public or a substantial portion of the public has access and in which there is no reasonable expectation of privacy.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 231(b, c), 251(b), and 1337(a); *See Barbieri v. News Journal Co.*, 189 A.2d 773, 774-75 (Del. 1963) (outlining the basic elements for a civil claim in tort for invasion of privacy and defining parameters of "privacy"**)**.

Violation of Privacy . . . . . 11.1335(a)(4)

VIOLATION OF PRIVACY

In order to find Defendant guilty of Violation of Privacy, you must find the State proved the following three (3) elements beyond a reasonable doubt:

(1) Defendant intercepted a message by **[**telephone/telegraph/letter/private conversation/other means of private communication**]**;

(2) Defendant acted without **[**victims'**]** consent; and

(3) Defendant acted **[**intentionally/knowingly**]**.

"Intentionally" means it was Defendant's conscious objective or purpose to engage in violating another's privacy.

"Knowingly" means Defendant knew or was aware Defendant was engaging in violation of another's privacy.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 231(b, c) and 251(b). *See Barbieri v. News Journal Co.*, 189 A.2d 773, 774-75 (Del. 1963) (outlining the basic elements for a civil claim in tort for invasion of privacy and defining parameters of "privacy"**)**.

Violation of Privacy . . . . . 11.1335(a)(5)

VIOLATION OF PRIVACY

In order to find Defendant guilty of Violation of Privacy, you must find the State proved the following four (4) elements beyond a reasonable doubt:

(1) Defendant divulged the **[**existence/contents**]** of a message communicated by **[**telephone/telegraph/letter/private conversation/other means of private communication**]**;

(2) Defendant acted without the consent of either **[**victim**]**, the sender, or **[**victim**]**, receiver of the message;

(3) Defendant **[**knew the message was unlawfully intercepted/learned of the message in the course of employment with agency transmitting it**]**; and

(4) Defendant acted **[**intentionally/knowingly**]**.

"Intentionally" means it was Defendant's conscious objective or purpose to engage in violating another's privacy.

"Knowingly" means Defendant knew or was aware Defendant was engaging in violation of another's privacy.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 231(b, c) and 251(b); *See Barbieri v. News Journal Co.*, 189 A.2d 773, 774-75 (Del. 1963) (outlining the basic elements for a civil claim in tort for invasion of privacy and defining parameters of "privacy"**)**.

Violation of Privacy . . . . . 11.1335(a)(6)

VIOLATION OF PRIVACY

In order to find Defendant guilty of Violation of Privacy, you must find the State proved the following four (4) elements beyond a reasonable doubt:

(1) Defendant **[**tape recorded/photographed/filmed/videotaped/reproduced**]** **[**victim's**]** image **[**getting dressed/getting undressed/had **(**Defendant's**)** **(**genitals/buttocks/breasts**)]** exposed;

(2) Defendant acted without **[**victim's**]** consent;

(3) Defendant's conduct occurred in a **[**fitting room/dressing room/locker room/bathroom**]** where **[**victim**]** had a reasonable expectation of privacy; and

(4) Defendant acted **[**intentionally/knowingly**]**.

"Intentionally" means it was Defendant's conscious objective or purpose to engage in recording, photographing or otherwise reproducing **[**victim's**]** image getting dressed, undressed or with genitals, buttocks or breasts exposed and violating another's privacy.

"Knowingly" means Defendant knew or was aware Defendant was engaging in recording, photographing or otherwise reproducing **[**victim's**]** image

getting dressed, undressed or with genitals, buttocks or breasts exposed in violation of another's privacy.

"Private place" means a place where one may reasonably expect to be safe from casual or hostile intrusion or surveillance, but does not include a place to which the public or a substantial portion of the public has access and in which there is no reasonable expectation of privacy.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 231(b, c), 251(b), and 1337(a). *See Barbieri v. News Journal Co.*, 189 A.2d 773, 774-75 (Del. 1963) (outlining the basic elements for a civil claim in tort for invasion of privacy and defining parameters of "privacy"**)**.

Violation of Privacy . . . . . 11.1335(a)(7)

VIOLATION OF PRIVACY

In order to find Defendant guilty of Violation of Privacy, you must find the State proved the following three (3) elements beyond a reasonable doubt:

(1) Defendant installed **[**device**]** for **[**videotaping//filming/photographing/recording**]** **[**under/ through**]** **[**victim's**]** clothing for the purpose of viewing **[**victim's**]** **[**body/underclothing worn**]**;

(2) Defendant did not have **[**victim's**]** consent to make **[**videotaping/filming/photographing/ recording**]**; and

(3) Defendant acted **[**intentionally/knowingly**]**.

"Intentionally" means it was Defendant's conscious objective or purpose to record through **[**victim's**]** clothing for the purpose of viewing **[**victim's**]** body or underwear worn violating another's privacy.

"Knowingly" means Defendant knew or was aware Defendant was engaging recording through **[**victim's**]** clothing for the purpose of viewing **[**victim's**]** body or underwear worn in violation of another's privacy.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 231(b, c) and 251(b). *See Barbieri v. News Journal Co.*, 189 A.2d 773, 774-75 (Del. 1963) (outlining the basic elements for a civil claim in tort for invasion of privacy and defining parameters of "privacy"**)**.

Violation of Privacy . . . . . 11.1335(a)(8)

VIOLATION OF PRIVACY

In order to find Defendant guilty of Violation of Privacy, you must find the State proved the following three (3) elements beyond a reasonable doubt:

(1) Defendant installed **[**electronic/mechanical**]** location tracking device **[**in/on**] [**victim's**]** motor vehicle;

(2) Defendant did not have **[**victim's**]** consent to install device; and

(3) Defendant acted knowingly.

This section does not apply to the lawful use of an electronic tracking device by a law enforcement officer.

This section does not apply to a parent or legal guardian who installs such a device for the purpose of tracking the location of a minor child.

"Intentionally" means it was Defendant's conscious objective or purpose to install a location tracking device in violation another's privacy.

"Knowingly" means Defendant knew or was aware Defendant was engaging in the installation of a location tracking device in violation of another's privacy.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 231(b, c) and 251(b). *See Barbieri v. News Journal Co.*, 189 A.2d 773, 774-75 (Del. 1963) (outlining the basic elements for a civil claim in tort for invasion of privacy and defining parameters of "privacy"**)**.

[Manufacture/Transfer/Use/Possess/Transport] of . . . . . 11.1338(b)
[Bomb/Incendiary Device/Molotov Cocktail/Explosive Device]

[MANUFACTURE/TRANSFER/USE/POSSESS/TRANSPORT] OF [BOMB/INCENDIARY DEVICE/MOLOTOV COCKTAIL/EXPLOSIVE DEVICE]

In order to find Defendant guilty of [Manufacture/Transfer/Use/Possess/Transport] of a [Bomb/Incendiary Device/Molotov Cocktail/Explosive Device], you must find the State proved the following three (3) elements beyond a reasonable doubt:

(1) Defendant [manufactured/transferred/used/possessed/transported] a [bomb/incendiary device/Molotov cocktail/device] designed to explode or produce uncontained combustion;

(2) Defendant meant to cause [bodily harm/damage to property]; and

(3) Defendant acted intentionally.

You may infer Defendant intended to cause bodily harm or damage to property if Defendant was found in possession of the [bomb/incendiary device/Molotov cocktail/explosive device].

A person who knowingly has direct physical control over a thing, at a given time has actual "possession" of it. In addition to actual possession, possession includes any location in or about Defendant’s person, premises, belongings, vehicle, or otherwise within the person's reasonable control. In other words, a

person who, although not in actual possession, has both the power and the intention, at a given time, to exercise control over a substance, either directly or through another person or persons, is then in "constructive possession" of it. Possession may be sole or joint. If one person alone has actual or constructive possession of a thing, possession is sole. If two (2) or more persons share actual or constructive possession over a thing, possession is joint. The element of possession is proven if you find beyond a reasonable doubt Defendant had actual or constructive possession, either alone or jointly with others.

"Intentionally" means it was Defendant's conscious objective or purpose to manufacture, transfer, use, possess or transport the device in question.

"Incendiary device" means any item designed to ignite by hand, chemical reaction or by spontaneous combustion and is not designed for any lawful purpose or use whatsoever, or where any lawful purpose or use has been or is terminated.

"Molotov cocktail" means a makeshift incendiary bomb made of a breakable container filled with a flammable liquid and provided with a wick composed of any substance capable of bringing flame into contact with the liquid.

[Commentary: The Effect of Inference of Recently Stolen Property Instruction, which may be applicable here, is designed for use in the situation where Defendant is charged with theft, and is found to be in possession of stolen property shortly after the commission of the charged offense. See 11 Del. C. §

306(c)(2), as interpreted in Hall v. State, Del. Supr., 473 A.2d 352, 355, 357-358 (1984). It can also be adapted to deal with other specific situations where an "inference" instruction may be appropriate. See, e.g. 11 Del. C. § 306(c)(1), as interpreted in Plass v. State, 457 A.2d 362, 367-368 (Del. 1983) (approving inference that a person intends the natural and probable consequences of their act).]

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 231(b) and 1338(a)(1, 2). *See*, Instructions on the Effect of Inference of Recently Stolen Property and Receiving Stolen Property.

Adulteration . . . . . 11.1339(a)(1)

ADULTERATION

In order to find Defendant guilty of Adulteration, you must find the State proved the following three (3) elements beyond a reasonable doubt:

(1) Defendant adulterated **[**substance**]**;

(2) Defendant acted to cause **[**victim's**] [**illness/physical injury/death**]**; and

(3) Defendant acted intentionally.

"Physical injury" means impairment of physical condition or substantial pain.

"Intentionally" means it was Defendant's conscious objective or purpose to cause **[**victim's**] [**illness/physical injury/death**]**

"Adulteration" means the intentional adding of any substance that is injected, inhaled, ingested or absorbed, and is used by people for customary or reasonably foreseeable purposes, if the added substance, whether alone or combined with the other substance, can cause death, physical injury, or illness.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 222(24), 231(b) and 1339(b).

*Adulteration **[**Causing Physical Injury/Illness**]*** . . . . . 11.1339(a)(2)

ADULTERATION

In order to find Defendant guilty of Adulteration **[**Causing Physical Injury/Illness**]**, you must find the State proved the following four (4) elements beyond a reasonable doubt:

(1) Defendant **[**distributed/disseminated/gave/sold/otherwise transferred**]** **[**substance**]**;

(2) Defendant **[**knew/had reason to know**]** **[**substance**]** had been adulterated;

(3) Defendant acted to cause **[**victim's**]** **[**illness/physical injury/death**]**; and

(4) Defendant acted intentionally.

"Physical injury" means impairment of physical condition or substantial pain.

"Intentionally" means it was Defendant's conscious objective or purpose to cause **[**victim's**]** **[**illness/physical injury/death**]**.

"Knowingly" means Defendant knew the substance had been adulterated.

"Adulteration" means the intentional adding of any substance that is injected, inhaled, ingested or absorbed, and is used by people for customary or

reasonably foreseeable purposes, if the added substance, whether alone or combined with the other substance, can cause death, physical injury, or illness.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 222(24), 231(b, c), and 1339(b).

Adulteration [Causing Death] . . . . . 11.1339(a)(2)

ADULTERATION [CAUSING DEATH]

In order to find Defendant guilty of Adulteration **[**Causing Death**]**, you must find the State proved the following five (5) elements beyond a reasonable doubt:

(1) Defendant **[**distributed/disseminated/gave/sold/otherwise transferred**]** **[**substance**]**;

(2) Defendant **[**knew/had reason to know**]** **[**substance**]** had been adulterated;

(3) Defendant acted to cause **[**victim's**]** **[**illness/physical injury/death**]**;

(4) Defendant caused **[**victim's**]** death; and

(5) Defendant acted intentionally.

"Intentionally" means it was Defendant's conscious objective or purpose to cause **[**victim's**]** death.

"Knowingly" means Defendant knew the substance had been adulterated.

"Adulteration" means the intentional adding of any substance that is injected, inhaled, ingested or absorbed, and is used by people for customary or reasonably foreseeable purposes, if the added substance, whether alone or combined with the other substance, can cause death, physical injury, or illness.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 222(24), 231(b, c), and 1339(b).

DESECRATION OF BURIAL PLACE

In order to find Defendant guilty of Desecration of Burial Place, you must find the State proved the following two (2) elements beyond a reasonable doubt:

(1) Defendant **[**defaced/damaged/polluted/vandalized/otherwise physically mistreated**] [**place**]**, a burial place; and

(2) Defendant acted intentionally.

"Intentionally" means Defendant consciously engaged in desecrating the burial site.

Applicable Code Sections and Case Law:

11 *Del. C.* § 231(b).

Lewdness 11.1341

LEWDNESS

In order to find Defendant guilty of Lewdness, you must find the State proved following three (3) elements beyond a reasonable doubt:

(1) Defendant engaged in a lewd act;

(2) Defendant **[**performed the act in a public place/knew the lewd act was likely to be observed by another person who would be affronted or alarmed by it**]**; and

(3) Defendant acted **[**intentionally/knowingly**]**.

"Intentionally" means it was Defendant's conscious objective or purpose to engage in a lewd act.

"Knowingly" means Defendant was aware Defendant's conduct was lewd.

"Lewd act" means any indecent sexual act that offends morality.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 231(b, c) and 251(b).

Prostitution . . . . . 11.1342(a)(1)

PROSTITUTION

In order to find Defendant guilty of Prostitution, you must find the State proved following two (2) elements beyond a reasonable doubt:

(1) Defendant **[**engaged/agreed to engage/offered to engage**]** in sexual conduct with **[**person**]** in return for a fee; and

(3) Defendant acted **[**intentionally/knowingly**]**.

{where applicable}

[It is not a defense to the charge of prostitution Defendant and (person) were of the same sex, or Defendant was a male and (person) was a female.**]**

"Intentionally" means it was Defendant's conscious objective or purpose to engage in prostitution.

"Knowingly" means Defendant knew or was aware **[**he/she**]** was engaging in prostitution.

"Sexual conduct" means any act designed to produce sexual gratification for either party and is not limited to sexual intercourse or deviate sexual intercourse.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 231(b, c), 251(b), 1344, and 1356(4).

Patronizing a Prostitute . . . . . 11.1343(a)(1)

PATRONIZING A PROSTITUTE

In order to find Defendant guilty of Patronizing a Prostitute, you must find the State proved following three (3) elements beyond a reasonable doubt:

(1) Defendant paid a fee to **[**person**]** as compensation for engaging in sexual conduct with Defendant;

(2) Defendant paid **[**person**]** under a previous **[**agreement/understanding**]**; and

(3) Defendant acted **[**intentionally/knowingly**]**.

{where applicable}

[It is not a defense to the charge of prostitution Defendant and (person) were of the same sex, or Defendant was a male and (person) was a female.**]**

"Intentionally" means it was Defendant's conscious objective or purpose to engage in patronizing a prostitute.

"Knowingly" means Defendant knew or was aware Defendant was engaging in patronizing a prostitute.

"Sexual conduct" means any act designed to produce sexual gratification for either party and is not limited to sexual intercourse or deviate sexual intercourse.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 231(b, c), 251(b), 1344, and 1356(4).

Patronizing a Prostitute . . . . . 11.1343(a)(2)

PATRONIZING A PROSTITUTE

In order to find Defendant guilty of Patronizing a Prostitute, you must find the State proved following three (3) elements beyond a reasonable doubt:

(1) Defendant **[**paid/agreed to pay**]** a fee to **[**person**]** in return for **[**person/third person**]** engaging in sexual conduct with Defendant;

(2) Defendant paid **[**person**]** under a previous **[**agreement/understanding**]**; and

(3) Defendant acted **[**intentionally/knowingly**]**.

{where applicable}

[It is not a defense to the charge of prostitution Defendant and (person) were of the same sex, or Defendant was a male and (person) was a female.**]**

"Intentionally" means it was Defendant's conscious objective or purpose to engage in patronizing a prostitute.

"Knowingly" means Defendant knew or was aware Defendant was engaging in patronizing a prostitute.

"Sexual conduct" means any act designed to produce sexual gratification for either party and is not limited to sexual intercourse or deviate sexual intercourse.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 231(b, c), 251(b), 1344, and 1356(4).

Patronizing a Prostitute . . . . . 11.1343(a)(3)

PATRONIZING A PROSTITUTE

In order to find Defendant guilty of Patronizing a Prostitute, you must find the State proved following two (2) elements beyond a reasonable doubt:

(1) Defendant **[**solicited/requested**] [**person**]** to engage in sexual conduct with Defendant for a fee; and

(2) Defendant acted **[**intentionally/knowingly**]**.

{where applicable}

[It is not a defense to the charge of prostitution Defendant and (person) were of the same sex, or Defendant was a male and (person) was a female.**]**

"Intentionally" means it was Defendant's conscious objective or purpose to engage in patronizing a prostitute.

"Knowingly" means Defendant knew or was aware Defendant was engaging in patronizing a prostitute.

"Sexual conduct" means any act designed to produce sexual gratification for either party and is not limited to sexual intercourse or deviate sexual intercourse.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 231(b, c), 251(b), 1344, and 1356(4).

PROMOTING PROSTITUTION IN THE THIRD DEGREE

In order to find Defendant guilty of Promoting Prostitution in the Third Degree, you must find the State proved the following two (2) elements beyond a reasonable doubt:

(1) Defendant **[**advanced/profited from**]** prostitution; and

(2) Defendant acted knowingly.

"Knowingly" means Defendant knew or was aware Defendant was engaging in promoting prostitution.

Defendant "advances prostitution" when Defendant knowingly causes or assists another person to commit or engage in prostitution, procures or solicits patrons for prostitution, provides persons or premises for prostitution purposes, operates or assists in the operation of a house of prostitution or a prostitution enterprise, or engages in any other conduct designed to establish, assist or facilitate an act or enterprise of prostitution.

Defendant "profits from prostitution" when Defendant, acting as other than a prostitute, receives compensation for rendering prostitution services and, under an agreement or understanding with another person, participates or is to participate in the proceeds of the prostitution activity. A person does not advance or profit

from prostitution by either patronizing a prostitute or by receiving compensation for personally engaging in prostitution activities.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 231(c) and 1356(1, 2, 4).

Promoting Prostitution in the Second Degree . . . . . 11.1352(1)

PROMOTING PROSTITUTION IN THE SECOND DEGREE

In order to find Defendant guilty of Promoting Prostitution in the Second Degree, you must find the State proved following two (2) elements beyond a reasonable doubt:

(1) Defendant **[**advanced/profited from**]** prostitution by **[**managing/supervising/controlling/ owning**] [**alone/in association with others**]** a **[**house of prostitution/prostitution business/enterprise involving prostitution**]** involving 2 or more prostitutes; and

(2) Defendant acted knowingly.

"Knowingly" means Defendant knew or was aware Defendant was engaging in promotion of prostitution.

Defendant "advances prostitution" when Defendant knowingly causes or assists another person to commit or engage in prostitution, procures or solicits patrons for prostitution, provides persons or premises for prostitution purposes, operates or assists in the operation of a house of prostitution or a prostitution enterprise, or engages in any other conduct designed to establish, assist or facilitate an act or enterprise of prostitution.

Defendant "profits from prostitution" when Defendant, acting as other than a prostitute, receives compensation for rendering prostitution services and, under an agreement or understanding with another person, participates or is to participate in the proceeds of the prostitution activity. A person does not advance or profit from prostitution by either patronizing a prostitute or by receiving compensation for personally engaging in prostitution activities.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 231(c) and 1356(1, 2, 4).

Promoting Prostitution in the Second Degree . . . . . 11.1352(2)

PROMOTING PROSTITUTION IN THE SECOND DEGREE

In order to find Defendant guilty of Promoting Prostitution in the Second Degree, you must find the State proved following two (2) elements beyond a reasonable doubt:

(1) Defendant **(**advanced/profited from**)** the prostitution of a person less than 18 years of age; and

(2) Defendant acted knowingly.

"Knowingly" means Defendant knew or was aware (prostitute) was less than 18 years old.

Defendant "advances prostitution" when Defendant knowingly causes or assists another person to commit or engage in prostitution, procures or solicits patrons for prostitution, provides persons or premises for prostitution purposes, operates or assists in the operation of a house of prostitution or a prostitution enterprise, or engages in any other conduct designed to establish, assist or facilitate an act or enterprise of prostitution.

Defendant "profits from prostitution" when Defendant, acting as other than a prostitute, receives compensation for rendering prostitution services and, under an agreement or understanding with another person, participates or is to participate in the proceeds of the prostitution activity. A person does not advance or profit from prostitution by either patronizing a prostitute or by receiving compensation for personally engaging in prostitution activities.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 231(c) and 1356(1, 2, 4).

PROMOTING PROSTITUTION IN THE FIRST DEGREE

In order to find Defendant guilty of Promoting Prostitution in the First Degree, you must find the State proved following two (2) elements beyond a reasonable doubt:

(1) Defendant **[**advanced prostitution by compelling (person) by **(**force/intimidation**)** to engage in prostitution/profited from coercive conduct by another**]**; and

(2) Defendant acted knowingly.

"Knowingly" means Defendant knew or was aware Defendant was engaging in promotion of prostitution.

Defendant "advances prostitution" when Defendant knowingly causes or assists another person to commit or engage in prostitution, procures or solicits patrons for prostitution, provides persons or premises for prostitution purposes, operates or assists in the operation of a house of prostitution or a prostitution enterprise, or engages in any other conduct designed to establish, assist or facilitate an act or enterprise of prostitution.

Defendant "profits from prostitution" when Defendant, acting as other than a prostitute, receives compensation for rendering prostitution services and, under

an agreement or understanding with another person, participates or is to participate in the proceeds of the prostitution activity. A person does not advance or profit from prostitution by either patronizing a prostitute or by receiving compensation for personally engaging in prostitution activities.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 231(c) and 1356 (1, 2, 4).

Promoting Prostitution in the First Degree . . . . . 11.1353(2)

PROMOTING PROSTITUTION IN THE FIRST DEGREE

In order to find Defendant guilty of Promoting Prostitution in the First Degree, you must find the State proved following two (2) elements beyond a reasonable doubt:

(1) Defendant **[**advanced/profited from**]** the prostitution of a person less than 16 years old; and

(2) Defendant acted knowingly.

"Knowingly" means Defendant knew or was aware (prostitute) was less than 16 years old.

Defendant "advances prostitution" when Defendant knowingly causes or assists another person to commit or engage in prostitution, procures or solicits

patrons for prostitution, provides persons or premises for prostitution purposes, operates or assists in the operation of a house of prostitution or a prostitution enterprise, or engages in any other conduct designed to establish, assist or facilitate an act or enterprise of prostitution.

Defendant "profits from prostitution" when Defendant, acting as other than a prostitute, receives compensation for rendering prostitution services and, under an agreement or understanding with another person, participates or is to participate in the proceeds of the prostitution activity. A person does not advance or profit from prostitution by either patronizing a prostitute or by receiving compensation for personally engaging in prostitution activities.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 231(c) and 1356(1, 2, 4).

Permitting Prostitution 11.1355

PERMITTING PROSTITUTION

In order to find Defendant guilty of Permitting Prostitution, you must find the State proved following two (2) elements beyond a reasonable doubt:

(1) Defendant **[**possessed/controlled**]** premises Defendant **[**knew/was aware**]** were being used for prostitution purposes; and

(2) Defendant failed to **[**halt/end**]** such use within a reasonable period of time after gaining such knowledge.

"Knowingly" means Defendant knew or was aware the premises were being used for purposes of prostitution.

Applicable Code Sections and Case Law:

11 *Del.C.* 231(c).

Acts Constituting Obscenity . . . . . 11.1361(a)(1)

ACTS CONSTITUTING OBSCENITY

In order to find Defendant guilty of Acts Constituting Obscenity, you must find the State proved following two (2) elements beyond a reasonable doubt:

(1) Defendant **[**sold/delivered/provided**]** an **[**obscene **(**picture/videotape/video game/writing/ record/audio cassette tape/compact disc**)/(**other representation/embodiment**)** of the obscene**]**; and

(2) Defendant acted knowingly.

{if applicable}

[You may infer a person who disseminates or possesses obscene material in the course of business does so knowingly.**]**

"Knowingly" means Defendant knew or was aware Defendant was engaging in acts constituting obscenity.

Material or live conduct is "obscene" if: (1) the average person, applying current community standards, would find the material or conduct, taken as a whole, appeals to prurient or lustful interests; (2) the material shows or describes or the live conduct portrays: (a) patently or clearly offensive representations or descriptions of ultimate sexual acts, normal or perverted, actual or simulated; or (b) patently or clearly offensive representations or descriptions of masturbation,

excretory functions, and/or lewd exhibitions of the genitals; and (3) the work or conduct taken as a whole lacks serious literary, artistic, political or scientific value.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 1363 and 1364.

Acts Constituting Obscenity . . . . . 11.1361(a)(2)

ACTS CONSTITUTING OBSCENITY

In order to find Defendant guilty of Acts Constituting Obscenity, you must find the State proved following two (2) elements beyond a reasonable doubt:

(1) Defendant **[(**presented/directed**)** an obscene **(**play/dance/performance**)/**participated in the obscene portion of a **(**play/dance/performance**)]**; and

(2) Defendant acted knowingly.

{if applicable}

[You may infer a person who disseminates or possesses obscene material in the course of business does so knowingly.**]**

"Knowingly" means Defendant knew or was aware Defendant was engaging in presentation of acts constituting obscenity.

Material or live conduct is "obscene" if: (1) the average person, applying current community standards, would find the material or conduct, taken as a whole, appeals to prurient or lustful interests; (2) the material shows or describes or the live conduct portrays: (a) patently or clearly offensive representations or descriptions of ultimate sexual acts, normal or perverted, actual or simulated; or (b) patently or clearly offensive representations or descriptions of masturbation, excretory functions, and/or lewd exhibitions of the genitals; and (3) the work or conduct taken as a whole lacks serious literary, artistic, political or scientific value.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 231(c) and 1363.

Acts Constituting Obscenity . . . . . 11.1361(a)(3)

ACTS CONSTITUTING OBSCENITY

In order to find Defendant guilty of Acts Constituting Obscenity, you must find the State proved following two (2) elements beyond a reasonable doubt:

(1) Defendant **[**published/exhibited/made available**]** obscene material; and

(2) Defendant acted knowingly.

{if applicable}

[You may infer a person who disseminates or possesses obscene material in the course of business does so knowingly.**]**

"Knowingly" means Defendant knew or was aware Defendant was engaging in presentation of obscene material.

Material or live conduct is "obscene" if: (1) the average person, applying current community standards, would find the material or conduct, taken as a whole, appeals to prurient or lustful interests; (2) the material shows or describes or the live conduct portrays: (a) patently or clearly offensive representations or descriptions of ultimate sexual acts, normal or perverted, actual or simulated; or (b) patently or clearly offensive representations or descriptions of masturbation, excretory functions, and/or lewd exhibitions of the genitals; and (3) the work or conduct taken as a whole lacks serious literary, artistic, political or scientific value.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 231(c) and 1363.

Acts Constituting Obscenity . . . . . 11.1361(a)(4)

ACTS CONSTITUTING OBSCENITY

In order to find Defendant guilty of Acts Constituting Obscenity, you must find the State proved following two (2) elements beyond a reasonable doubt:

(1) Defendant possessed obscene material for purposes of **[**sale/commercial dissemination**]**; and

(2) Defendant acted knowingly.

{if applicable}

[You may infer a person who disseminates or possesses obscene material in the course of business does so knowingly.**]**

"Knowingly" means Defendant knew or was aware Defendant possessed obscene material.

Material or live conduct is "obscene" if: (1) the average person, applying current community standards, would find the material or conduct, taken as a whole, appeals to prurient or lustful interests; (2) the material shows or describes or the live conduct portrays: (a) patently or clearly offensive representations or descriptions of ultimate sexual acts, normal or perverted, actual or simulated; or (b) patently or clearly offensive representations or descriptions of masturbation, excretory functions, and/or lewd exhibitions of the genitals; and (3) the work or

conduct taken as a whole lacks serious literary, artistic, political or scientific value.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 231(c) and 1363.

Acts Constituting Obscenity . . . . . 11.1361(a)(5)

ACTS CONSTITUTING OBSCENITY

In order to find Defendant guilty of Acts Constituting Obscenity, you must find the State proved following three (3) elements beyond a reasonable doubt:

(1) Defendant permitted a person under the age of 12 to be on the premises where material harmful to minors is **[**sold/made available for commercial distribution**]**;

(2) The material harmful to minors was **[**readily accessible to/easily viewed by**]** such minors; and

(3) Defendant acted knowingly.

It is no defense to a charge of obscenity Defendant did not know the child was under the age of 12.

{if applicable}

[You may infer a person who disseminates or possesses obscene material in the course of business does so knowingly.**]**

"Knowingly" means Defendant knew or was aware Defendant permitted a child under the age of 12 to be on premises where obscene material was available to the child.

Material or live conduct is "obscene" if: (1) the average person, applying current community standards, would find the material or conduct, taken as a whole, appeals to prurient or lustful interests; (2) the material shows or describes or the live conduct portrays: (a) patently or clearly offensive representations or descriptions of ultimate sexual acts, normal or perverted, actual or simulated; or (b) patently or clearly offensive representations or descriptions of masturbation, excretory functions, and/or lewd exhibitions of the genitals; and (3) the work or conduct taken as a whole lacks serious literary, artistic, political or scientific value.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 231(c) and 1363.

Through 77 Del. Laws June 30, 2010.

Obscenity [Affirmative Defense] . . . . . 11.1362(1)

OBSCENITY [AFFIRMATIVE DEFENSE]

In this case, Defendant has asserted the affirmative defense of Justified Possession to the charge of Obscenity. In order to establish this affirmative defense, Defendant must prove each of the following two (2) elements by a preponderance of the evidence:

(1) Defendant was a**(**n**) (**institution/person**)** having **(**scientific/educational/governmental/ similar**)** justification for possessing obscene material; and

(2) Dissemination of the material was restricted to **(**institution/Defendant**)**.

Proof by a preponderance of the evidence means proof something is more likely than not. It means certain evidence, when compared to the evidence opposed to it, has the more convincing force and makes you believe something is more likely true than not. Preponderance of the evidence does not depend on the number of witnesses. If the evidence supporting the existence of the defense is evenly balanced, then Defendant has not proved the existence of the defense by a preponderance of the evidence, and you must find against Defendant on that point. The state has no burden to present any evidence on this matter.

If after considering all of the evidence, you find this affirmative defense is established by a preponderance of the evidence, then you must find Defendant not guilty of Obscenity. Even if Defendant has not met this burden of proof for this particular affirmative defense, you must find Defendant not guilty of Obscenity if you find the State has not met its burden of proving its case beyond a reasonable doubt.

Applicable Code Sections and Case Law:

11 *Del.C.* § 304.

Obscenity ***[****Affirmative Defense****]*** . . . . . 11.1362(2)

OBSCENITY [AFFIRMATIVE DEFENSE]

In this case, Defendant has asserted the affirmative defense of Justified Possession to the charge of Obscenity. In order to establish this affirmative defense, Defendant must prove each of the following two (2) elements by a preponderance of the evidence:

(1) Dissemination of the material by Defendant was non-commercial; and

(2) Material was received by Defendant's associates whom Defendant knew did not object to receiving such material.

Proof by a preponderance of the evidence means proof something is more likely than not. It means certain evidence, when compared to the evidence opposed

to it, has the more convincing force and makes you believe something is more likely true than not. Preponderance of the evidence does not depend on the number of witnesses. If the evidence supporting the existence of the defense is evenly balanced, then Defendant has not proved the existence of the defense by a preponderance of the evidence, and you must find against Defendant on that point. The state has no burden to present any evidence on this matter.

If after considering all of the evidence, you find this affirmative defense is established by a preponderance of the evidence, then you must find Defendant not guilty of Obscenity. Even if Defendant has not met this burden of proof for this particular affirmative defense, you must find Defendant not guilty of Obscenity if you find the State has not met its burden of proving its case beyond a reasonable doubt.

Applicable Code Sections and Case Law:

11 *Del.C.* § 304.

Obscene Literature Harmful to Minors . . . . . 11.1365(i)(1)

OBSCENE LITERATURE HARMFUL TO MINORS

In order to find Defendant guilty of Obscene Literature Harmful to Minors, you must find the State proved the following two (2) elements beyond a reasonable doubt:

(1) Defendant **[**exhibited for sale/sold/displayed/transferred/gave for free/loaned/rented/ advertised**]** **[**item**]** to a known minor any **[**book/pamphlet/magazine/printed matter however reproduced/sound recording/picture/photograph/drawing/sculpture/motion picture film/other visual representation**]**; and

(2) Defendant knew **[**item**]** was, in whole or in part, harmful to minors.

No person shall be subject to prosecution under this section if: 1) Person had reasonable cause to believe minor was 17 years of age or older, and such minor exhibited to Person a draft card, driver's license, birth certificate, or other official or apparently official document purporting to establish such minor was 17 years of age or older; 2) for any sale where minor is accompanied by a parent or guardian, or accompanied by an adult and Person has not reason to suspect the adult accompanying minor is not the minor's parent or guardian; or 3) Person is a *bona fide* school, museum, or public library or is acting in an official capacity as an employee of such organization or as a retail outlet affiliated with and serving th e educational purposes of such organization.

In the context of this offense, "knows" means Defendant 1) was aware of the item's nature and it was harmful to minors, 2) had knowledge of fact that would lead a reasonable person to ask whether the item was harmful to minors; or

3) had knowledge or information that type of item had been found harmful to minors in a proceeding under section 1365 (b) or (i) of the Criminal Code.

"Minor" is any person under the age of 17 years.

"Known minor" is any person Defendant actually knew to be under the age of 18 years, or any person under the age of 18 years unless a reasonable, bona fide attempt was made to determine the minor's age.

"Harmful to minors" means any description or representation, in whatever form, of nudity, sexual conduct, sexual excitement or sado-masochistic abuse, which predominately appeals to the prurient, lustful, shameful or morbid interest of minors, and is patently or clearly offensive, according to prevailing standards in the adult community, with respect to what is suitable material for minors.

Applicable Code Sections and Case Law:

11 *Del. C.* § 1365(1, 2, 3, 4).

Obscene Literature Harmful to Minors . . . . . 11.1365(i)(2)

OBSCENE LITERATURE HARMFUL TO MINORS

In order to find Defendant guilty of Obscene Literature Harmful to Minors, you must find the State proved the following two (2) elements beyond a reasonable doubt:

(1) Defendant **[**exhibited for sale/sold/displayed/transferred/gave for free/loaned/rented/ advertised**] [**item**]** to a known minor;

(2) Defendant knew **[**item**]** was, in whole or in part, harmful to minors.

No person shall be subject to prosecution under this section if: 1) Person had reasonable cause to believe minor was 17 years of age or older, and such minor exhibited to Person a draft card, driver's license, birth certificate, or other official or apparently official document purporting to establish such minor was 17 years of age or older; 2) for any sale where minor is accompanied by a parent or guardian, or accompanied by an adult and Person has not reason to suspect the adult accompanying minor is not the minor's parent or guardian; or 3) Person is a *bona fide* school, museum, or public library or is acting in an official capacity as an employee of such organization or as a retail outlet affiliated with and serving th e educational purposes of such organization.

In the context of this offense, “knows" means Defendant 1) was aware of the item’s nature and it was harmful to minors, 2) had knowledge of fact that would lead a reasonable person to ask whether the item was harmful to minors; or 3) had knowledge or information that type of item had been found harmful to minors in a proceeding under section 1365 (b) or (i) of the Criminal Code.

"Minor" is any person under the age of 17 years.

"Known minor" is any person Defendant actually knew to be under the age of 18 years, or any person under the age of 18 years unless a reasonable, bona fide attempt was made to determine the minor’s age.

"Harmful to minors" means any description or representation, in whatever form, of nudity, sexual conduct, sexual excitement or sado-masochistic abuse, which predominately appeals to the prurient, lustful, shameful or morbid interest of minors, and is patently or clearly offensive, according to prevailing standards in the adult community, with respect to what is suitable material for minors.

Applicable Code Sections and Case Law:

11 *Del. C.* § 1365(a)(1, 2, 3, 4).

Obscene Literature Harmful to Minors . . . . . 11.1365(i)(3)

OBSCENE LITERATURE HARMFUL TO MINORS

In order to find Defendant guilty of Obscene Literature Harmful to Minors, you must find the State proved the following two (2) elements beyond a reasonable doubt:

(1) Defendant misrepresented Defendant's age as 17 years or older for the purpose of evading the restrictions of this section; and

(2) Defendant knew there was a misrepresentation.

No person shall be subject to prosecution under this section if: 1) Person had reasonable cause to believe minor was 17 years of age or older, and such minor exhibited to Person a draft card, driver's license, birth certificate, or other official or apparently official document purporting to establish such minor was 17 years of age or older; 2) for any sale where minor is accompanied by a parent or guardian, or accompanied by an adult and Person has not reason to suspect the adult accompanying minor is not the minor's parent or guardian; or 3) Person is a *bona fide* school, museum, or public library or is acting in an official capacity as an employee of such organization or as a retail outlet affiliated with and serving th e educational purposes of such organization.

In the context of this offense, “knows" means Defendant 1) was aware of the item’s nature and it was harmful to minors, 2) had knowledge of fact that would lead a reasonable person to ask whether the item was harmful to minors; or 3) had knowledge or information that type of item had been found harmful to minors in a proceeding under section 1365 (b) or (i) of the Criminal Code.

"Minor" is any person under the age of 17 years.

"Known minor" is any person Defendant actually knew to be under the age of 18 years, or any person under the age of 18 years unless a reasonable, bona fide attempt was made to determine the minor’s age.

"Harmful to minors" means any description or representation, in whatever form, of nudity, sexual conduct, sexual excitement or sado-masochistic abuse, which predominately appeals to the prurient, lustful, shameful or morbid interest of minors, and is patently or clearly offensive, according to prevailing standards in the adult community, with respect to what is suitable material for minors.

Applicable Code Sections and Case Law:

11 *Del. C.* § 1365(1, 2, 3, 4).

OBSCENE LITERATURE HARMFUL TO MINORS

In order to find Defendant guilty of Obscene Literature Harmful to Minors, you must find the State proved the following **[**two (2)/three (3)**]** elements beyond a reasonable doubt:

(1) Defendant **[**exhibited for sale/sold/displayed/transferred/gave for free/loaned/rented/ advertised**] [**item**]**;

(2) Defendant knew **[**item**]** was, in whole or in part, harmful to minors; and

(3) **[**item**] [**sold/displayed/displayed/transferred/given for free/loaned/rented/advertised**]** did not prominently include the words "Unlawful to persons under 17 years of age."

No person shall be subject to prosecution under this section if: 1) Person had reasonable cause to believe minor was 17 years of age or older, and such minor exhibited to Person a draft card, driver's license, birth certificate, or other official or apparently official document purporting to establish such minor was 17 years of age or older; 2) for any sale where minor is accompanied by a parent or guardian, or accompanied by an adult and Person has not reason to suspect the adult accompanying minor is not the minor's parent or guardian; or 3) Person is a *bona fide* school, museum, or public library or is acting in an official capacity as

an employee of such organization or as a retail outlet affiliated with and serving th e educational purposes of such organization.

In the context of this offense, “knows" means Defendant 1) was aware of the item’s nature and it was harmful to minors, 2) had knowledge of fact that would lead a reasonable person to ask whether the item was harmful to minors; or 3) had knowledge or information that type of item had been found harmful to minors in a proceeding under section 1365 (b) or (i) of the Criminal Code.

"Minor" is any person under the age of 17 years.

"Known minor" is any person Defendant actually knew to be under the age of 18 years, or any person under the age of 18 years unless a reasonable, bona fide attempt was made to determine the minor’s age.

"Harmful to minors" means any description or representation, in whatever form, of nudity, sexual conduct, sexual excitement or sado-masochistic abuse, which predominately appeals to the prurient, lustful, shameful or morbid interest of minors, and is patently or clearly offensive, according to prevailing standards in the adult community, with respect to what is suitable material for minors.

Applicable Code Sections and Case Law:

11 *Del. C.* § 1365(1, 2, 3, 4).

Through 77 Del. Laws June 30, 2010.

SHOWING MATERIAL HARMFUL TO MINORS IN OUTDOOR MOTION PICTURE THEATERS

In order to find Defendant guilty of Showing Material Harmful to Minors in Outdoor Motion Picture Theaters, you must find the State proved following three (3) elements beyond a reasonable doubt:

(1) Defendant was the **[**owner/operator**]** of **[**theater**]**, an outdoor motion picture theater;

(2) Defendant **[**exhibited/permitted to be exhibited**] [**film**] [**not suitable/harmful**]** to minors; and

(3) **[**Film**]** could be viewed by minors not in attendance at **[**theater**]**.

"Film" means any motion picture film or series of films, whether full length or short subject, but does not include newsreels portraying actual current events or pictorial news of the day.

"Minor" is any person under the age of 17 years.

"Harmful to minors" means any description or representation, in whatever form, of nudity, sexual conduct, sexual excitement or sado-masochistic abuse, which predominately appeals to the prurient, lustful, shameful or morbid interest

of minors, and is patently or clearly offensive, according to prevailing standards in the adult community, with respect to what is suitable material for minors.

"Not suitable to minors" means any film, reel, or view which has a rating of "R" or “NC-a7" or "X" according to the Code and Rating Administration of the Motion Picture Association of America. "R" means admission is restricted; persons under the age of 17 must be accompanied by a parent or an adult guardian. “NC-17" and "X" mean no one under the age of 17 years will be admitted.

Applicable Code Sections and Case Law:

11 *Del. C.* § 1366(b)(2, 3, 4, 5).

Unauthorized Promotion of Boxing, Mixed Martial Arts . . . . . 11.1367(a)
or of a Combative Sports Entertainment or
Combative Fighting Match, Contest, or Event

UNAUTHORIZED PROMOTION OF BOXING, MIXED MARTIAL ARTS, OR OF A COMBATIVE SPORTS ENTERTAINMENT OR COMBATIVE FIGHTING MATCH, CONTEST, OR EVENT

In order to find Defendant guilty of Unauthorized Promotion of **[**Boxing/Mixed Martial Arts/Combative Sports Entertainment/Combative Fighting **] [**Match/Contest/Event**]**, you must find the State proved the following two (2) elements beyond a reasonable doubt:

(1) Defendant **[**promoted/arranged/advertised/conducted**]** a **[**boxing/mixed martial arts/ combative **(**sports entertainment/fighting**)] [**match/contest/event**]**; and

(2) Defendant acted **[**intentionally/knowingly**].**

"Intentionally" means it was Defendant's conscious objective or purpose to promoted an unauthorized combative sports or fighting match, contest or event.

"Knowingly" means Defendant knew or was aware Defendant was promoting an unauthorized combative sports or fighting match, contest or event.

"Boxing"' shall mean the act, activity, or sport of attack and defense in which a participant delivers blows with that participant's fists, especially according to rules requiring the use of boxing gloves and limiting legal blows to those striking above the waist and on the front or sides of the opponent.

"Boxing match" shall mean a single boxing bout wherein participants use their best efforts to prevail through knockout, technical knockout, judges' decision or any other manner of determining victory which are consistent with the rules governing boxing and authorized by the rules and regulations of the Division.

"Combative fighting" shall include, but not be limited to such terms as "toughman fighting", "toughwoman fighting", "badman fighting", "extreme fighting", and all such similar terms or names, and shall mean any unsanctioned combative sports or wrestling match, contest or exhibition between 2 or more participants and where members of the public are selected from the audience to participate with or without protective headgear, who use their hands, with or without gloves, or their feet, or both, and who compete for a financial prize or any item of pecuniary value, and which match, contest, tournament, championship or exhibition is not recognized or sanctioned by any international, national or regional professional sanctioning organization recognized by the Director.

"Combative sports" shall include all professional boxing and mixed martial arts and all amateur boxing and mixed martial arts.

"Combative sports entertainment", included but not limited to "celebrity boxing", "entertainment boxing" and all such similar terms or names shall mean a display of skill for the purpose of entertaining an audience, consisting of choreographed or simulated combat in which techniques commonly used in

combative sports are employed by participants. The participants do not exert their best effort and the winner is determined prior to the match.

"Contest" shall mean a bout or group of bouts involving contestants competing in a professional or amateur combative sports or permitted combative sports entertainment event.

"Event" shall mean an organized series of contests and/or individual matches presented as a single occasion.

"Mixed martial arts" shall mean combative discipline in which a combination of controls, takedowns, submissions and striking techniques are employed by trained practitioners.

Applicable Code Sections and Case Law:

11 *Del.C.* § 231(b, c) and 28 *Del.C.* § 102(3, 4, 5, 6, 7, 8, 13, 14).

Unauthorized Participation in a Boxing, Mixed Martial Arts . . . . . 11.1368(a)
or in a Combative Sports Entertainment or
Combative Fighting Match, Contest, or Event

UNAUTHORIZED PARTICIPATION IN A BOXING, MIXED MARTIAL ARTS, OR IN A COMBATIVE SPORTS ENTERTAINMENT OR COMBATIVE FIGHTING MATCH, CONTEST, OR EVENT

In order to find Defendant guilty of Unauthorized Participation in a **[**Boxing/Mixed Martial Arts/Combative Sports Entertainment/Combative Fighting **] [**Match/Contest/Event**]**, you must find the State proved the following elements beyond a reasonable doubt:

(1) Defendant participated as a competitor in **[**boxing/mixed martial arts/combative **(**sports entertainment/fighting**)] [**match/contest/event**]**; and

(2) Defendant acted **[**intentionally/knowingly**].**

"Intentionally" means it was Defendant's conscious objective or purpose to participate as a competitor in an unauthorized boxing, martial arts, combative sports entertainment or combative fighting match, contest or event.

"Knowingly" means Defendant knew or was aware Defendant was participating as a competitor in an unauthorized boxing, martial arts, combative sports entertainment or combative fighting match, contest or event.

"Boxing"' shall mean the act, activity, or sport of attack and defense in which a participant delivers blows with that participant's fists, especially according to rules requiring the use of boxing gloves and limiting legal blows to those striking above the waist and on the front or sides of the opponent.

"Boxing match" shall mean a single boxing bout wherein participants use their best efforts to prevail through knockout, technical knockout, judges' decision or any other manner of determining victory which are consistent with the rules governing boxing and authorized by the rules and regulations of the Division.

"Combative fighting" shall include, but not be limited to such terms as "toughman fighting", "toughwoman fighting", "badman fighting", "extreme fighting", and all such similar terms or names, and shall mean any unsanctioned combative sports or wrestling match, contest or exhibition between 2 or more participants and where members of the public are selected from the audience to participate with or without protective headgear, who use their hands, with or without gloves, or their feet, or both, and who compete for a financial prize or any item of pecuniary value, and which match, contest, tournament, championship or exhibition is not recognized or sanctioned by any international, national or regional professional sanctioning organization recognized by the Director.

"Combative sports" shall include all professional boxing and mixed martial arts and all amateur boxing and mixed martial arts.

"Combative sports entertainment", included but not limited to "celebrity boxing", "entertainment boxing" and all such similar terms or names shall mean a display of skill for the purpose of entertaining an audience, consisting of choreographed or simulated combat in which techniques commonly used in combative sports are employed by participants. The participants do not exert their best effort and the winner is determined prior to the match.

"Contest" shall mean a bout or group of bouts involving contestants competing in a professional or amateur combative sports or permitted combative sports entertainment event.

"Contestant" shall mean a person who competes in any licensed combative sports event or permitted combative sports entertainment event.

"Event" shall mean an organized series of contests and/or individual matches presented as a single occasion.

"Mixed martial arts" shall mean combative discipline in which a combination of controls, takedowns, submissions and striking techniques are employed by trained practitioners.

Applicable Code Sections and Case Law:

11 *Del.C.* § 231(b, c) and 28 *Del.C.* § 102(3, 4, 5, 6, 7, 8, 9, 13, 14).

ADVANCING GAMBLING IN THE SECOND DEGREE

In order to find Defendant guilty of Advancing Gambling in the Second Degree, you must find the State proved following three (3) elements beyond a reasonable doubt:

(1) Defendant **[**sold/disposed of/possessed**]** a lottery **[**policy/certificate/other like thing**]**;

(2) **[**Defendant/another person**] [**promised/guaranteed**]** in such **[**policy/certificate/other like thing**]** a particular **[**number/series of numbers/character/ticket/certificate**]** would, in the **[**event/ happening**]** of a contingency in the nature of a lottery, entitle the **[**purchaser/holder**]** to receive **[**money/property/evidence of debt**]**; and

(3) Defendant acted **[**intentionally/knowingly**]**.

"Intentionally" means it was Defendant's conscious objective or purpose to sell, dispose of or possess a lottery policy or certificate and promised or guaranteed another the policy or certificate would entitle purchaser or holder to receive something of value.

"Knowingly" means Defendant knew or was aware Defendant was selling, disposing of or possessing a lottery policy or certificate and promise or guarantee another the policy or certificate would entitle purchaser or holder to receive something of value.

[Commentary: *This statute obviously does not contemplate prosecutions for the sale of State-sponsored lottery chances or tickets. But the language of the statute makes no mention of such an exception. Compare to § 1403 in which an exception is made for wagering licensed by the Delaware Racing Commission.]*

Applicable Code Sections and Case Law:

11 *Del.C.* §§ 231(b, c) and 251(b).

Advancing Gambling in the Second Degree . . . . . 11.1401(2)

ADVANCING GAMBLING IN THE SECOND DEGREE

In order to find Defendant guilty of Advancing Gambling in the Second Degree, you must find the State proved following three (3) elements beyond a reasonable doubt:

(1) Defendant **[**used/employed**]** any devise;

(2) **[**Defendant/other person**] [**promised/guaranteed**]** in such **[**policy/certificate/other like thing or devise**]** a particular **[**number/series of numbers/character/ticket/certificate**]** would, in the **[**event/happening**]** of a

contingency in the nature of a lottery, entitle the **[**purchaser/holder**]** to receive **[**money/property/evidence of debt**]**; and

(3) Defendant acted **[**intentionally/knowingly**]**.

"Intentionally" means it was Defendant's conscious objective or purpose to sell, dispose of or possess a lottery policy or certificate and promised or guaranteed another the policy or certificate would entitle purchaser or holder to receive something of value.

"Knowingly" means Defendant knew or was aware Defendant was selling, disposing of or possessing a lottery policy or certificate and promise or guarantee another the policy or certificate would entitle purchaser or holder to receive something of value.

[Commentary: *This statute obviously does not contemplate prosecutions for the sale of State-sponsored lottery chances or tickets. But the language of the statute makes no mention of such an exception. Compare to § 1403 in which an exception is made for wagering licensed by the Delaware Racing Commission.]*

Applicable Code Sections and Case Law:

11 *Del.C.* §§ 231(b, c) and 251(b).

Advancing Gambling in the Second Degree . . . . . 11.1401(3)

ADVANCING GAMBLING IN THE SECOND DEGREE

In order to find Defendant guilty of Advancing Gambling in the Second Degree, you must find the State proved following three (3) elements beyond a reasonable doubt:

(1) Defendant was concerned in interest in **[**lottery policy writing/**(**selling/disposing**)** of any lottery policy/certificate/number**(**s**)**/other like thing**]**;

(2) **[**Defendant/other person**] [**promised/guaranteed**]** a particular **[**number/series of numbers/ character/ticket/certificate**]** would, in the **[**event/happening**]** of a contingency in the nature of a lottery, entitle the **[**purchaser/holder**]** to receive **[**money/property/evidence of debt**]**; and

(3) Defendant acted **[**intentionally/knowingly**]**.

"Intentionally" means it was Defendant's conscious objective or purpose have an interest in selling, disposing of or possessing a lottery policy or certificate and the promise or guarantee to another the policy or certificate would entitle purchaser or holder to receive something of value.

"Knowingly" means Defendant knew or was aware Defendant had a interest in the selling, disposing of or possessing a lottery policy or certificate and the

promise or guarantee to another the policy or certificate would entitle purchaser or holder to receive something of value.

[Commentary: *This statute obviously does not contemplate prosecutions for the sale of State-sponsored lottery chances or tickets. But the language of the statute makes no mention of such an exception. Compare to § 1403 in which an exception is made for wagering licensed by the Delaware Racing Commission.]*

Applicable Code Sections and Case Law:

11 *Del.C.* §§ 231(b, c) and 251(b).

Advancing Gambling in the Second Degree . . . . . 11.1401(4)

ADVANCING GAMBLING IN THE SECOND DEGREE

In order to find Defendant guilty of Advancing Gambling in the Second Degree, you must find the State proved following two (2) elements beyond a reasonable doubt:

(1) Defendant **[**used/employed**]** any devise;

(2) **[**Defendant/other person**] [**promised/guaranteed**]** a particular **[**number/series of numbers/ character/ticket/certificate**]** would, in the **[**event/happening**]** of a contingency in the nature of a lottery, entitle the **[**purchaser/holder**]** to receive **[**money/property/evidence of debt**]**; and

(3) Defendant acted **[**intentionally/knowingly**]**.

"Intentionally" means it was Defendant's conscious objective or purpose to have an interest in the sale, disposition of or possession a lottery policy or certificate and the promise or guarantee another the policy or certificate would entitle purchaser or holder to receive something of value.

"Knowingly" means Defendant knew or was aware Defendant had an interest in the selling, disposing of or possessing a lottery policy or certificate and the promise or guarantee to another the policy or certificate would entitle purchaser or holder to receive something of value.

[Commentary: *This statute obviously does not contemplate prosecutions for the sale of State-sponsored lottery chances or tickets. But the language of the statute makes no mention of such an exception. Compare to § 1403 in which an exception is made for wagering licensed by the Delaware Racing Commission.]*

Applicable Code Sections and Case Law:

11 *Del.C.* §§ 231(b, c) and 251(b).

FOREIGN LOTTERIES In order to find Defendant guilty of Engaging in a Foreign Lottery, you must find the State proved following four (4) elements beyond a reasonable doubt:

(1) Defendant **[**brought/sent/procured to be **(**brought/sent**)]** into this State any scheme of **[**lottery/drawing/ticket/part of ticket/certificate/substitute for a **(**ticket/certificate**)]**;

(2) Defendant **[**sold/offered for sale**]** such a **[**ticket/part of ticket/certificate/substitute for a **(**ticket/certificate**)]**;

(3) Defendant circulated in any manner any **[**scheme/drawing**]**; and

(4) Defendant acted **[**intentionally/knowingly**]**.

"Intentionally" means it was Defendant's conscious objective or purpose to bring into this State any lottery ticket or certificate to sell within this State.

"Knowingly" means Defendant knew or was aware Defendant brought into this State any lottery ticket or certificate to sell within this State.

[Commentary: Section 1402(b) speaks of prima facie evidence in regard to the offense of foreign lotteries, but the language is so incomprehensible that it is just about impossible to interpret.]

Applicable Code Sections and Case Law:

11 *Del.C.* §§ 231(b, c) and 251(b).

ADVANCING GAMBLING IN THE FIRST DEGREE

In order to find Defendant guilty of Advancing Gambling in the First Degree, you must find the State proved the following two (2) elements beyond a reasonable doubt:

(1) Defendant **[**kept/exhibited/used/was concerned with keeping or exhibiting or using**]** any **[**book/device/apparatus/paraphernalia**]** for the purpose of **[**receiving/recording/registering**] [**bets/ wagers**]** upon the result of a **[**trial/contest**]** wherever conducted of **[**skill/speed/power of endurance of **(**human/beast**)]**;

(2) Defendant acted **[**intentionally/knowingly**]**.

"Intentionally" means it was Defendant's conscious objective or purpose to keep, exhibit, or use any book, device, apparatus or paraphernalia to receive, record or register bets or wagers on the result of a trial or contest of skill, speed, or endurance wherever conducted.

"Knowingly" means Defendant knew or was aware Defendant kept, exhibited, or used any book, device, apparatus or paraphernalia to receive, record or register bets or wagers on the result of a trial or contest of skill, speed, or endurance wherever conducted.

Applicable Code Sections and Case Law:

11 *Del.C.* §§ 231(b, c) and 251(b).

ADVANCING GAMBLING IN THE FIRST DEGREE

In order to find Defendant guilty of Advancing Gambling in the First Degree, you must find the State proved the following three (3) elements beyond a reasonable doubt:

(1) Defendant was the **[**owner/lessee/occupant**]** of a **[**room/house/building/enclosure/place of any kind**]**; and

(2) Defendant **[**kept/exhibited/used/was concerned with keeping or exhibiting or using/ permitted or allowed to be **(**kept/exhibited/used/employed**)]** therein any **[**book/device/apparatus/ paraphernalia**]** for the purpose of **[**receiving/recording/registering/forwarding**]** any **[**bets/wagers/ money/thing/consideration for value for the purpose of being bet or wagered**]** upon the result of a **[**trial/contest**]**, wherever conducted, of **[**skill/speed/power of endurance of **(**human/beast**)]**.

"Intentionally" means it was Defendant's conscious objective or purpose to own or rent a location to keep, exhibit, or use any book, device, apparatus or paraphernalia to receive, record or register bets or wagers on the result of a trial or contest of skill, speed, or endurance wherever conducted.

"Knowingly" means Defendant knew or was aware Defendant owned or leased a location to keep, exhibit, or use any book, device, apparatus or paraphernalia to receive, record or register bets or wagers on the result of a trial or contest of skill, speed, or endurance wherever conducted.

Applicable Code Sections and Case Law:

11 *Del.C.* §§ 231(b, c) and 251(b).

Advancing Gambling in the First Degree . . . . . 11.1403(3)

ADVANCING GAMBLING IN THE FIRST DEGREE

In order to find Defendant guilty of Advancing Gambling in the First Degree, you must find the State proved the following two (2) elements beyond a reasonable doubt:

(1) Defendant **[**recorded/registered/received money/contracted/agreed to receive (money/ anything of value**)]** for the **[**purpose/intent**]** to **[**bet/wager**]**, whether for **[**Defendant/someone else**]**, upon the result of a **[**trial/contest**]**, wherever conducted, of **[**skill/speed/power of endurance of **(**human/ beast**)]**; and

(2) Defendant acted **[**intentionally/knowingly**]**.

"Intentionally" means it was Defendant's conscious objective or purpose to record , register, receive money or anything of value to bet or wager upon the result of a trial or contest of skill, speed, endurance of person or beast wherever conducted.

"Knowingly" means Defendant knew or was aware Defendant recorded, registered, received money or anything of value to bet or wager upon the result of a trial or contest of skill, speed, endurance of person or beast wherever conducted.

Applicable Code Sections and Case Law:

11 *Del.C.* §§ 231(b, c) and 251(b).

ADVANCING GAMBLING IN THE FIRST DEGREE

In order to find Defendant guilty of Advancing Gambling in the First Degree, you must find the State proved the following two (2) elements beyond a reasonable doubt:

(1) Defendant, directly or indirectly, **[**bet/wagered/promised to bet or wager**] [**money/ anything of value**]**, upon the result of a **[**trial/contest**]**, wherever conducted, of **[**skill/speed/power of endurance of **(**human/beast**)]**; and

(2) Defendant acted **[**intentionally/knowingly**]**.

"Intentionally" means it was Defendant's conscious objective or purpose to bet or wager on the result of a trial or contest of skill, speed, or endurance wherever conducted.

"Knowingly" means Defendant knew or was aware Defendant placed bets or wagers on the result of a trial or contest of skill, speed, or endurance wherever conducted.

Applicable Code Sections and Case Law:

11 *Del.C.* §§ 231(b, c) and 251(b).

PROVIDING PREMISES FOR GAMBLING

In order to find Defendant guilty of Providing Premises for Gambling, you must find the State proved the following three (3) elements beyond a reasonable doubt:

(1) Defendant **[**let/demised/transferred**]** to another person any **[**building/structure/room/ rooms**]**;

(2) Defendant was aware the other person would use the **[**building/structure/room/rooms**]** to commit any gambling offense; and

(3) Defendant acted knowingly.

"Knowingly" means Defendant knew or was aware the other person would use the building, structure, room or rooms to commit a gambling offense.

"Gambling offense" means any offense defined in §§ 1401-1431 of Title 11 of the Delaware Code.

Applicable Code Sections and Case Law:

11 *Del.C.* §§ 231(c) and 1432(d).

PROVIDING PREMISES FOR GAMBLING

In order to find Defendant guilty of Providing Premises for Gambling, you must find the State proved the following two (2) elements beyond a reasonable doubt:

(1) Defendant **[**possessed/controlled**]** any **[**house/structure/building/room/rooms**]**;

(2) Defendant permitted the **[**house/structure/building/room/rooms**]** to be used for the purpose of committing any gambling offense; and

(3) Defendant acted knowingly.

"Knowingly" means Defendant knew or was aware the other person would use the building, structure, room or rooms possessed or controlled by Defendant to commit a gambling offense.

"Gambling offense" means any offense defined in §§ 1401-1431 of Title 11 of the Delaware Code.

Applicable Code Sections and Case Law:

11 *Del.C.* §§ 231(c) and 1432(d).

Through 77 Del. Laws June 30, 2010.

PROVIDING PREMISES FOR GAMBLING

In order to find Defendant guilty of Providing Premises for Gambling, you must find the State proved the following three (3) elements beyond a reasonable doubt:

(1) Defendant contributed to the support and maintenance of any **[**house/place**]**

(2) Gambling was carried on/conducted at the **[**house/place**]**; and

(3) Defendant acted **[**intentionally/knowingly**]**.

"Intentionally" means it was Defendant's conscious objective or purpose to contribute to the support and maintenance of a house or place where gambling was conducted or carried on.

"Knowingly" means Defendant knew or was aware Defendant contributed to the support and maintenance of a house or place where gambling was conducted or carried on.

Applicable Code Sections and Case Law:

11 *Del.C.* §§ 231(b, c) and 251(b).

Through 77 Del. Laws June 30, 2010.

PROVIDING PREMISES FOR GAMBLING

In order to find Defendant guilty of Providing Premises for Gambling, you must find the State proved the following three (3) elements beyond a reasonable doubt:

(1) Defendant **[**kept/maintained**]** any **[**house/place**]**;

(2) Gambling was carried on at such **[**house/place**]**; and

(3) Defendant acted **[**intentionally/knowingly**]**.

"Intentionally" means it was Defendant's conscious objective or purpose to keep or maintain a house or place where gambling was carried on.

"Knowingly" means Defendant knew or was aware Defendant was keeping or maintaining a house or place where gambling was carried on.

Applicable Code Sections and Case Law:

11 *Del.C.* §§ 231(b, c) and 251(b).

POSSESSING A GAMBLING DEVICE

In order to find Defendant guilty of Possessing a Gambling Device, you must find the State proved following two (2) elements beyond a reasonable doubt:

(1) Defendant

[manufactured/sold/transported/kept/exhibited/managed/placed/possessed/

(conducted/negotiated**)** a transaction**] [**affecting/designed to affect**]**

[ownership/custody/use**]** of a**[**n**] [**slot machine/other gambling device**]**; and

(2) Defendant acted knowingly.

A person is not guilty of this section if the device or machine is either: 1) an antique slot machine not used for gambling purposes; or 2) any slot machine or gambling device manufactured, assembled, transported, kept, exhibited, managed, place or possessed by a person within this State or which is subject to any negotiation involving a transaction affecting or designed to affect the ownership, custody or use of such machine where the person is duly licensed to conduct a manufacturing or other business in this State or is registered in accordance with the Federal Gaming Devices Act of 1962, as amended, and is in the business of designing, assembling, manufacturing, selling, supplying, repairing or retrofitting slot machines, gambling devices or component parts thereof exclusively for lawful possession and use.

“Knowingly” means Defendant knew or was aware Defendant possessed a gambling device for the purpose of changing ownership, custody or use of the gambling device.

"Gambling device" is any device, machine, paraphernalia or equipment which is used or usable in the playing phases of any gambling activity, whether the activity consists of gambling between persons or gambling by a person involving the playing of a machine. Lottery tickets, policy slips and other items used in the playing phases of lottery and policy schemes are not gambling devices.

"Slot machine" is a gambling device, which as a result of the insertion of a coin or other object, operates, either automatically or with the aid of a physical act by the player, in such manner that, depending upon elements of chance, it may eject something of value.

Applicable Code Sections and Case Law:

11 *Del. C.* § 231(c) and § 1432(c, h).

Being Concerned in Interest in Keeping any Gambling Device . . . . . 11.1406(a)(1)

BEING CONCERNED IN INTEREST IN KEEPING ANY GAMBLING DEVICE

In order to find Defendant guilty of Being Concerned in Interest in Keeping any Gambling Device, you must find the State proved the following three (3) elements beyond a reasonable doubt:

(1) Defendant **[**kept/exhibited**]** a **[**gaming table/faro bank/sweat cloth/roulette table/other gambling device**]**;

(2) **[**cards/dice/other game of chance**]**, was played for **[**money/other thing of value**]** at such device; and

(3) Defendant acted **[**intentionally/knowingly**]**.

"Intentionally" means it was Defendant's conscious objective or purpose to keep exhibit a gambling device for use in playing cards, dice or other games of chance for money or something else of value.

"Knowingly" means Defendant knew or was aware Defendant kept or exhibited a gambling device where games were played for money or something of value.

"Gambling device" is any device, machine, paraphernalia or equipment which is used or usable in the playing phases of any gambling activity, whether

the activity consists of gambling between persons or gambling by a person involving the playing of a machine. Lottery tickets, policy slips and other items used in the playing phases of lottery and policy schemes are not gambling devices.

"Slot machine" is a gambling device, which as a result of the insertion of a coin or other object, operates, either automatically or with the aid of a physical act by the player, in such manner that, depending upon elements of chance, it may eject something of value.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 231(b) and 1432(b, h).

BEING CONCERNED IN INTEREST IN KEEPING ANY GAMBLING DEVICE

In order to find Defendant guilty of Being Concerned in Interest in Keeping any Gambling Device, you must find the State proved the following three (3) elements beyond a reasonable doubt;

(1) Defendant **[**bought/sold/distributed**]** a **[**gaming table/faro bank/sweat cloth/roulette table/other gambling device**]**;

(2) Defendant meant to **[**keep/exhibit**] [**device**]** for use by the public; and

(3) Defendant acted intentionally.

"Intentionally" means it was Defendant's conscious objective or purpose to keep the gambling device for use by the public.

"Gambling device" is any device, machine, paraphernalia or equipment which is used or usable in the playing phases of any gambling activity, whether the activity consists of gambling between persons or gambling by a person involving the playing of a machine. Lottery tickets, policy slips and other items used in the playing phases of lottery and policy schemes are not gambling devices.

"Slot machine" is a gambling device, which as a result of the insertion of a coin or other object, operates, either automatically or with the aid of a physical act

by the player, in such manner that, depending upon elements of chance, it may eject something of value.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 231(b) and 1432(b, h).

BEING CONCERNED IN INTEREST IN KEEPING ANY GAMBLING DEVICE

In order to find Defendant guilty of Being Concerned in Interest in Keeping any Gambling Device, you must find the State proved the following two (2) elements beyond a reasonable doubt:

(1) Defendant was a **[**partner/concerned in interest**]** in **[**keeping/exhibiting**]** a **[**gaming table/ faro bank/sweat cloth/roulette table/other gambling device**]**; and

(2) Defendant acted **[**intentionally/knowingly**]**.

"Intentionally" means it was Defendant's conscious objective or purpose to be a partner or have an interest in the gaming device.

"Knowingly" means Defendant knew or was aware Defendant was a partner or had an interest in keeping or exhibiting a gambling device.

"Gambling device" is any device, machine, paraphernalia or equipment which is used or usable in the playing phases of any gambling activity, whether the activity consists of gambling between persons or gambling by a person involving the playing of a machine. Lottery tickets, policy slips and other items used in the playing phases of lottery and policy schemes are not gambling devices.

"Slot machine" is a gambling device, which as a result of the insertion of a coin or other object, operates, either automatically or with the aid of a physical act by the player, in such manner that, depending upon elements of chance, it may eject something of value.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 231(b) and 1432(b, h).

Engaging in a Crap Game 11.1407

ENGAGING IN A CRAP GAME

In order to find Defendant guilty of Engaging in a Crap Game, you must find the State proved the following three (3) elements beyond a reasonable doubt:

(1) Defendant **[**took part in/was present at**]** the form of gaming with dice, commonly known as crap;

(2) Money or other valuable things were played for; and

(3) Defendant acted knowingly.

"Knowingly" means Defendant knew or was aware Defendant took part in or was present at a form of gaming called crap.

Merchandising Plans are not Gambling 11.1408

MERCHANDISING PLANS ARE NOT GAMBLING

Sections 1401 through 1405 do not apply to any plan for stimulating public interest in, or sale of, merchandise, services, or exhibitions unless the plan requires the chance to win a prize be paid for in money or something of actual pecuniary value or that some items be bought or to any lottery under state control for the purpose of raising funds.

UNLAWFULLY DISSEMINATING GAMBLING INFORMATION

In order to find Defendant guilty of Unlawfully Disseminating Gambling Information, you must find the State proved the following three (3) elements beyond a reasonable doubt:

(1) Defendant was a public utility;

(2) Defendant furnished a wire to **[**person**]** for use in disseminating information in furtherance of **[**gambling/gambling purposes**]**; and

(3) Defendant acted knowingly.

"Knowingly" means Defendant knew or was aware Defendant was engaging in providing a wire by which gambling information was disseminated in furtherance of gambling purposes.

"Dissemination" means the act of transmitting, distributing, advising, spreading, communicating, conveying or making known.

"Public utility" means a person, partnership, association or corporation owning or operating in this State equipment or facilities for conveying or transmitting messages or communications by telephone or telegraph to the public for compensation.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 231(c) and 1432(b, f).

UNLAWFULLY DISSEMINATING GAMBLING INFORMATION

In order to find Defendant guilty of Unlawfully Disseminating Gambling Information, you must find the State proved the following two (2) elements beyond a reasonable doubt:

(1) Defendant used a private wire in **[**disseminating/receiving**]** information in furtherance of **[**gambling/gambling purposes**]**; and

(2) Defendant acted knowingly.**]**

"Knowingly" means Defendant knew or was aware Defendant used a private wire to disseminate or receive information in furtherance of gambling purposes.

"Dissemination" means the act of transmitting, distributing, advising, spreading, communicating, conveying or making known.

"Private wire" means service equipment, facilities, conduits, poles, wires, circuits, systems by means of which service is furnished for communication purposes, either through the medium of telephone, telegraph, Morse, teletypewriter, loudspeaker or any other means, or by which the voice or electrical impulses are sent over a wire, and which services are contracted for or leased for services between two or more points specifically designated, and are not

connected to or available for general telegraphic, telephonic or teletypewriter exchange or toll service, and includes such services known as "special contract leased wire service," "leased line," "private line," "private system," "Morse line," "private wire," but does not include the usual and customary telephone or teletypewriter service by which the subscriber may be connected at each separate call to any other telephone or teletypewriter designated by the subscriber only through the general telephone or teletypewriter exchange system or toll service.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 231(c) and 1432(b, e).

UNLAWFULLY DISSEMINATING GAMBLING INFORMATION

In order to find Defendant guilty of Unlawfully Disseminating Gambling Information, you must find the State proved the following two (2) elements beyond a reasonable doubt:

(1) Defendant **[**engaged in the business of/received compensation in any form for**] [**disseminating/receiving**]** information in furtherance of **[**gambling/gambling purposes**]** by means of a **[**private wire/call service**]**; and

(2) Defendant acted knowingly.**]**

"Knowingly" means Defendant knew or was aware Defendant received money to receive or disseminate information in furtherance of gambling purposes.

"Call service" means the furnishing of information upon request or by prearrangement over general telegraphic, telephonic or teletypewriter exchange or toll service.

"Dissemination" means the act of transmitting, distributing, advising, spreading, communicating, conveying or making known.

"Private wire" means service equipment, facilities, conduits, poles, wires, circuits, systems by means of which service is furnished for communication purposes, either through the medium of telephone, telegraph, Morse,

teletypewriter, loudspeaker or any other means, or by which the voice or electrical impulses are sent over a wire, and which services are contracted for or leased for services between two or more points specifically designated, and are not connected to or available for general telegraphic, telephonic or teletypewriter exchange or toll service, and includes such services known as "special contract leased wire service," "leased line," "private line," "private system," "Morse line," "private wire," but does not include the usual and customary telephone or teletypewriter service by which the subscriber may be connected at each separate call to any other telephone or teletypewriter designated by the subscriber only through the general telephone or teletypewriter exchange system or toll service.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 231(c) and 1432(a, b, e).

CARRYING A CONCEALED DEADLY WEAPON

In order to find Defendant guilty of Carrying a Concealed Deadly Weapon, you must find the State proved following four (4) elements beyond a reasonable doubt:

(1) Defendant carried a **[**weapon**]**;

(2) Defendant carried the weapon upon or about Defendant's person;

(3) Weapon was concealed; and

(4) Defendant was without a license to carry the weapon concealed about Defendant's person.

It shall be a defense that Defendant had been issued an otherwise valid license to carry a concealed weapon where 1) the license had expired; 2) Defendant applied for renewal of license within the allotted time frame prior to the expiration of the license; and 3) the alleged offense occurred while the application for renewal was pending.

"Knowingly" means Defendant knew or was aware Defendant was carrying a concealed deadly weapon without a license to do so.

"Deadly weapon" is defined to include: firearm, bomb, knife of any sort (other than an ordinary pocket knife carried in a closed position), switchblade

knife, billy, blackjack, bludgeon, metal knuckles, slingshot, razor, bicycle chain, ice pick or any dangerous instrument which a person used, or tried to use, to cause death or serious physical injury. For the purpose of this definition, an ordinary pocket knife is a folding knife with a blade no longer than 3 inches.

"Carried" means Defendant had control of the weapon on or about Defendant's person. Actual possession is not required. About Defendant's person means the weapon was immediately available and accessible to Defendant. In determining whether the weapon was accessible, consider whether Defendant would have had to significantly change Defendant's position in order to reach the weapon, and how long it would have taken Defendant to reach the weapon if Defendant was provoked.

Weapon is "concealed" if it is located on or about the person carrying so as not to be visible to an individual who came close enough to see it by ordinary observation. Absolute invisibility is not required.

Applicable Code Sections and Case Law:

11 *Del.C.* §§ 222(5) and 231(c).

CARRYING A CONCEALED DANGEROUS INSTRUMENT

In order to find Defendant guilty of Carrying a Concealed Dangerous Instrument, you must find the State proved following three (3) elements beyond a reasonable doubt:

(1) Defendant carried a**[**n**]** **[**instrument**]**, a dangerous instrument;

(2) **[**Instrument**]** was concealed; and

(3) Defendant acted knowingly.

It shall be a defense that Defendant has raised the defense of Lawful Purpose to the charge of Carrying a Concealed Dangerous Instrument where Defendant had a specific lawful purpose in carrying the dangerous instrument and Defendant had no intention of causing or threatening any physical injury.

For purposes of this section, disabling chemical spray is not considered to be a dangerous instrument.

"Disabling chemical spray" includes mace, tear gas, pepper spray or any other mixture containing quantities thereof, or any other aerosol spray or any liquid, gaseous or solid substance capable of producing temporary physical discomfort, disability or injury through being vaporized or otherwise dispersed in

the air, or any cannister, container or device designed or intended to carry, store or disperse such aerosol or such gas or solid.

"Knowingly" means Defendant knew or was aware Defendant was engaging having a dangerous weapon on or about Defendant's person.

"Dangerous instrument" means any instrument, article, or substance which, under the circumstances in which it is used, attempted to be used, or threatened to be used, is readily capable of causing death or serious physical injury.

"Carried" means Defendant had control of the instrument on or about Defendant's person. Actual possession is not required. About Defendant's person" means the instrument was immediately available and accessible to Defendant. In determining whether the instrument was accessible, consider whether Defendant would have had to significantly change Defendant's position in order to reach the instrument, and how long it would have taken Defendant to reach the instrument if Defendant was provoked.

An instrument is "concealed" if it is located on or about the person carrying so as not to be visible to an individual who came close enough to see it by ordinary observation. Absolute invisibility is not required.

Applicable Code Sections and Case Law:

11 *Del. C.* § 222(4, 6), 231(c) and § 1443(b).

POSSESSING A DESTRUCTIVE WEAPON

In order to find Defendant guilty of Possessing a Destructive Weapon, you must find the State proved following two (2) elements beyond a reasonable doubt:

(1) Defendant **[**sold/transferred/bought/received/possessed**]** a **[**bomb/bombshell/firearm silencer/sawed-off shotgun/machine gun/other firearm or weapon adapted for use as a machine gun**]**; and

(2) Defendant acted **[**intentionally/knowingly**]**.

"Intentionally" means it was Defendant's conscious objective or purpose sell, transfer, purchase, receive or possess a **[**bomb/bombshell/firearm silencer/sawed-off shotgun/machine gun/ other firearm or weapon adapted for use as a machine gun**]**.

"Knowingly" means Defendant knew or was aware Defendant sold, transferred, bought, received or possessed a destructive weapon.

"Sawed-off shotgun" is any shotgun having 1 or more barrels less than 18 inches in length, or any weapon made, altered or modified from a shotgun if such weapon as modified has an overall length of less than 26 inches.

In addition to its ordinary dictionary meaning, "possession" includes actual possession and constructive possession. Actual possession means Defendant

knowingly had direct physical control over the destructive weapon. Constructive possession means the destructive weapon was within Defendant's reasonable control, that is, in or about Defendant's person, premises, belongings, or vehicle. In other words, Defendant had constructive possession over the destructive weapon if Defendant had both the power and the intention, at a given time, to exercise control over the destructive weapon, either directly or through another person. Possession may be sole or joint. If one person has actual or constructive possession of a thing, possession is sole. If two or more persons share actual or constructive possession over a thing, possession is joint. Possession is proven if you find beyond a reasonable doubt Defendant had actual or constructive possession, either alone or jointly with others.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 231(b, c) and 1444(c).

Unlawful Dealing with a Dangerous Weapon . . . . . 11.1445(1)a

UNLAWFUL DEALING WITH A DANGEROUS WEAPON

In order to find Defendant guilty of Unlawful Dealing with a Dangerous Weapon, you must find the State proved the following three (3) elements beyond a reasonable doubt:

(1) Defendant **[**possessed/sold/controlled in any manner**]** of a weapon;

(2) Weapon **[**discharged/projected**]** a **[**pellet/slug/bullet**]** by compressed air/spring action**]**; and

(3) Defendant acted **[**intentionally/knowingly**].**

A B.B. or air gun which does not discharge a pellet or slug larger than a B.B. shot is not in a dangerous weapon under this section.

"Intentionally" means it was Defendant's conscious objective or purpose possess, sell, or control a weapon which discharges a pellet, slug or bullet by compressed air or spring action.

"Knowingly" means Defendant knew or was aware Defendant possessed, sold, or controlled a weapon which discharges a pellet, slug or bullet by compressed air or spring action.

Applicable Code Sections and Case Law:

11 *Del.C.* §§ 231(b, c) and 251(b).

Unlawful Dealing with a Dangerous Weapon . . . . . 11.1445(1)b

UNLAWFUL DEALING WITH A DANGEROUS WEAPON

In order to find Defendant guilty of Unlawful Dealing with a Dangerous Weapon, you must find the State proved the following three (3) elements beyond a reasonable doubt:

(1) Defendant **[**possessed/sold/controlled in any manner**]** of a **[**pellet/slug/bullet**]**;

(2) The [pellet/slug/bullet**]** was **[**discharged/projected**]** by **[**compressed air/spring action**]**; and

(3) Defendant acted **[**intentionally/knowingly**].**

"Intentionally" means it was Defendant's conscious objective or purpose possess, sell, or control a weapon which discharges a pellet, slug or bullet by compressed air or spring action.

"Knowingly" means Defendant knew or was aware Defendant possessed, sold, or controlled a weapon which discharges a pellet, slug or bullet by compressed air or spring action.

Applicable Code Sections and Case Law:

11 *Del.C.* §§ 231(b, c) and 251(b).

Through 77 Del. Laws June 30, 2010.

UNLAWFUL DEALING WITH A DANGEROUS WEAPON

In order to find Defendant guilty of Unlawful Dealing with a Dangerous Weapon, you must find the State proved the following three (3) elements beyond a reasonable doubt:

(1) Defendant **[**sold/gave/transferred**] [**a **(**B.B./air/spear**)** gun/B.B. shot**]** to a child under 16 years of age;

(2) Defendant **[**was not child's **(**parent/guardian**)/**did not first receive permission of child's **(**parent/guardian**)]**;

(3) Defendant acted **[**intentionally/knowingly**]**.

"Intentionally" means it was Defendant's conscious objective or purpose to sell, give or transfer a B.B., air or shot gun or B.B. shot to a child under the age of 16 without being or having permission of the child's parent or guardian.

"Knowingly" means Defendant knew or was aware Defendant sold, gave or transferred a B.B., air or shot gun or B.B. shot to a child under the age of 16 without being or having permission of the child's parent or guardian.

Applicable Code Sections and Case Law:

11 *Del.C.* § 231(b, c) and 251(b).

Through 77 Del. Laws June 30, 2010.

UNLAWFUL DEALING WITH A DANGEROUS WEAPON

In order to find Defendant guilty of Unlawful Dealing with a Dangerous Weapon, you must find the State proved the following three (3) elements beyond a reasonable doubt:

(1) Defendant was a parent of **[**child**]**, a child under the age of 16;

(2) Defendant permitted **[**child**]** to have possession of a **[**firearm/B.B. gun/air gun/spear gun**]** without the direct supervision of an adult; and

(3) Defendant acted **[**intentionally/knowingly**]**.

"Intentionally" means it was Defendant's conscious objective or purpose to permit Defendant's child under the age of 16 to have possession of a firearm, B.B. gun, air gun or spear gun without the direct supervision of an adult.

"Knowingly" means Defendant knew or was aware Defendant permitted Defendant's child under the age of 16 to possess a firearm, B.B. gun, air gun or spear gun without the direct supervision of an adult.

Applicable Code Sections and Case Law:

11 *Del.C.* § 231(b, c) and 251(b).

UNLAWFUL DEALING WITH A DANGEROUS WEAPON

In order to find Defendant guilty of Unlawful Dealing with a Dangerous Weapon, you must find the State proved the following three (3) elements beyond a reasonable doubt:

(1) Defendant **[**sold/gave/transferred**]** a **[**firearm/ammunition for a firearm**]** to a child under 18 years of age;

(2) Defendant **[**was not child's **(**parent/guardian**)/**did not first receive permission of child's **(**parent/guardian**)]**;

(3) Defendant acted **[**intentionally/knowingly**]**.

"Intentionally" means it was Defendant's conscious objective or purpose to sell, give or transfer a firearm or ammunition for a firearm to a child under the age of 18 without being or having permission of the child's parent or guardian.

"Knowingly" means Defendant knew or was aware Defendant sold, gave or transferred a B.B., air or shot gun or B.B. shot to a child under the age of 16 without being or having permission of the child's parent or guardian.

Applicable Code Sections and Case Law:

11 *Del.C.* § 231(b, c) and 251(b).

Through 77 Del. Laws June 30, 2010.

Unlawful Dealing with a Dangerous Weapon . . . . . 11.1445(5)

UNLAWFUL DEALING WITH A DANGEROUS WEAPON

In order to find Defendant guilty of Unlawful Dealing with a Dangerous Weapon, you must find the State proved the following three (3) elements beyond a reasonable doubt:

(1) Defendant **[**sold/gave/transferred**]** a firearm to a person;

(2) Defendant was aware person intended to commit a **[**felony/class A misdemeanor/drug related offense**]** while in possession of firearm; and

(3) Defendant acted knowingly.

"Knowingly" means Defendant knew or was aware other person would commit a felony, class A misdemeanor or drug related offense while in possession of the firearm.

Applicable Code Sections and Case Law:

11 *Del.C.* § 231(c).

UNLAWFULLY DEALING WITH A SWITCHBLADE KNIFE

In order to find Defendant guilty of Unlawfully Dealing with a Switchblade Knife, you must find the State proved the following three (3) elements beyond a reasonable doubt:

(1) Defendant **[**sold/offered for sale/possessed**]** and knife;

(2) The blade of the knife by a spring mechanism or gravity;

(3) Defendant acted **[**intentionally/knowingly**]**.

"Intentionally" means it was Defendant's conscious objective or purpose to sell, offer for sale or possess a knife with a blade that opened by a spring mechanism or gravity.

"Knowingly" means Defendant knew or was aware Defendant sold, offered for sale or possessed a knife with a blade that opened by a spring mechanism or gravity.

Applicable Code Sections and Case Law:

11 *Del.C.* § 231(b, c) and 251(b).

Undetectable Knives; Commercial Manufacture, ... 11.1446A(a)
Import for Sale, or Offers for Sale; or Possession

UNDETECTABLE KNIVES; COMMERCIAL MANUFACTURE, IMPORT FOR COMMERCIAL SALE, OR OFFERS FOR COMMERCIAL SALE; OR POSSESSION

In order to find Defendant guilty of Commercial Manufacture of Undetectable Knives, you must find the State proved the following two (2) elements beyond a reasonable doubt:

(1) Defendant **[**commercially manufactured/caused to be commercially manufactured/ **(**imported into the State/kept/offered/exposed**)** for commercial sale/possessed**]** any undetectable knife; and

(2) Defendant acted knowingly.

"Knowingly" means Defendant knew or was aware Defendant possessed, commercially manufactured, caused to be commercially manufactured, imported into the State, kept, offered, or exposed for commercial sale any undetectable knife.

Applicable Code Sections and Case Law:

11 *Del.C.* § 231(c).

POSSESSION OF A DEADLY WEAPON DURING COMMISSION OF A FELONY

In order to find Defendant guilty of Possession of a Deadly Weapon During Commission of a Felony, you must find the State proved following three (3) elements beyond a reasonable doubt:

(1) Defendant committed **[**felony**]**, a felony; and

(2) Defendant possessed **[**weapon**]**, a deadly weapon, during the commission of **[**felony**]**; and

(3) Defendant acted knowingly.

"Deadly weapon" is defined to include: firearm, bomb, knife of any sort (other than an ordinary pocket knife carried in a closed position), switchblade knife, billy, blackjack, bludgeon, metal knuckles, slingshot, razor, bicycle chain, ice pick or any dangerous instrument which a person used, or tried to use, to cause death or serious physical injury. For the purpose of this definition, an ordinary pocket knife is a folding knife with a blade no longer than 3 inches.

"Knowingly" means Defendant knew or was aware Defendant possessed a deadly weapon during the commission of a felony.

Within the meaning of this offense, "possession" means the weapon was in the immediate personal possession of, or under the immediate control of, Defendant so it was physically available or accessible during the commission of the crime.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 222(5). 231(c) and 251(b); *Mack v. State*, 312 A.2d 319, 322 (Del. 1973) (defining "possession" for purposes of § 1447).

POSSESSION OF A FIREARM DURING COMMISSION OF A FELONY

In order to find Defendant guilty of Possession of a Firearm During Commission of a Felony, you must find the State has proved following three (3) elements beyond a reasonable doubt:

(1) Defendant committed a felony;

(2) Defendant possessed a firearm during the commission of the felony; and

(3) Defendant acted knowingly.

"Firearm" means any weapon from which a shot, projectile, or other object may be discharged by force of combustion, explosive, gas and/or mechanical means, whether the weapon is operable or inoperable, loaded or unloaded. The term does not include a BB gun.

“Possession” means the firearm was in the immediate personal possession of, or under the immediate control of, Defendant so it was physically available or accessible during the commission of the crime.

“Knowingly” means Defendant knew or was aware Defendant possessed a firearm during th e commission of a felony.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 222(12), 231(c) and 251(b); *See also Mack v. State*, 312 A.2d 319, 322 (Del. 1973) (defining "possession").

[*Possession/Purchase***]** *of a Deadly Weapons by Person Prohibited* . 11.1448(a)(1)

[POSSESSION/PURCHASE/CONTROL] OF A DEADLY WEAPON BY PERSON PROHIBITED

In order to find Defendant guilty of **[**Purchase/Possession**]** of a Deadly Weapon by Person Prohibited, you must find the State proved following three (3) elements beyond a reasonable doubt:

(1) Defendant **[**purchased/owned/possessed/controlled**] [**a deadly weapon/ammunition for a firearm**]** within the State;

(2) Defendant was prohibited from **[**purchasing/owning/possessing/controlling**] [**a deadly weapon/ammunition for a firearm**]** because Defendant had been convicted of a **[**felony/crime of violence**]**; and

(3) Defendant acted knowingly.

"Deadly weapon" is defined to include: firearm, bomb, knife of any sort (other than an ordinary pocket knife carried in a closed position), switchblade knife, billy, blackjack, bludgeon, metal knuckles, slingshot, razor, bicycle chain, ice pick or any dangerous instrument which a person used, or tried to use, to cause death or serious physical injury. For the purpose of this definition, an ordinary pocket knife is a folding knife with a blade no longer than 3 inches.

“Possession” includes actual possession and constructive possession. Actual possession means Defendant knowingly had direct physical control over the destructive weapon. Constructive possession means the destructive weapon was within Defendant’s reasonable control, that is, in or about Defendant’s person, premises, belongings, or vehicle. In other words, Defendant had constructive possession over the destructive weapon if Defendant had both the power and the intention, at a given time, to exercise control over the destructive weapon, either directly or through another person. Possession may be sole or joint. If one person has actual or constructive possession of a thing, possession is sole. If two or more persons share actual or constructive possession over a thing, possession is joint. Possession is proven if you find beyond a reasonable doubt Defendant had actual or constructive possession, either alone or jointly with others.

“Knowingly” means Defendant knew or was aware Defendant possessed a deadly weapon as a person prohibited.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 222(5), 231(c) and 251(b).

3[*Possession/Purchase***]** *of a Deadly Weapons by Person Prohibited* 11.1448(a)(2)

[POSSESSION/PURCHASE/CONTROL] OF A DEADLY WEAPON BY PERSON PROHIBITED

In order to find Defendant guilty of Possession of a Deadly Weapon by Person Prohibited, you must find the State proved following three (3) elements beyond a reasonable doubt:

(1) Defendant [purchased/owned/possessed/controlled**] [**a deadly weapon/ammunition for a firearm**]**;

(2) Defendant was prohibited from **[**purchasing/owning/possessing/controlling**] [**a deadly weapon/ammunition for a firearm**]** because Defendant had been committed for a mental disorder to **[**hospital/mental institution/sanitarium**]**; and

(3) Defendant acted knowingly.

It is a defense to the charge of possession of a deadly weapon by person prohibited if Defendant possessed a certificate of a medical doctor or psychiatrist licensed in this State stating Defendant no loner suffers from a mental disorder which interferes or handicaps Defendant from handling deadly weapons.

"Deadly weapon" is defined to include: firearm, bomb, knife of any sort (other than an ordinary pocket knife carried in a closed position), switchblade

knife, billy, blackjack, bludgeon, metal knuckles, slingshot, razor, bicycle chain, ice pick or any dangerous instrument which a person used, or tried to use, to cause death or serious physical injury. For the purpose of this definition, an ordinary pocket knife is a folding knife with a blade no longer than 3 inches.

"Possession" includes actual possession and constructive possession. Actual possession means Defendant knowingly had direct physical control over the destructive weapon. Constructive possession means the destructive weapon was within Defendant's reasonable control, that is, in or about Defendant's person, premises, belongings, or vehicle. In other words, Defendant had constructive possession over the destructive weapon if Defendant had both the power and the intention, at a given time, to exercise control over the destructive weapon, either directly or through another person. Possession may be sole or joint. If one person has actual or constructive possession of a thing, possession is sole. If two or more persons share actual or constructive possession over a thing, possession is joint. Possession is proven if you find beyond a reasonable doubt Defendant had actual or constructive possession, either alone or jointly with others.

"Knowingly" means Defendant knew or was aware Defendant possessed a deadly weapon as a person prohibited.

Applicable Code Sections and Case Law:

Through 77 Del. Laws June 30, 2010.

11 *Del. C.* §§ 222(5), 231(c) and 251(b).

[*Possession/Purchase***]** *of a Deadly Weapons by Person Prohibited* . 11.1448(a)(3)

[POSSESSION/PURCHASE/CONTROL] OF A DEADLY WEAPON BY PERSON PROHIBITED

In order to find Defendant guilty of Possession of **[**a**]** Deadly Weapon by Person Prohibited, you must find the State proved following three (3) elements beyond a reasonable doubt:

(1) Defendant **[**purchased/owned/possessed/controlled**]** a deadly weapon;

(2) Defendant was prohibited from **[**purchasing/owning/possessing/controlling**]** a deadly weapon because Defendant had been convicted for the unlawful **[**use/possession/sale**]** of a **[**narcotic/dangerous drug/central nervous system depressant/stimulant/controlled substance**]**; and

(3) Defendant acted knowingly.

"Deadly weapon" is defined to include: firearm, bomb, knife of any sort (other than an ordinary pocket knife carried in a closed position), switchblade knife, billy, blackjack, bludgeon, metal knuckles, slingshot, razor, bicycle chain, ice pick or any dangerous instrument which a person used, or tried to use, to cause death or serious physical injury. For the purpose of this definition, an ordinary pocket knife is a folding knife with a blade no longer than 3 inches.

"Possession" includes actual possession and constructive possession. Actual possession means Defendant knowingly had direct physical control over the destructive weapon. Constructive possession means the destructive weapon was within Defendant's reasonable control, that is, in or about Defendant's person, premises, belongings, or vehicle. In other words, Defendant had constructive possession over the destructive weapon if Defendant had both the power and the intention, at a given time, to exercise control over the destructive weapon, either directly or through another person. Possession may be sole or joint. If one person has actual or constructive possession of a thing, possession is sole. If two or more persons share actual or constructive possession over a thing, possession is joint. Possession is proven if you find beyond a reasonable doubt Defendant had actual or constructive possession, either alone or jointly with others.

"Knowingly" means Defendant knew or was aware Defendant was prohibited from possessing a deadly weapon.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 222(5), 231(c) and 251(b).

[*Possession/Purchase***]** *of a Deadly Weapons by Person Prohibited* . 11.1448(a)(4)

[POSSESSION/PURCHASE/CONTROL] OF A DEADLY WEAPON BY PERSON PROHIBITED

In order to find Defendant guilty of Possession of **[**a**]** Deadly Weapon by Person Prohibited, you must find the State proved following three (3) elements beyond a reasonable doubt:

(1) Defendant **[**purchased/owned/possessed/controlled**]** a deadly weapon;

(2) Defendant was prohibited from **[**purchasing/owning/possessing/controlling**]** a deadly weapon because Defendant, as a juvenile, was adjudicated as delinquent for **[**conduct**]**, which if committed by an adult, would have constituted a felony, unless Defendant is now 25 years of age or older; and

(3) Defendant acted knowingly.

"Deadly weapon" is defined to include: firearm, bomb, knife of any sort (other than an ordinary pocket knife carried in a closed position), switchblade knife, billy, blackjack, bludgeon, metal knuckles, slingshot, razor, bicycle chain, ice pick or any dangerous instrument which a person used, or tried to use, to cause death or serious physical injury. For the purpose of this definition, an ordinary pocket knife is a folding knife with a blade no longer than 3 inches.

"Possession" includes actual possession and constructive possession. Actual possession means Defendant knowingly had direct physical control over the destructive weapon. Constructive possession means the destructive weapon was within Defendant's reasonable control, that is, in or about Defendant's person, premises, belongings, or vehicle. In other words, Defendant had constructive possession over the destructive weapon if Defendant had both the power and the intention, at a given time, to exercise control over the destructive weapon, either directly or through another person. Possession may be sole or joint. If one person has actual or constructive possession of a thing, possession is sole. If two or more persons share actual or constructive possession over a thing, possession is joint. Possession is proven if you find beyond a reasonable doubt Defendant had actual or constructive possession, either alone or jointly with others.

"Knowingly" means Defendant knew or was aware Defendant was prohibited from possessing a deadly weapon.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 222(5), 231(c) and 251(b).

[*Possession/Purchase***]** *of a Deadly Weapons by Person Prohibited* . 11.1448(a)(5)

[POSSESSION/PURCHASE/CONTROL] OF A DEADLY WEAPON BY PERSON PROHIBITED

In order to find Defendant guilty of Possession of **[**a**]** Deadly Weapon by Person Prohibited, you must find the State proved following two (2) elements beyond a reasonable doubt:

(1) Defendant **[**purchased/owned/possessed/controlled**]** a handgun;

(2) Defendant was a juvenile in possession of a handgun at the time of the charged offense, unless Defendant was engaged in lawful hunting, instruction, sporting or recreational activity while under the direct or indirect supervision of an adult; and

(3) Defendant acted knowingly.

For the purpose of this subsection, handgun shall be defined as any pistol, revolver or other firearm designed to be readily capable of being fired when held in one (1) hand.

"Deadly weapon" is defined to include: firearm, bomb, knife of any sort (other than an ordinary pocket knife carried in a closed position), switchblade knife, billy, blackjack, bludgeon, metal knuckles, slingshot, razor, bicycle chain, ice pick or any dangerous instrument which a person used, or tried to use, to cause

death or serious physical injury. For the purpose of this definition, an ordinary pocket knife is a folding knife with a blade no longer than 3 inches.

"Possession" includes actual possession and constructive possession. Actual possession means Defendant knowingly had direct physical control over the destructive weapon. Constructive possession means the destructive weapon was within Defendant's reasonable control, that is, in or about Defendant's person, premises, belongings, or vehicle. In other words, Defendant had constructive possession over the destructive weapon if Defendant had both the power and the intention, at a given time, to exercise control over the destructive weapon, either directly or through another person. Possession may be sole or joint. If one person has actual or constructive possession of a thing, possession is sole. If two or more persons share actual or constructive possession over a thing, possession is joint. Possession is proven if you find beyond a reasonable doubt Defendant had actual or constructive possession, either alone or jointly with others.

"Knowingly" means Defendant knew or was aware Defendant was prohibited from possessing a handgun.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 222(5), 231(c) and 251(b).

[*Possession/Purchase***]** *of a Deadly Weapons by Person Prohibited* . 11.1448(a)(6)

[POSSESSION/PURCHASE/CONTROL] OF A DEADLY WEAPON BY PERSON PROHIBITED

In order to find Defendant guilty of Possession of **[**a**]** Deadly Weapon by Person Prohibited, you must find the State proved following three (3) elements beyond a reasonable doubt:

(1) Defendant **[**purchased/owned/possessed/controlled**]** a deadly weapon;

(2) Defendant was subject to an applicable, in force Family Court protection from abuse order; and

(3) Defendant acted knowingly.

"Deadly weapon" is defined to include: firearm, bomb, knife of any sort (other than an ordinary pocket knife carried in a closed position), switchblade knife, billy, blackjack, bludgeon, metal knuckles, slingshot, razor, bicycle chain, ice pick or any dangerous instrument which a person used, or tried to use, to cause death or serious physical injury. For the purpose of this definition, an ordinary pocket knife is a folding knife with a blade no longer than 3 inches.

"Possession" includes actual possession and constructive possession. Actual possession means Defendant knowingly had direct physical control over the destructive weapon. Constructive possession means the destructive weapon was

within Defendant's reasonable control, that is, in or about Defendant's person, premises, belongings, or vehicle. In other words, Defendant had constructive possession over the destructive weapon if Defendant had both the power and the intention, at a given time, to exercise control over the destructive weapon, either directly or through another person. Possession may be sole or joint. If one person has actual or constructive possession of a thing, possession is sole. If two or more persons share actual or constructive possession over a thing, possession is joint. Possession is proven if you find beyond a reasonable doubt Defendant had actual or constructive possession, either alone or jointly with others.

"Knowingly" means Defendant knew or was aware Defendant was prohibited from possessing a deadly weapon.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 222(5), 231(c) and 251(b).

[*Possession/Purchase***]** *of a Deadly Weapons by Person Prohibited* 11.1448(a)(7)a

[POSSESSION/PURCHASE/CONTROL] OF A DEADLY WEAPON BY PERSON PROHIBITED

In order to find Defendant guilty of Possession of **[**a**]** Deadly Weapon by Person Prohibited, you must find the State proved following four (4) elements beyond a reasonable doubt:

(1) Defendant **[**purchased/owned/possessed/controlled**]** a deadly weapon;

(2) Defendant was prohibited from **[**purchasing/owning/possessing/controlling**]** a deadly weapon because Defendant had been convicted of a misdemeanor crime of domestic violence;

(3) Defendant **[**was a member of **(**victim's**)** family as defined in 10 *Del.C.* § 901(12)/former spouse of **(**victim**)**/co-habitated with **(**victim**)** at time of the offense/person with a child in common with **(**victim**)]**; and

(4) Defendant acted knowingly.

"Deadly weapon" is defined to include: firearm, bomb, knife of any sort (other than an ordinary pocket knife carried in a closed position), switchblade knife, billy, blackjack, bludgeon, metal knuckles, slingshot, razor, bicycle chain, ice pick or any dangerous instrument which a person used, or tried to use, to cause

death or serious physical injury. For the purpose of this definition, an ordinary pocket knife is a folding knife with a blade no longer than 3 inches.

"Possession" includes actual possession and constructive possession. Actual possession means Defendant knowingly had direct physical control over the destructive weapon. Constructive possession means the destructive weapon was within Defendant's reasonable control, that is, in or about **[**Defendant's**]** person, premises, belongings, or vehicle. In other words, Defendant had constructive possession over the destructive weapon if Defendant had both the power and the intention, at a given time, to exercise control over the destructive weapon, either directly or through another person. Possession may be sole or joint. If one person has actual or constructive possession of a thing, possession is sole. If two or more persons share actual or constructive possession over a thing, possession is joint. Possession is proven if you find beyond a reasonable doubt Defendant had actual or constructive possession, either alone or jointly with others.

"Knowingly" means Defendant knew or was aware Defendant was prohibited from possessing a deadly weapon.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 222(5), 231(c) and 251(b).

[*Possession/Purchase***]** *of a Deadly Weapons by Person Prohibited* 11.1448(a)(7)b

[POSSESSION/PURCHASE/CONTROL] OF A DEADLY WEAPON BY PERSON PROHIBITED

In order to find Defendant guilty of Possession of **[**a**]** Deadly Weapon by Person Prohibited, you must find the State proved following four (4) elements beyond a reasonable doubt:

(1) Defendant **[**purchased/owned/possessed/controlled**]** a deadly weapon;

(2) Defendant was prohibited from **[**purchasing/owning/possessing/controlling**]** a deadly weapon because Defendant had been convicted of a misdemeanor crime of domestic violence;

(3) Defendant was convicted of a misdemeanor crime of domestic violence **[**name of misdemeanor crime**]**, under 11 *Del.C.* § **[**601/ 602/603/611/614/621/625/628/763/765/766/767/781/ 791/any similar offense committed or prosecuted an another jurisdiction**]**; and

(4) Defendant acted knowingly.

"Deadly weapon" is defined to include: firearm, bomb, knife of any sort (other than an ordinary pocket knife carried in a closed position), switchblade knife, billy, blackjack, bludgeon, metal knuckles, slingshot, razor, bicycle chain, ice pick or any dangerous instrument which a person used, or tried to use, to cause

death or serious physical injury. For the purpose of this definition, an ordinary pocket knife is a folding knife with a blade no longer than 3 inches.

"Possession" includes actual possession and constructive possession. Actual possession means Defendant knowingly had direct physical control over the destructive weapon. Constructive possession means the destructive weapon was within Defendant's reasonable control, that is, in or about **[**Defendant's**]** person, premises, belongings, or vehicle. In other words, Defendant had constructive possession over the destructive weapon if Defendant had both the power and the intention, at a given time, to exercise control over the destructive weapon, either directly or through another person. Possession may be sole or joint. If one person has actual or constructive possession of a thing, possession is sole. If two or more persons share actual or constructive possession over a thing, possession is joint. Possession is proven if you find beyond a reasonable doubt Defendant had actual or constructive possession, either alone or jointly with others.

"Knowingly" means Defendant knew or was aware Defendant was prohibited from possessing a deadly weapon.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 222(5), 231(c) and 251(b).

[*Possession/Purchase***]** *of a Deadly Weapons by Person Prohibited* . 11.1448(a)(8)

[POSSESSION/PURCHASE/CONTROL] OF A DEADLY WEAPON BY PERSON PROHIBITED

In order to find Defendant guilty of Possession of **[**a**]** Deadly Weapon by Person Prohibited, you must find the State proved following four (4) elements beyond a reasonable doubt:

(1) Defendant **[**purchased/owned/possessed/controlled**]** a deadly weapon;

(2) Defendant was prohibited from **[**purchasing/owning/possessing/controlling**]** a deadly weapon because Defendant was a **[**defendant/co-defendant**]** in any criminal case where Defendant was alleged to have committed any felony;

(3) Defendant was a fugitive from justice by failing to appear for any scheduled court appearance for which proper notice was **[**provided/attempted**]**; and

(4) Defendant acted knowingly.

It is no defense to prosecution under this section that Defendant did not receive notice of the scheduled court proceeding.

"Deadly weapon" is defined to include: firearm, bomb, knife of any sort (other than an ordinary pocket knife carried in a closed position), switchblade knife, billy, blackjack, bludgeon, metal knuckles, slingshot, razor, bicycle chain,

ice pick or any dangerous instrument which a person used, or tried to use, to cause death or serious physical injury. For the purpose of this definition, an ordinary pocket knife is a folding knife with a blade no longer than 3 inches.

"Possession" includes actual possession and constructive possession. Actual possession means Defendant knowingly had direct physical control over the destructive weapon. Constructive possession means the destructive weapon was within Defendant's reasonable control, that is, in or about **[**Defendant's**]** person, premises, belongings, or vehicle. In other words, Defendant had constructive possession over the destructive weapon if Defendant had both the power and the intention, at a given time, to exercise control over the destructive weapon, either directly or through another person. Possession may be sole or joint. If one person has actual or constructive possession of a thing, possession is sole. If two or more persons share actual or constructive possession over a thing, possession is joint. Possession is proven if you find beyond a reasonable doubt Defendant had actual or constructive possession, either alone or jointly with others.

"Knowingly" means Defendant knew or was aware Defendant was prohibited from possessing a deadly weapon.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 222(5), 231(c) and 251(b).

Through 77 Del. Laws June 30, 2010.

Wearing Body Armor During the Commission of a Felony . . . . . 11.1449(a)

WEARING BODY ARMOR DURING THE COMMISSION OF A FELONY

In order to find Defendant guilty of Wearing Body Armor During the Commission of a Felony, you must find the State proved following three (3) elements beyond a reasonable doubt:

(1) Defendant committed **[**felony**]**, a felony;

(2) Defendant wore body armor at the time of committing **[**felony**]**; and

(3) Defendant acted **[**intentionally/knowingly**]**.

"Intentionally" means it was Defendant's conscious objective or purpose to wear body armor while committing a felony

"Knowingly" means Defendant knew or was aware Defendant was wearing body armor during the commission of a felony.

"Body armor" means any material designed to provide bullet penetration resistance.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 231(b, c), 251(b), and 1449(e).

RECEIVING A STOLEN FIREARM

In order to find Defendant guilty of Receiving a Stolen Firearm, you must find the State proved following four (4) elements beyond a reasonable doubt:

(1) Defendant **[**received/retained/disposed of**]** a firearm belonging to **[**victim**]**;

(2) Defendant **[**deprived the owner of the firearm/appropriated the firearm**]**;

(3) Defendant **[**knew/believed**]** the firearm was acquired under circumstances amounting to theft; and

(4) Defendant acted intentionally.

"Firearm" means any weapon from which a shot, projectile, or other object may be discharged by force of combustion, explosive, gas and/or mechanical means, whether the weapon is operable or inoperable, loaded or unloaded. The term does not include a BB gun.

“Intentionally” means it was Defendant’s conscious objective or purpose to receive a stolen firearm.

"Appropriate" means to exercise control over someone else’s property permanently or for such an extended period of time so as to obtain a major part of the item’s economic value.

Knowledge a firearm has been acquired under circumstances amounting to theft may be inferred if the person acquires it for a price which Defendant knows is substantially below its reasonable value, or if the person possesses a firearm on which the affixed identification or serial number is altered, removed, defaced or falsified.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 222(12), 231(b), and 857(1). *See also Guyer v. State*, 453 A.2d 462, 466 (Del. 1982); *State v. Shahan*, 335 A.2d 277, 281-3 (Del. Super. 1973); *Sexton v. State*, 397 A.2d 540, 544 (Del. 1979), *overruled on other grounds*, *Hughes v. State*, 437 A.2d 559 (1981).

THEFT OF A FIREARM

11 *Del.C.* § 1451

In order to find Defendant guilty of Theft of a Firearm, you must find the State proved following three (3) elements beyond a reasonable doubt:

(1) Defendant **[**took/exercised control over/obtained**]** a firearm of **[**victim**]**;

(2) Defendant meant to **[**appropriate/deprive **(**victim**)** of**]** the firearm; and

(3) Defendant acted intentionally.

"Firearm" means any weapon from which a shot, projectile, or other object may be discharged by force of combustion, explosive, gas and/or mechanical means, whether the weapon is operable or inoperable, loaded or unloaded. The term does not include a BB gun.

“Intentionally” means it was Defendant’s conscious objective or purpose to deprive **[**victim**]** of the firearm.

"Appropriate" means to exercise control over someone else’s property permanently or for such an extended period of time so as to obtain a major part of the item’s economic value.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 222(12), 231(b), and 857(1); *Guyer v. State*, 453 A.2d 462, 466 (Del. Super. 1982); *Wright v. State*, 405 A.2d 685 (Del. 1979); *Reader v. State*, 349 A.2d 745, 747 (Del. 1975); *State v. Shahan*, 335 A.2d 277, 281-3 (Del. Super. 1975).

Unlawfully Dealing with Knuckles-Combination Knife 11.1452

UNLAWFULLY DEALING WITH KNUCKLES-COMBINATION KNIFE

In order to find Defendant guilty of Unlawfully Dealing with Knuckles-Combination Knife, you must find the State proved following three (3) elements beyond a reasonable doubt:

(1) Defendant **[**sold/offered for sale/possessed**]** a knife;

(2) The knife blade was supported by a knuckle ring grip handle; and

(3) Defendant acted **[**intentionally/knowingly**]**.

"Intentionally" means it was Defendant's conscious objective or purpose to sell or possess a knuckles-combination knife.

"Knowingly" means Defendant knew or was aware Defendant was possessing or selling a knuckles-combination knife.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 231(b, c) and 251(b).

Unlawfully Dealing with Martial Arts Throwing Star 11.1453

UNLAWFULLY DEALING WITH MARTIAL ARTS THROWING STAR

In order to find Defendant guilty of Unlawfully Dealing a Martial Arts Throwing Star, you must find the State proved following two (2) elements beyond a reasonable doubt:

(1) Defendant **[**sold/offered for sale/possessed**]** a sharp metal throwing star; and

(2) Defendant acted **[**intentionally/knowingly**]**.

"Intentionally" means it was Defendant's conscious objective or purpose to sell or possess a sharp metal throwing star.

"Knowingly" means Defendant knew or was aware Defendant sold or possessed a sharp metal throwing star..

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 231(b, c) and 251(b).

Giving a Firearm to Person Prohibited l1.1454

GIVING A FIREARM TO PERSON PROHIBITED

In order to find Defendant guilty of Giving a Firearm to Person Prohibited, you must find the State proved following two (2) elements beyond a reasonable doubt:

(1) Defendant **[**sold/transferred/gave/loaned/furnished**]** a firearm to **[**person**]**;

(2) Defendant was aware **[**person**]** was prohibited from **[**possessing/purchasing**]** a firearm, because **[**§ 1448 disqualifying reason**]**; and

(3) Defendant acted knowingly.

"Firearm" means any weapon from which a shot, projectile, or other object may be discharged by force of combustion, explosive, gas and/or mechanical means, whether the weapon is operable or inoperable, loaded or unloaded. The term does not include a BB gun.

“Knowingly” means Defendant knew or was aware Defendant transferred possession of a firearm to a person prohibited from possessing a deadly weapon.

A person is a “person prohibited” from possessing or purchasing a firearm if Defendant:

(1) Had been convicted in Delaware or elsewhere of a felony or crime of violence
involving physical injury to another, whether or not armed with or having possession of any weapon during the commission of such felony or crime of violence;

(2) Had ever been committed for a mental disorder to any hospital, mental institution
or sanitarium, unless the person possesses a certificate of a medical doctor or psychiatrist licensed in this State that the person is no longer suffering from a mental disorder which interferes or handicaps the person from handling deadly weapons;

(3) Had, as a juvenile, been adjudicated as delinquent for conduct which, if committed by an adult, would constitute a felony, unless and until that person has reached **[**Defendant's**]** 25th birthday;

(4) Is a juvenile, if the deadly weapon is a handgun, unless the juvenile possessed the
handgun for the purpose of engaging in lawful hunting, instruction, sporting or recreational activity while under the direct or indirect supervision of an adult;

(5) Is a juvenile, if said deadly weapon is a handgun, unless said juvenile possesses said handgun for the purpose of engaging in lawful hunting, instruction,

sporting or recreational activity while under the direct or indirect supervision of an adult;

(6) Is subject to a Family Court protection from abuse order (other than an *ex parte* order), but only for so long as that order remains in effect or is not vacated or otherwise terminated; or

(7) Has been convicted in any court of any misdemeanor crime of domestic violence.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 222(12), 231(c), and 1448.

ENGAGING IN FIREARMS TRANSACTION ON BEHALF OF ANOTHER

In order to find Defendant guilty of Engaging in Firearms Transaction on Behalf of Another, you must find the State proved following four (4) elements beyond a reasonable doubt:

(1) Defendant **[**purchased/obtained**]** a firearm;

(2) Defendant acted **[**on behalf of **(**person**)** not qualified to legally **(**purchase/own/possess) a firearm/with the purpose of **(**selling/giving/transferring) a firearm to **(**person**)** not qualified to legally **(**purchase/own/possess) a firearm;**]**

(3) **[**Person**]**, was not legally qualified to **[**purchase/own/possess**]** a firearm in this State because **[**state reason**]**; and

(4) Defendant acted **[**intentionally/knowingly**]**.

"Firearm" means any weapon from which a shot, projectile, or other object may be discharged by force of combustion, explosive, gas and/or mechanical means, whether the weapon is operable or inoperable, loaded or unloaded. The term does not include a BB gun.

“Intentionally” means it was Defendant’s conscious objective or purpose to engage in a firearm transaction on behalf of person not qualified to legally purchase, own or possess a firearm.

"Knowingly" means Defendant knew or was aware Defendant was engaging in a firearm transaction on behalf of person not qualified to legally purchase, own or possess a firearm.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 222(12") and 231(b, c).

UNLAWFULLY PERMITTING A MINOR ACCESS TO A FIREARM

In order to find Defendant guilty of Unlawfully Permitting a Minor Access to a Firearm, you must find the State proved following three (3) elements beyond a reasonable doubt:

(1) Defendant **[**stored/left**]** a loaded **[**firearm**]** within **[**the reach/easy access**]** of **[**minor**]**, a minor;

(2) **[**Minor**]** obtained the firearm and used it to inflict **[**serious physical injury/death**]** upon **[**himself/herself/someone else**]**; and

(3) Defendant acted **[**intentionally/recklessly**]**.

"Firearm" means any weapon from which a shot, projectile, or other object may be discharged by force of combustion, explosive, gas and/or mechanical means, whether the weapon is operable or inoperable, loaded or unloaded. The term does not include a BB gun.

"Serious physical injury" means any physical injury which creates a substantial risk of death, or which causes serious and prolonged disfigurement, prolonged impairment of health, or prolonged loss or impairment of the function of any bodily organ.

“Intentionally” means it was Defendant’s conscious objective or purpose tostore or leave a loaded firearm within reach or easy access of a minor..

“Recklessly” means Defendant was aware of and consciously disregarded a substantial and unjustifiable risk the firearm would be easily accessible to a minor. The State must demonstrate the risk was of such a nature and degree Defendant’s disregard of it was a gross deviation from the standard of conduct a reasonable person would observe under the same circumstances.

"Minor" is any person under the age of 18 years.

[Commentary: The Committee assumed that a minor was a person under the age of 18. 11 Del. C. § 1456 does not define the word. The Committee notes that sections 1365(3) and 1366(4), dealing with obscenity, define “minors” as being those under the age of 17. On the other hand, statutes like 16 Del. C. § 4773, prohibiting the delivery of drug paraphernalia to minors, equates a minor as being one under 18 years of age. This is the more common definition and the one that the Committee adopted.]

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 222(12, 25) and 231(b, c).

UNLAWFULLY PERMITTING A MINOR ACCESS TO A FIREARM [AFFIRMATIVE DEFENSE]

In this case, Defendant has asserted an affirmative defense to the charge of Unlawfully Permitting a Minor Access to a Firearm. In order to establish this affirmative defense, Defendant must prove the following element by a preponderance of the evidence:

The firearm was stored in a locked box or container or in a location a reasonable person would have believed to be secure from access to a minor.

Proof by a preponderance of the evidence means proof something is more likely than not. It means certain evidence, when compared to the evidence opposed to it, has the more convincing force and makes you believe something is more likely true than not. Preponderance of the evidence does not depend on the number of witnesses. If the evidence supporting the existence of the defense is evenly balanced, then Defendant has not proved the existence of the defense by a preponderance of the evidence, and you must find against Defendant on that point. The state has no burden to present any evidence on this matter.

If after considering all of the evidence, you find this affirmative defense is established by a preponderance of the evidence, then you must find Defendant not

guilty of Unlawfully Permitting a Minor Access to a Firearm. Even if Defendant has not met this burden of proof for this particular affirmative defense, you must find Defendant not guilty of Unlawfully Permitting a Minor Access to a Firearm if you find the State has not met its burden of proving its case beyond a reasonable doubt.

Applicable Code Sections and Case Law:

11 *Del.C.* § 304.

UNLAWFULLY PERMITTING A MINOR ACCESS TO A FIREARM [AFFIRMATIVE DEFENSE]

In this case, Defendant has asserted an affirmative defense to the charge of Unlawfully Permitting a Minor Access to a Firearm. In order to establish this affirmative defense, Defendant must prove the following element by a preponderance of the evidence:

The minor obtained the firearm as the result of an unlawful entry by any person.

Proof by a preponderance of the evidence means proof something is more likely than not. It means certain evidence, when compared to the evidence opposed to it, has the more convincing force and makes you believe something is more likely true than not. Preponderance of the evidence does not depend on the number of witnesses. If the evidence supporting the existence of the defense is evenly balanced, then Defendant has not proved the existence of the defense by a preponderance of the evidence, and you must find against Defendant on that point. The state has no burden to present any evidence on this matter.

If after considering all of the evidence, you find this affirmative defense is established by a preponderance of the evidence, then you must find Defendant not

guilty of Unlawfully Permitting a Minor Access to a Firearm. Even if Defendant has not met this burden of proof for this particular affirmative defense, you must find Defendant not guilty of Unlawfully Permitting a Minor Access to a Firearm if you find the State has not met its burden of proving its case beyond a reasonable doubt.

Applicable Code Sections and Case Law:

11 *Del.C.* § 304.

Unlawfully Permitting a Minor Access to a Firearm ***[****Affirmative Defense****]*** 11 § 456(b)(3)

UNLAWFULLY PERMITTING A MINOR ACCESS TO A FIREARM [AFFIRMATIVE DEFENSE]

In this case, Defendant has asserted an affirmative defense to the charge of Unlawfully Permitting a Minor Access to a Firearm. In order to establish this affirmative defense, Defendant must prove the following element by a preponderance of the evidence:

The serious physical injuries or death to **(**the minor/other person) resulted from a **(**target or sport shooting/hunting) accident.

Proof by a preponderance of the evidence means proof something is more likely than not. It means certain evidence, when compared to the evidence opposed to it, has the more convincing force and makes you believe something is more likely true than not. Preponderance of the evidence does not depend on the number

of witnesses. If the evidence supporting the existence of the defense is evenly balanced, then Defendant has not proved the existence of the defense by a preponderance of the evidence, and you must find against Defendant on that point. The state has no burden to present any evidence on this matter.

If after considering all of the evidence, you find this affirmative defense is established by a preponderance of the evidence, then you must find Defendant not guilty of Unlawfully Permitting a Minor Access to a Firearm. Even if Defendant has not met this burden of proof for this particular affirmative defense, you must find Defendant not guilty of Unlawfully Permitting a Minor Access to a Firearm if you find the State has not met its burden of proving its case beyond a reasonable doubt.

"Serious physical injury" means any physical injury which creates a substantial risk of death, or which causes serious and prolonged disfigurement, prolonged impairment of health, or prolonged loss or impairment of the function of any bodily organ.

Applicable Code Sections and Case Law:

11 *Del.C.* §§ 222(25) and 304.

POSSESSION OF A WEAPON IN A SAFE SCHOOL AND RECREATION ZONE

In order to find Defendant guilty of Possession of a Weapon in a Safe School and Recreation Zone, you must find the State proved following two (2) elements beyond a reasonable doubt:

(1) Defendant was in or on a safe school and recreation zone; and

(2) Defendant committed the offense of **[**carrying a concealed deadly weapon/possessing a destructive weapon/unlawfully dealing with a switchblade knife/**(**possession/purchase) of a deadly weapon by a person prohibited/unlawfully dealing with a knuckles-combination knife/unlawfully dealing with a martial arts throwing star**]**.

It is not a defense to a charge of possession of a weapon in a safe school and recreation zone Defendant was unaware the prohibited conduct took place on or in a safe school or recreation zone.

"Deadly weapon" is defined to include: firearm, bomb, knife of any sort (other than an ordinary pocket knife carried in a closed position), switchblade knife, billy, blackjack, bludgeon, metal knuckles, slingshot, razor, bicycle chain, ice pick or any dangerous instrument which a person used, or tried to use, to cause

death or serious physical injury. For this offense, “Deadly weapon" includes a BB gun.

A "safe school and recreation zone" is any building, structure, athletic field, sports stadium, or real property owned, operated, leased or rented by any public or private school including, but not limited to, any kindergarten, elementary, secondary, or vocational-technical school or any college or university, or an area within 1000 feet thereof; or any motor vehicle owned, operated, leased or rented by any public or private school including, but not limited to, any kindergarten, elementary, secondary, or vocational-technical school or any college or university; or any building or structure, owned, operated, leased, or rented by any county or municipality, or by the State, or by any board, agency, commission, department, corporation, or other entity thereof, or by any private organization, which is utilized as a recreation center, athletic field or sports stadium.

[Commentary: Use the standard instruction for the underlying crime.]

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 222(5, 12), 251(b), and 1457(c, e, i).

Possession of a Weapon in a Safe School and Recreation Zone ***[****Affirmative Defense****]*** . . . . . 11.1457(f)

POSSESSION OF A WEAPON IN A SAFE SCHOOL AND RECREATION ZONE

[AFFIRMATIVE DEFENSE]

In this case, Defendant has asserted an affirmative defense to the charge of Possession of a Weapon in a Safe School and Recreation Zone. In order to establish this affirmative defense, Defendant must prove the following element by a preponderance of the evidence:

Defendant possessed the weapon **[**pursuant to an authorized course of school instruction/for the purpose of engaging in any legitimate sporting or recreational activity**]**.

Proof by a preponderance of the evidence means proof something is more likely than not. It means certain evidence, when compared to the evidence opposed to it, has the more convincing force and makes you believe something is more likely true than not. Preponderance of the evidence does not depend on the number of witnesses. If the evidence supporting the existence of the defense is evenly balanced, then Defendant has not proved the existence of the defense by a preponderance of the evidence, and you must find against Defendant on that point. The state has no burden to present any evidence on this matter.

If after considering all of the evidence, you find this affirmative defense is established by a preponderance of the evidence, then you must find Defendant not guilty of Possession of a Weapon in a Safe School and Recreation Zone. Even if Defendant has not met this burden of proof for this particular affirmative defense, you must find Defendant not guilty of Possession of a Weapon in a Safe School and Recreation Zone if you find the State has not met its burden of proving its case beyond a reasonable doubt.

Applicable Code Sections and Case Law:

11 *Del.C.* § 304.

Possession of a Weapon in a Safe School and Recreation Zone ***[****Affirmative Defense****]*** . . . . . 11.1457(g)

POSSESSION OF A WEAPON IN A SAFE SCHOOL AND RECREATION ZONE

[AFFIRMATIVE DEFENSE]

In this case, Defendant has asserted an affirmative defense to the charge of Possession of a Weapon in a Safe School and Recreation Zone. In order to establish this affirmative defense, Defendant must prove the following two (2) elements by a preponderance of the evidence:

(1) Defendant **[**possessed/dealt with**]** the weapon entirely within a private residence, (location); and

(2) No person under the age of 18 years was present in the residence when the charged offense occurred.**]**

Proof by a preponderance of the evidence means proof something is more likely than not. It means certain evidence, when compared to the evidence opposed to it, has the more convincing force and makes you believe something is more likely true than not. Preponderance of the evidence does not depend on the number of witnesses. If the evidence supporting the existence of the defense is evenly balanced, then Defendant has not proved the existence of the defense by a

preponderance of the evidence, and you must find against Defendant on that point. The state has no burden to present any evidence on this matter.

If after considering all of the evidence, you find this affirmative defense is established by a preponderance of the evidence, then you must find Defendant not guilty of Possession of a Weapon in a Safe School and Recreation Zone. Even if Defendant has not met this burden of proof for this particular affirmative defense, you must find Defendant not guilty of Possession of a Weapon in a Safe School and Recreation Zone if you find the State has not met its burden of proving its case beyond a reasonable doubt.

Applicable Code Sections and Case Law:

11 *Del.C.* § 304.

REMOVING A FIREARM FROM THE POSSESSION OF A LAW ENFORCEMENT OFFICER

In order to find Defendant guilty of Removing a Firearm From the Possession of a Law Enforcement Officer, you must find the State proved following four (4) elements beyond a reasonable doubt:

(1) Defendant **[**removed/attempted to remove**]** a **[**firearm/disabling chemical spray/baton/ deadly weapon**]** from the possession of **[**victim**]**;

(2) Defendant **[**knew/had reason to know**] [**victim**]** was employed as a law enforcement officer authorized by law to make arrests;

(3) **[**Victim**]** was acting within the course and scope of **[**victim's**]** employment; and

(4) Defendant acted **[**knowingly/recklessly**]**.

"Firearm" means any weapon from which a shot, projectile, or other object may be discharged by force of combustion, explosive, gas and/or mechanical means, whether the weapon is operable or inoperable, loaded or unloaded. The term does not include a BB gun.

"Deadly weapon" is defined to include: firearm, bomb, knife of any sort (other than an ordinary pocket knife carried in a closed position), switchblade

knife, billy, blackjack, bludgeon, metal knuckles, slingshot, razor, bicycle chain, ice pick or any dangerous instrument which a person used, or tried to use, to cause death or serious physical injury. For the purpose of this definition, an ordinary pocket knife is a folding knife with a blade no longer than 3 inches.

"Knowingly" means Defendant knew or was aware Defendant was removing a firearm from a law enforcement officer.

"Recklessly" means Defendant was aware of and consciously disregarded a substantial and unjustifiable risk Defendant would **[**remove/attempt to remove**]** **[**weapon**]** from a law-enforcement officer. The State must demonstrate the risk was of such a nature and degree Defendant's disregard of it was a gross deviation from the standard of conduct a reasonable person would observe under the same circumstances.

"Police officer" means any police officer holding current certification by the Council on Police Training who is a member of the Delaware State Police, New Castle County Police, a police department of any incorporated city or town, the Delaware River and Bay Authority Police, the Capitol Police, the University of Delaware Police, a law enforcement officer of the Department of Natural Resources and Environmental Control or an agent of the State Division of Alcoholic Beverage Control.

"Disabling chemical spray" includes mace, tear gas, pepper spray or any other mixture containing quantities thereof, or any other aerosol spray or any liquid, gaseous or solid substance capable of producing temporary physical discomfort, disability or injury through being vaporized or otherwise dispersed in the air, or any canister, container or device designed or intended to carry, store or disperse such aerosol spray or such gas or solid.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 222(5, 12), 231(c, e), 1458(a)(2) and 1911.

REMOVING A FIREARM FROM THE POSSESSION OF A LAW ENFORCEMENT OFFICER

In order to find Defendant guilty of Removing a Firearm From the Possession of a Law Enforcement Officer, you must find the State proved following four (4) elements beyond a reasonable doubt:

(1) Defendant **[**removed/attempted to remove**]** a **[**firearm/disabling chemical spray/baton/ deadly weapon**]** from the possession of **[**victim**]**;

(2) Defendant **[**knew/had reason to know**] [**victim**]** was employed as a **[**sheriff/deputy sheriff/constable/judicial assistant/court bailiff/other court security officer**]**;

(3) **[**Victim**]** was acting within the course and scope of **[**victim's**]** employment; and

(4) Defendant acted **[**knowingly/recklessly**]**.

"Firearm" means any weapon from which a shot, projectile, or other object may be discharged by force of combustion, explosive, gas and/or mechanical means, whether the weapon is operable or inoperable, loaded or unloaded. The term does not include a BB gun.

“Deadly weapon" is defined to include: firearm, bomb, knife of any sort (other than an ordinary pocket knife carried in a closed position), switchblade knife, billy, blackjack, bludgeon, metal knuckles, slingshot, razor, bicycle chain, ice pick or any dangerous instrument which a person used, or tried to use, to cause death or serious physical injury. For the purpose of this definition, an ordinary pocket knife is a folding knife with a blade no longer than 3 inches.

“Knowingly” means Defendant knew or was aware Defendant was was removing a firearm from a sheriff, deputy sheriff, constable, judicial assistant, court bailiff, or other court security officer.

“Recklessly” means Defendant was aware of and consciously disregarded a substantial and unjustifiable risk Defendant would **[**remove/attempt to remove**]** **[**weapon**]** from a sheriff, deputy sheriff, constable, judicial assistant, court bailiff, or other court security officer. The State must demonstrate the risk was of such a nature and degree Defendant’s disregard of it was a gross deviation from the standard of conduct a reasonable person would observe under the same circumstances.

“Disabling chemical spray” includes mace, tear gas, pepper spray or any other mixture containing quantities thereof, or any other aerosol spray or any liquid, gaseous or solid substance capable of producing temporary physical discomfort, disability or injury through being vaporized or otherwise dispersed in

the air, or any canister, container or device designed or intended to carry, store or disperse such aerosol spray or such gas or solid.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 222(5, 12), 231(c, e) and 1458(a)(2).

REMOVING A FIREARM FROM THE POSSESSION OF A LAW ENFORCEMENT OFFICER

In order to find Defendant guilty of Removing a Firearm From the Possession of a Law Enforcement Officer, you must find the State proved following four (4) elements beyond a reasonable doubt:

(1) Defendant **[**removed/attempted to remove**]** a **[**firearm/disabling chemical spray/baton/ deadly weapon**]** from the possession of **[**victim**]**;

(2) Defendant **[**knew/had reason to know**] [**victim**]** was employed as an employee of the **[**Department of Corrections/Division of Parole and Probation/Department of Youth Rehabilitation Services**]**;

(3) **[**Victim**]** was acting within the course and scope of **[**victim's**]** employment; and

(4) Defendant acted **[**knowingly/recklessly**]**.

"Firearm" means any weapon from which a shot, projectile, or other object may be discharged by force of combustion, explosive, gas and/or mechanical means, whether the weapon is operable or inoperable, loaded or unloaded. The term does not include a BB gun.

“Deadly weapon" is defined to include: firearm, bomb, knife of any sort (other than an ordinary pocket knife carried in a closed position), switchblade knife, billy, blackjack, bludgeon, metal knuckles, slingshot, razor, bicycle chain, ice pick or any dangerous instrument which a person used, or tried to use, to cause death or serious physical injury. For the purpose of this definition, an ordinary pocket knife is a folding knife with a blade no longer than 3 inches.

“Knowingly” means Defendant knew or was aware Defendant was removing a firearm from an employee of the Department of Corrections or Division of Parole and Probation or Department of Youth Rehabilitation Services.

“Recklessly” means Defendant was aware of and consciously disregarded a substantial and unjustifiable risk Defendant would **[**remove/attempt to remove**]** **[**weapon**]** from an employee of the Department of Corrections or Division of Parole and Probation or Department of Youth Rehabilitation Services. The State must demonstrate the risk was of such a nature and degree Defendant’s disregard of it was a gross deviation from the standard of conduct a reasonable person would observe under the same circumstances.

“Disabling chemical spray” includes mace, tear gas, pepper spray or any other mixture containing quantities thereof, or any other aerosol spray or any liquid, gaseous or solid substance capable of producing temporary physical discomfort, disability or injury through being vaporized or otherwise dispersed in

the air, or any canister, container or device designed or intended to carry, store or disperse such aerosol spray or such gas or solid.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 222(5, 12), 231(c, e) and 1458(a)(2).

REMOVING A FIREARM FROM THE POSSESSION OF A LAW ENFORCEMENT OFFICER

In order to find Defendant guilty of Removing a Firearm From the Possession of a Law Enforcement Officer, you must find the State proved following four (4) elements beyond a reasonable doubt:

(1) Defendant **[**removed/attempted to remove**]** a **[**firearm/disabling chemical spray/baton/ deadly weapon**]** from the possession of **[**victim**]**;

(2) Defendant **[**knew/had reason to know**] [**victim**]** was employed as a **[**special investigator/ state detective**]** with the Delaware Department of Justice, Office of the Attorney General;

(3) **[**Victim**]** was acting within the course and scope of **[**victim's**]** employment; and

(4) Defendant acted **[**knowingly/recklessly**]**.

"Firearm" means any weapon from which a shot, projectile, or other object may be discharged by force of combustion, explosive, gas and/or mechanical means, whether the weapon is operable or inoperable, loaded or unloaded. The term does not include a BB gun.

“Deadly weapon" is defined to include: firearm, bomb, knife of any sort (other than an ordinary pocket knife carried in a closed position), switchblade knife, billy, blackjack, bludgeon, metal knuckles, slingshot, razor, bicycle chain, ice pick or any dangerous instrument which a person used, or tried to use, to cause death or serious physical injury. For the purpose of this definition, an ordinary pocket knife is a folding knife with a blade no longer than 3 inches.

“Knowingly” means Defendant knew or was aware Defendant was removing a firearm from a special investigator or state detective with the Delaware Department of Justice, Office of the Attorney General.

“Recklessly” means Defendant was aware of and consciously disregarded a substantial and unjustifiable risk Defendant would **[**remove/attempt to remove**]** **[**weapon**]** from a special investigator or state detective with the Delaware Department of Justice, Office of the Attorney General. The State must demonstrate the risk was of such a nature and degree Defendant’s disregard of it was a gross deviation from the standard of conduct a reasonable person would observe under the same circumstances.

“Disabling chemical spray” includes mace, tear gas, pepper spray or any other mixture containing quantities thereof, or any other aerosol spray or any liquid, gaseous or solid substance capable of producing temporary physical discomfort, disability or injury through being vaporized or otherwise dispersed in

the air, or any canister, container or device designed or intended to carry, store or disperse such aerosol spray or such gas or solid.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 222(5, 12), 231(c, e) and 1458(a)(2).

REMOVING A FIREARM FROM THE POSSESSION OF A LAW ENFORCEMENT OFFICER

In order to find Defendant guilty of Removing a Firearm From the Possession of a Law Enforcement Officer, you must find the State proved following four (4) elements beyond a reasonable doubt:

(1) Defendant **[**removed/attempted to remove**]** a **[**firearm/disabling chemical spray/baton/ deadly weapon**]** from the possession of **[**victim**]**;

(2) Defendant **[**knew/had reason to know**] [**victim**]** was employed as licensed armored car guard;

(3) **[**Victim**]** was acting within the course and scope of **[**victim's**]** employment; and

(4) Defendant acted **[**knowingly/recklessly**]**.

"Firearm" means any weapon from which a shot, projectile, or other object may be discharged by force of combustion, explosive, gas and/or mechanical means, whether the weapon is operable or inoperable, loaded or unloaded. The term does not include a BB gun.

"Deadly weapon" is defined to include: firearm, bomb, knife of any sort (other than an ordinary pocket knife carried in a closed position), switchblade

knife, billy, blackjack, bludgeon, metal knuckles, slingshot, razor, bicycle chain, ice pick or any dangerous instrument which a person used, or tried to use, to cause death or serious physical injury. For the purpose of this definition, an ordinary pocket knife is a folding knife with a blade no longer than 3 inches.

"Knowingly" means Defendant knew or was aware Defendant was removing a firearm from a licensed armored car guard.

"Recklessly" means Defendant was aware of and consciously disregarded a substantial and unjustifiable risk Defendant would **[**remove/attempt to remove**]** **[**weapon**]** from a licensed armored car guard. The State must demonstrate the risk was of such a nature and degree Defendant's disregard of it was a gross deviation from the standard of conduct a reasonable person would observe under the same circumstances.

"Disabling chemical spray" includes mace, tear gas, pepper spray or any other mixture containing quantities thereof, or any other aerosol spray or any liquid, gaseous or solid substance capable of producing temporary physical discomfort, disability or injury through being vaporized or otherwise dispersed in the air, or any canister, container or device designed or intended to carry, store or disperse such aerosol spray or such gas or solid.

Applicable Code Sections and Case Law:

Through 77 Del. Laws June 30, 2010.

11 *Del. C.* §§ 222(5, 12), 231(c, e) and 1458(a)(2).

POSSESSION OF A WEAPON WITH A REMOVED, OBLITERATED OR ALTERED SERIAL NUMBER

In order to find Defendant guilty of Possession of a Weapon With a Removed, Obliterated or Altered Serial Number, you must find the State proved following three (3) elements beyond a reasonable doubt:

(1) Defendant **[**transported/shipped/possessed/received**]** a firearm;

(2) Defendant so acted, being aware the serial number of the firearm had been **[**removed/ obliterated/altered**]** in a manner **[**disguising/concealing**]** the **[**identity/origin**]** of the weapon; and

(3) Defendant acted knowingly.

"Firearm" means any weapon from which a shot, projectile, or other object may be discharged by force of combustion, explosive, gas and/or mechanical means, whether the weapon is operable or inoperable, loaded or unloaded. The term does not include a BB gun.

“Knowingly” means Defendant knew or was aware Defendant transported a firearm knowing the serial number of the firearm had been removed to hide the identity or origin of the firearm.

Applicable Code Sections and Case Law:

11 *Del. C.* §§ 222(12) and 231(c).

PROHIBITED ACTS

In order to find Defendant guilty of Prohibited Acts, you must find the State proved following two (2) elements beyond a reasonable doubt:

(1) Defendant **[**used a cheating device **(**in a video lottery/at a table game**)**/had possession of a cheating device**]** in a video lottery facility including its **[**parking area/adjacent facilities**]**; and

(2) Defendant acted **[**intentionally/knowingly.**]**

"Intentionally" means it was Defendant's conscious objective or purpose to use or possess a cheating device.

"Knowingly" means Defendant was aware Defendant was using or possessed a cheating device.

"Cheating device" means any physical, mechanical, electromechanical, electronic, photographic, or computerized device used in such a manner as to cheat, deceive or defraud a video lottery machine or a table game. This includes, but is not limited to, slugs, plastic, tape, string or dental floss which is placed inside a coin or bill acceptor or any other opening in a video lottery machine in a manner to simulate coin or currency acceptance, and is thereafter withdrawn, or

forged or stolen keys used to gain access to a machine to remove its contents, or game cards or dice that have been marked, loaded or tampered with.

"Table game" shall mean any game played with cards, dice or any mechanical, electromechanical or electronic device or machine (excluding video lottery machines) for money, credit or any representative of value, including, but not limited to, baccarat, blackjack, twenty-one, poker, craps, roulette, keno, bingo, wheel of fortune or any variation of these games, whether or not similar in design or operation.

"Video lottery machine" shall mean any machine in which bills, coins or tokens are deposited in order to play in a game of chance in which the results, including options to the player, are randomly and immediately determined by the machine. A machine may use spinning reels or video displays or both, and may or may not dispense coins or tokens directly to winning players. A machine shall be considered a video lottery machine notwithstanding the use of an electronic credit system making the deposit of bills, coins or tokens unnecessary.

Applicable Code Sections and Case Law:

11 *Del.C.* §§ 231(b, c), 251(b) and 1470(b, d, e)

PROHIBITED ACTS

In order to find Defendant guilty of Prohibited Acts, you must find the State proved following two (2) elements beyond a reasonable doubt:

(1) Defendant **[**possessed/used/had**]** paraphernalia for the manufacture of cheating devices; and

(2) Defendant acted **[**intentionally/knowingly.**]**

"Intentionally" means it was Defendant's conscious objective or purpose to possess, use or have paraphernalia for the manufacture of a cheating device.

"Knowingly" means Defendant was aware Defendant possessed, was using or had paraphernalia for the manufacture of a cheating device.

"Cheating device" means any physical, mechanical, electromechanical, electronic, photographic, or computerized device used in such a manner as to cheat, deceive or defraud a video lottery machine or a table game. This includes, but is not limited to, slugs, plastic, tape, string or dental floss which is placed inside a coin or bill acceptor or any other opening in a video lottery machine in a manner to simulate coin or currency acceptance, and is thereafter withdrawn, or forged or stolen keys used to gain access to a machine to remove its contents, or game cards or dice that have been marked, loaded or tampered with.

"Paraphernalia for the manufacturing of cheating devices" means the equipment, products or materials that are intended for use or designed for use in manufacturing, producing, fabricating, preparing, testing, analyzing, packaging, storing or concealing a counterfeit facsimile of the chips, tokens, debit instruments or other wagering devices approved by the State Lottery Office or lawful coin or currency of the United States of America. This term includes, but is not limited to, lead or lead alloy molds, forms, or similar equipment capable of producing a likeness of a gaming token or United States coin or currency; melting pots or other receptacles; torches; tongs, trimming tools or other similar equipment; and equipment that can be used to manufacture facsimiles of debit instruments or wagering instruments approved by the State Lottery Office.

Applicable Code Sections and Case Law:

11 *Del.C.* §§ 231(b, c), 251(b) and 1470(b, c)

PROHIBITED ACTS

In order to find Defendant guilty of Prohibited Acts, you must find the State proved following two (2) elements beyond a reasonable doubt:

(1) Defendant **[**cheated/attempted to cheat**]** to **[**collect/take**]** **[**money/anything of value**]** for **[**Defendant/another person**]** **[**in/from**]** **[**a video lottery/at a table game**]** in a video lottery facility including its **[**parking areas/adjacent facilities**]**; and

(2) Defendant acted **[**intentionally/knowingly.**]**

"Intentionally" means it was Defendant's conscious objective or purpose to cheat or attempt to cheat.

"Knowingly" means Defendant was aware Defendant was cheating or attempting to cheat.

"Cheat" means to alter the element of chance, method of selection, or criteria which determines: (1) the result of the game; (2) the amount or frequency of payment in a game, including intentionally taking advantage of a malfunctioning machine; (3) the value of a wagering instrument; or (4) the value of a wagering credit.

"Table game" shall mean any game played with cards, dice or any mechanical, electromechanical or electronic device or machine (excluding video lottery machines) for money, credit or any representative of value, including, but not limited to, baccarat, blackjack, twenty-one, poker, craps, roulette, keno, bingo, wheel of fortune or any variation of these games, whether or not similar in design or operation.

"Video lottery machine" shall mean any machine in which bills, coins or tokens are deposited in order to play in a game of chance in which the results, including options to the player, are randomly and immediately determined by the machine. A machine may use spinning reels or video displays or both, and may or may not dispense coins or tokens directly to winning players. A machine shall be considered a video lottery machine notwithstanding the use of an electronic credit system making the deposit of bills, coins or tokens unnecessary.

Applicable Code Sections and Case Law:

11 *Del.C.* §§ 231(b, c), 251(b) and 1470(a, d, e)

PROHIBITED ACTS

In order to find Defendant guilty of Prohibited Acts, you must find the State proved following four (4) elements beyond a reasonable doubt:

(1) Defendant **[**manipulated/altered**]** any **[**physical/mechanical/electromagnetic/electronic/ other computerized component of a **(**video lottery machine/table game**)]**;

(2) The **[**manipulation/alteration**]** was contrary to the normal operational purpose of the component, including, but not limited to varying the pull of the handle of a video lottery machine;

(3) Defendant was aware the **[**manipulation/alteration**]** could affect the outcome of the game; and

(4) Defendant acted **[**intentionally/knowingly**]**.

"Intentionally" means it was Defendant's conscious objective or purpose to manipulate or alter a component of the video lottery machine or table game.

"Knowingly" means Defendant was aware Defendant was manipulating or altering a component of the video lottery machine or table game.

"Table game" shall mean any game played with cards, dice or any mechanical, electromechanical or electronic device or machine (excluding video

lottery machines) for money, credit or any representative of value, including, but not limited to, baccarat, blackjack, twenty-one, poker, craps, roulette, keno, bingo, wheel of fortune or any variation of these games, whether or not similar in design or operation.

"Video lottery machine" shall mean any machine in which bills, coins or tokens are deposited in order to play in a game of chance in which the results, including options to the player, are randomly and immediately determined by the machine. A machine may use spinning reels or video displays or both, and may or may not dispense coins or tokens directly to winning players. A machine shall be considered a video lottery machine notwithstanding the use of an electronic credit system making the deposit of bills, coins or tokens unnecessary.

Applicable Code Sections and Case Law:

11 *Del.C.* §§ 231(b, c) and 1470(d, e)

PROHIBITED ACTS

In order to find Defendant guilty of Prohibited Acts, you must find the State proved following two (2) elements beyond a reasonable doubt:

(1) Defendant **[**used/sold/possessed**]** counterfeit **[**slugs/tokens/gaming chips/debt instruments/other wagering devices resembling **(**tokens/gaming chips/other wagering devices**)]** approved by the State Lottery Office for use **[**in a video lottery machine/at a table game**]** in a video lottery facility including its **[**parking area/adjacent facilities**]**; and

(2) Defendant acted **[**intentionally/knowingly.**]**

"Intentionally" means it was Defendant's conscious objective or purpose to use or possess a cheating device.

"Knowingly" means Defendant was aware Defendant was using or possessed a cheating device.

"Table game" shall mean any game played with cards, dice or any mechanical, electromechanical or electronic device or machine (excluding video lottery machines) for money, credit or any representative of value, including, but not limited to, baccarat, blackjack, twenty-one, poker, craps, roulette, keno, bingo,

wheel of fortune or any variation of these games, whether or not similar in design or operation.

"Video lottery machine" shall mean any machine in which bills, coins or tokens are deposited in order to play in a game of chance in which the results, including options to the player, are randomly and immediately determined by the machine. A machine may use spinning reels or video displays or both, and may or may not dispense coins or tokens directly to winning players. A machine shall be considered a video lottery machine notwithstanding the use of an electronic credit system making the deposit of bills, coins or tokens unnecessary.

Applicable Code Sections and Case Law:

11 *Del.C.* §§ 231(b, c), 251(b) and 1470(d, e)

PROHIBITED ACTS

In order to find Defendant guilty of Prohibited Acts, you must find the State proved following three (3) elements beyond a reasonable doubt:

(1) Defendant **[**placed/**(**increased/decreased**)**a wager/determined the course of play**] [**after acquiring knowledge/aiding another to acquire knowledge**]** for the purpose of [(placing/increasing/ decreasing a wager/determining the course of play**]** of the outcome of **[**a table game/any event affecting the outcome of the game/the subject of the wager**]**;

(2) Knowledge was not available to other players; and

(3) Defendant acted **[**intentionally/knowingly.**]**

.

"Intentionally" means it was Defendant's conscious objective or purpose to place, increase or decrease a bet or help another player to do the same after gaining knowledge not available to other players.

"Knowingly" means Defendant was aware Defendant was placing, increasing or decreasing a bet or help another player to do the same after gaining knowledge not available to other players.

"Table game" shall mean any game played with cards, dice or any mechanical, electromechanical or electronic device or machine (excluding video

lottery machines) for money, credit or any representative of value, including, but not limited to, baccarat, blackjack, twenty-one, poker, craps, roulette, keno, bingo, wheel of fortune or any variation of these games, whether or not similar in design or operation.

Applicable Code Sections and Case Law:

11 *Del.C.* §§ 231(b, c), 251(b) and 1470(d)

Prohibited Acts . . . . . 11.1471(g)

PROHIBITED ACTS

In order to find Defendant guilty of Prohibited Acts, you must find the State proved following three (3) elements beyond a reasonable doubt:

(1) Defendant **[**claimed/collected/took/attempted to **(**claim/collect/take**)]** **[**money/anything of value**]** **[**in/from**]** **[**video lottery machine/table game**]** meaning to **[**defraud/take an amount greater than the amount won**]**;

(2) Defendant had not made a wager contingent upon the **[**video lottery machine/ table game**]**; and

(3) Defendant acted intentionally.

"Intentionally" means it was Defendant's conscious objective or purpose to take an amount for which Defendant had not made a wager or for an amount greater than the amount won.

"Table game" shall mean any game played with cards, dice or any mechanical, electromechanical or electronic device or machine (excluding video lottery machines) for money, credit or any representative of value, including, but not limited to, baccarat, blackjack, twenty-one, poker, craps, roulette, keno, bingo, wheel of fortune or any variation of these games, whether or not similar in design or operation.

"Video lottery machine" shall mean any machine in which bills, coins or tokens are deposited in order to play in a game of chance in which the results, including options to the player, are randomly and immediately determined by the machine. A machine may use spinning reels or video displays or both, and may or may not dispense coins or tokens directly to winning players. A machine shall be considered a video lottery machine notwithstanding the use of an electronic credit system making the deposit of bills, coins or tokens unnecessary.

Applicable Code Sections and Case Law:

11 *Del.C.* §§ 231(b(b) and 1470(d, e)

PROHIBITED ACTS

In order to find Defendant guilty of Prohibited Acts, you must find the State proved following two (2) elements beyond a reasonable doubt:

(1) Defendant was an **[**employee/agent**]** of a video lottery facility;

(2) Defendant **[**failed to collect a losing wager/paid an amount greater on any wager**]** required by the rules of a table game; and

(3) Defendant acted knowingly.

"Knowingly" means Defendant was aware Defendant was using or possessed a cheating device.

"Table game" shall mean any game played with cards, dice or any mechanical, electromechanical or electronic device or machine (excluding video lottery machines) for money, credit or any representative of value, including, but not limited to, baccarat, blackjack, twenty-one, poker, craps, roulette, keno, bingo, wheel of fortune or any variation of these games, whether or not similar in design or operation.

Applicable Code Sections and Case Law:

11 *Del.C.* §§ 231(c) and 1470(d).

Through 77 Del. Laws June 30, 2010.

PROHIBITED ACTS

In order to find Defendant guilty of Prohibited Acts, you must find the State proved following two (2) elements beyond a reasonable doubt:

(1) Defendant **[**placed/increased/attempted to **(**place/increase**)]** a wager after acquiring knowledge of the outcome of the **[**table game/other event**]**; and

(2) Defendant acted **[**intentionally/knowingly**]**.

"Intentionally" means it was Defendant's conscious objective or purpose to place, increase, or attempt to place or increase a wager after gaining knowledge as to the outcome of the table game or other event.

"Knowingly" means Defendant was aware Defendant was placing, increasing, or attempt to place or increase a wager after gaining knowledge as to the outcome of the table game or other event.

"Table game" shall mean any game played with cards, dice or any mechanical, electromechanical or electronic device or machine (excluding video lottery machines) for money, credit or any representative of value, including, but not limited to, baccarat, blackjack, twenty-one, poker, craps, roulette, keno, bingo, wheel of fortune or any variation of these games, whether or not similar in design or operation.

Applicable Code Sections and Case Law:

11 *Del.C.* §§ 231(b, c), 251(b) and 1470(d).

PROHIBITED ACTS

In order to find Defendant guilty of Prohibited Acts, you must find the State proved following two (2) elements beyond a reasonable doubt:

(1) Defendant **[**reduced the amount wagered/**(**reduced/canceled**)** the wager/attempted to (reduce/reduce/cancel**)** the wager**]** after acquiring knowledge of the outcome of the **[**table game/other event**]**; and

(2) Defendant acted **[**intentionally/knowingly**]**.

"Intentionally" means it was Defendant's conscious objective or purpose to decrease the amount wagered, cancel or reduce a wager, or attempt to decrease a wager, or cancel or reduce a wager after gaining knowledge as to the outcome of the table game or other event.

"Knowingly" means Defendant was aware Defendant was decreasing the amount wagered, canceling or reducing a wager, or attempting to decrease a wager, or cancel or reduce a wager after gaining knowledge as to the outcome of the table game or other event.

"Table game" shall mean any game played with cards, dice or any mechanical, electromechanical or electronic device or machine (excluding video lottery machines) for money, credit or any representative of value, including, but

not limited to, baccarat, blackjack, twenty-one, poker, craps, roulette, keno, bingo, wheel of fortune or any variation of these games, whether or not similar in design or operation.

Applicable Code Sections and Case Law:

11 *Del.C.* §§ 231(b, c), 251(b) and 1470(d).

PROHIBITED ACTS

In order to find Defendant guilty of Prohibited Acts, you must find the State proved following two (2) elements beyond a reasonable doubt:

(1) Defendant **[**directly/indirectly**] [(**offered to/conferred upon/agreed to confer upon**)** to another anything of value/**(**solicited/accepted/agreed to accept**)/(**placed/increased/decreased**)** a wager after acquiring knowledge not available to the general public anyone had been **(**offered/promised/given anything of value**)]** for the purpose of influencing the outcome of a **(**race/ sporting event/contest/table game**)** upon which a wager may be made; and

(2) Defendant acted **[**intentionally/knowingly.**]**

"Intentionally" means it was Defendant's conscious objective or purpose to use or possess a cheating device.

"Knowingly" means Defendant was aware Defendant was using or possessed a cheating device.

"Table game" shall mean any game played with cards, dice or any mechanical, electromechanical or electronic device or machine (excluding video lottery machines) for money, credit or any representative of value, including, but not limited to, baccarat, blackjack, twenty-one, poker, craps, roulette, keno, bingo,

wheel of fortune or any variation of these games, whether or not similar in design or operation.

Applicable Code Sections and Case Law:

11 *Del.C.* §§ 231(b, c), 251(b) and 1470(d).

PROHIBITED ACTS

In order to find Defendant guilty of Prohibited Acts, you must find the State proved following three (3) elements beyond a reasonable doubt:

(1) Defendant **[**used/possessed with intent to use**]** any **[**electronic/electric/mechanical**]** device **[**designed/constructed/programmed**]** to assist **[**Defendant/another person**]** to project the outcome of **[**table game/video lottery machine**]**;

(2) Device was used at a video lottery facility including its **[**parking area/adjacent facilities**]** without the permission of the Delaware Lottery Director; and

(3) Defendant acted **[**intentionally/knowingly.**]**

.

"Intentionally" means it was Defendant's conscious objective or purpose to use or possess with the intent to use any electronic, electric or mechanical device to project the out come of a table game or video lottery machine without the permission of the Delaware Lottery Director while on the property of a video lottery facility.

"Knowingly" means Defendant was aware Defendant was using or possessing with the intent to use any electronic, electric or mechanical device to

project the out come of a table game or video lottery machine without the permission of the Delaware Lottery Director while on the property of a video lottery facility.

"Table game" shall mean any game played with cards, dice or any mechanical, electromechanical or electronic device or machine (excluding video lottery machines) for money, credit or any representative of value, including, but not limited to, baccarat, blackjack, twenty-one, poker, craps, roulette, keno, bingo, wheel of fortune or any variation of these games, whether or not similar in design or operation.

"Video lottery machine" shall mean any machine in which bills, coins or tokens are deposited in order to play in a game of chance in which the results, including options to the player, are randomly and immediately determined by the machine. A machine may use spinning reels or video displays or both, and may or may not dispense coins or tokens directly to winning players. A machine shall be considered a video lottery machine notwithstanding the use of an electronic credit system making the deposit of bills, coins or tokens unnecessary.

Applicable Code Sections and Case Law:

11 *Del.C.* §§ 231(b, c), 251(b) and 1470(d, e)

PROHIBITED ACTS

In order to find Defendant guilty of Prohibited Acts, you must find the State proved following three (3) elements beyond a reasonable doubt:

(1) Defendant **[**used/possessed with intent to use**]** any **[**electronic/electric/mechanical**]** device **[**designed/constructed/programmed**]** to assist **[**Defendant/another person**]** to keep track of cards played;

(2) Device was used at a video lottery facility including its **[**parking area/adjacent facilities**]** without the permission of the Delaware Lottery Director; and

(3) Defendant acted **[**intentionally/knowingly.**]**

.

"Intentionally" means it was Defendant's conscious objective or purpose to use or possess with the intent to use any electronic, electric or mechanical device to keep track of cards played without the permission of the Delaware Lottery Director while on the property of a video lottery facility.

"Knowingly" means Defendant was aware Defendant was using or possessing with the intent to use any electronic, electric or mechanical device to keep track of cards played without the permission of the Delaware Lottery Director while on the property of a video lottery facility.

Applicable Code Sections and Case Law:

11 *Del.C.* §§ 231(b, c) and 251(b).

PROHIBITED ACTS

In order to find Defendant guilty of Prohibited Acts, you must find the State proved following three (3) elements beyond a reasonable doubt:

(1) Defendant **[**used/possessed with intent to use**]** any **[**electronic/electric/mechanical**]** device **[**designed/constructed/programmed**]** to assist **[**Defendant/another person**]** to analyze the probability of the outcome of an event relating to the game;

(2) Device was used at a video lottery facility including its **[**parking area/adjacent facilities**]** without the permission of the Delaware Lottery Director; and

(3) Defendant acted **[**intentionally/knowingly.**]**

.

"Intentionally" means it was Defendant's conscious objective or purpose to use or possess with the intent to use any electronic, electric or mechanical device to analyze the probability of the outcome of an event relating to the game without the permission of the Delaware Lottery Director while on the property of a video lottery facility.

"Knowingly" means Defendant was aware Defendant was using or possessing with the intent to use any electronic, electric or mechanical device to

analyze the probability of the outcome of an event relating to the game without the permission of the Delaware Lottery Director while on the property of a video lottery facility.

Applicable Code Sections and Case Law:

11 *Del.C.* §§ 231(b, c) and 251(b).

PROHIBITED ACTS

In order to find Defendant guilty of Prohibited Acts, you must find the State proved following three (3) elements beyond a reasonable doubt:

(1) Defendant **[**used/possessed with intent to use**]** any **[**electronic/electric/mechanical**]** device **[**designed/constructed/programmed**]** to assist **[**Defendant/another person**]** to analyze the strategy for **[**playing/wagering**]** to be used in the game;

(2) Device was used at a video lottery facility including its **[**parking area/adjacent facilities**]** without the permission of the Delaware Lottery Director; and

(3) Defendant acted **[**intentionally/knowingly.**]**

"Intentionally" means it was Defendant's conscious objective or purpose to use or possess with the intent to use any electronic, electric or mechanical device to analyze the strategy for **[**playing/wagering**]** to be used in the game without the permission of the Delaware Lottery Director while on the property of a video lottery facility.

"Knowingly" means Defendant was aware Defendant was using or possessing with the intent to use any electronic, electric or mechanical device to

analyze the strategy for **[**playing/wagering**]** to be used in the game without the permission of the Delaware Lottery Director while on the property of a video lottery facility.

Applicable Code Sections and Case Law:

11 *Del.C.* §§ 231(b, c) and 251(b).

OFFENSES BY DELAWARE CODE SECTION (TITLE 16)

[§4752(1) Drug Dealing - Aggravated Possession Manufacture, Delivery or Possession Tier 4 Quantity]

DRUG DEALING: POSSESSION WITH INTENT TO DELIVER [DESIGNER DRUG]

In order to find Defendant guilty of this charge, you must find that the State has proved the following elements beyond a reasonable doubt:

1. The substance possessed was [drug], or any mixture containing [drug] [, or has a chemical structure substantially similar to [drug] or that was specifically designed to product an effect substantially similar to [drug]];
2. Defendant possessed the substance;
3. Defendant acted knowingly;
4. Defendant possessed [amount] or more of the substance; and
5. When Defendant possessed the substance, Defendant had the intent to deliver it.

"Possession" includes actual possession and constructive possession. Actual possession means Defendant knowingly had direct physical control over the substance. Constructive possession means the substance was within Defendant's reasonable control, that is, in or about Defendant's person, premises, belongings, or vehicle. In other words, Defendant had constructive possession over the substance if Defendant had both the power and the intention, at a given

time, to exercise control over the substance, either directly or through another person. Possession may be sole or joint. If one person has actual or constructive possession of a thing, possession is sole. If two or more persons share actual or constructive possession over a thing, possession is joint. Possession is proven if you find beyond a reasonable doubt Defendant had actual or constructive possession, either alone or jointly with others.

"Knowingly" means Defendant knew or was aware Defendant possessed the substance. The State need not prove that Defendant had any knowledge of the weight or quantity of the substance. However, the State must prove beyond a reasonable doubt that the substance weighed a certain amount or was in a certain quantity. Knowledge may be inferred from the surrounding circumstances, considering whether a reasonable person in Defendant's circumstances would have had such knowledge.

"Deliver" means the actual, constructive or attempted transfer from one person to another of an illegal or prohibited drug, either directly or through another person.

[§4752(2) Drug Dealing - Aggravated Possession Manufacture, Delivery or Possession Tier 2 Quantity with Aggravating Factor]

DRUG DEALING: POSSESSION WITH INTENT TO DELIVER [DESIGNER DRUG]

In order to find Defendant guilty of this charge, you must find that the State has proved the following elements beyond a reasonable doubt:

1. The substance possessed was [drug], or any mixture containing [drug] [, or has a chemical structure substantially similar to [drug] or that was specifically designed to product an effect substantially similar to [drug]];
2. Defendant possessed the substance;
3. Defendant acted knowingly;
4. Defendant possessed [amount] or more of the substance; and
5. When Defendant possessed the substance, Defendant had the intent to deliver it.

"Possession" includes actual possession and constructive possession. Actual possession means Defendant knowingly had direct physical control over the substance. Constructive possession means the substance was within Defendant's reasonable control, that is, in or about Defendant's person, premises, belongings, or vehicle. In other words, Defendant had constructive possession

over the substance if Defendant had both the power and the intention, at a given time, to exercise control over the substance, either directly or through another person. Possession may be sole or joint. If one person has actual or constructive possession of a thing, possession is sole. If two or more persons share actual or constructive possession over a thing, possession is joint. Possession is proven if you find beyond a reasonable doubt Defendant had actual or constructive possession, either alone or jointly with others.

"Knowingly" means Defendant knew or was aware Defendant possessed the substance. The State need not prove that Defendant had any knowledge of the weight or quantity of the substance. However, the State must prove beyond a reasonable doubt that the substance weighed a certain amount or was in a certain quantity. Knowledge may be inferred from the surrounding circumstances, considering whether a reasonable person in Defendant's circumstances would have had such knowledge.

"Deliver" means the actual, constructive or attempted transfer from one person to another of an illegal or prohibited drug, either directly or through another person.

SPECIAL CIRCUMSTANCE

The State must prove the following special circumstance beyond a reasonable doubt:

At the time Defendant possessed the substance with the intent to deliver the substance,

[Defendant was within 300 feet of a school.]

[Defendant was within 300 feet of a park.]

[Defendant was within 300 feet of a place of worship.]

[Defendant was an adult (age 18 or older) and the offense involved a juvenile (under the age of 18); and the juvenile was a co-conspirator or accomplice, or the juvenile was the intended or actual recipient of the substance; and Defendant was more than 4 years older than the juvenile.]

[the offense occurred in a vehicle.]

[Defendant intentionally prevented or attempted to prevent arrest by a law enforcement officer by using force or violence towards the officer.]

[Defendant fled in a vehicle from a law enforcement office while the officer was trying to arrest or detain Defendant, and Defendant created a substantial risk of physical injury to others.]

[§4752(3) Drug Dealing - Aggravated Possession Tier 5 Quantity]

DRUG DEALING: POSSESSION OF [DESIGNER DRUG]

In order to find Defendant guilty of this charge, you must find that the State has proved the following elements beyond a reasonable doubt:

1. The substance possessed was [drug], or any mixture containing [drug] [, or has a chemical structure substantially similar to [drug] or that was specifically designed to product an effect substantially similar to [drug]];
2. Defendant possessed the substance;
3. Defendant acted knowingly; and
4. Defendant possessed [amount] or more of the substance.

"Possession" includes actual possession and constructive possession. Actual possession means Defendant knowingly had direct physical control over the substance. Constructive possession means the substance was within Defendant's reasonable control, that is, in or about Defendant's person, premises, belongings, or vehicle. In other words, Defendant had constructive possession over the substance if Defendant had both the power and the intention, at a given time, to exercise control over the substance, either directly or through another person. Possession may be sole or joint. If one person has actual or constructive

possession of a thing, possession is sole. If two or more persons share actual or constructive possession over a thing, possession is joint. Possession is proven if you find beyond a reasonable doubt Defendant had actual or constructive possession, either alone or jointly with others.

"Knowingly" means Defendant knew or was aware Defendant possessed the substance. The State need not prove that Defendant had any knowledge of the weight or quantity of the substance. However, the State must prove beyond a reasonable doubt that the substance weighed a certain amount or was in a certain quantity. Knowledge may be inferred from the surrounding circumstances, considering whether a reasonable person in Defendant's circumstances would have had such knowledge.

**[§4752(4) Drug Dealing - Aggravated Possession
Tier 5 Quantity with Aggravating Factor]**

**DRUG DEALING: POSSESSION OF
[DESIGNER DRUG]**

In order to find Defendant guilty of this charge, you must find that the State has proved the following elements beyond a reasonable doubt:

1. The substance possessed was [drug], or any mixture containing [drug] [, or has a chemical structure substantially similar to [drug] or that was specifically designed to product an effect substantially similar to [drug]];
2. Defendant possessed the substance;
3. Defendant acted knowingly; and
4. Defendant possessed [amount] or more of the substance.

"Possession" includes actual possession and constructive possession. Actual possession means Defendant knowingly had direct physical control over the substance. Constructive possession means the substance was within Defendant's reasonable control, that is, in or about Defendant's person, premises, belongings, or vehicle. In other words, Defendant had constructive possession over the substance if Defendant had both the power and the intention, at a given time, to exercise control over the substance, either directly or through another

person. Possession may be sole or joint. If one person has actual or constructive possession of a thing, possession is sole. If two or more persons share actual or constructive possession over a thing, possession is joint. Possession is proven if you find beyond a reasonable doubt Defendant had actual or constructive possession, either alone or jointly with others.

"Knowingly" means Defendant knew or was aware Defendant possessed the substance. The State need not prove that Defendant had any knowledge of the weight or quantity of the substance. However, the State must prove beyond a reasonable doubt that the substance weighed a certain amount or was in a certain quantity. Knowledge may be inferred from the surrounding circumstances, considering whether a reasonable person in Defendant's circumstances would have had such knowledge.

SPECIAL CIRCUMSTANCE

The State must prove the following special circumstance beyond a reasonable doubt:

At the time Defendant possessed the substance with the intent to deliver the substance,

[Defendant was within 300 feet of a school.]

[Defendant was within 300 feet of a park.]

[Defendant was within 300 feet of a place of worship.]

[Defendant was an adult (age 18 or older) and the offense involved a juvenile (under the age of 18); and the juvenile was a co-conspirator or accomplice, or the juvenile was the intended or actual recipient of the substance; and Defendant was more than 4 years older than the juvenile.]

[the offense occurred in a vehicle.]

[Defendant intentionally prevented or attempted to prevent arrest by a law enforcement officer by using force or violence towards the officer.]

[Defendant fled in a vehicle from a law enforcement office while the officer was trying to arrest or detain Defendant, and Defendant created a substantial risk of physical injury to others.]

**[§4752(5) Drug Dealing - Aggravated Possession
Tier 2 Quantity with 2 Aggravating Factors]**

**DRUG DEALING: POSSESSION OF
[DESIGNER DRUG]**

In order to find Defendant guilty of this charge, you must find that the State has proved the following elements beyond a reasonable doubt:

1. The substance possessed was [drug], or any mixture containing [drug] [, or has a chemical structure substantially similar to [drug] or that was specifically designed to product an effect substantially similar to [drug]];
2. Defendant possessed the substance;
3. Defendant acted knowingly; and
4. Defendant possessed [amount] or more of the substance.

"Possession" includes actual possession and constructive possession. Actual possession means Defendant knowingly had direct physical control over the substance. Constructive possession means the substance was within Defendant's reasonable control, that is, in or about Defendant's person, premises, belongings, or vehicle. In other words, Defendant had constructive possession over the substance if Defendant had both the power and the intention, at a given time, to exercise control over the substance, either directly or through another

person. Possession may be sole or joint. If one person has actual or constructive possession of a thing, possession is sole. If two or more persons share actual or constructive possession over a thing, possession is joint. Possession is proven if you find beyond a reasonable doubt Defendant had actual or constructive possession, either alone or jointly with others.

"Knowingly" means Defendant knew or was aware Defendant possessed the substance. The State need not prove that Defendant had any knowledge of the weight or quantity of the substance. However, the State must prove beyond a reasonable doubt that the substance weighed a certain amount or was in a certain quantity. Knowledge may be inferred from the surrounding circumstances, considering whether a reasonable person in Defendant's circumstances would have had such knowledge.

SPECIAL CIRCUMSTANCES

The State must prove the following special circumstances beyond a reasonable doubt:

At the time Defendant possessed the substance with the intent to deliver the substance,

[Defendant was within 300 feet of a school.]

[Defendant was within 300 feet of a park.]

[Defendant was within 300 feet of a place of worship.]

[Defendant was an adult (age 18 or older) and the offense involved a juvenile (under the age of 18); and the juvenile was a co-conspirator or accomplice, or the juvenile was the intended or actual recipient of the substance; and Defendant was more than 4 years older than the juvenile.]

[the offense occurred in a vehicle.]

[Defendant intentionally prevented or attempted to prevent arrest by a law enforcement officer by using force or violence towards the officer.]

[Defendant fled in a vehicle from a law enforcement office while the officer was trying to arrest or detain Defendant, and Defendant created a substantial risk of physical injury to others.]

[§4753(1) Drug Dealing - Aggravated Possession Manufacture, Delivery or Possession Tier 2 Quantity]

DRUG DEALING: POSSESSION WITH INTENT TO DELIVER [DESIGNER DRUG]

In order to find Defendant guilty of this charge, you must find that the State has proved the following elements beyond a reasonable doubt:

1. The substance possessed was [drug], or any mixture containing [drug] [, or has a chemical structure substantially similar to [drug] or that was specifically designed to product an effect substantially similar to [drug]];
2. Defendant possessed the substance;
3. Defendant acted knowingly;
4. Defendant possessed [amount] or more of the substance; and
5. When Defendant possessed the substance, Defendant had the intent to deliver it.

"Possession" includes actual possession and constructive possession. Actual possession means Defendant knowingly had direct physical control over the substance. Constructive possession means the substance was within Defendant's reasonable control, that is, in or about Defendant's person, premises, belongings, or vehicle. In other words, Defendant had constructive possession

over the substance if Defendant had both the power and the intention, at a given time, to exercise control over the substance, either directly or through another person. Possession may be sole or joint. If one person has actual or constructive possession of a thing, possession is sole. If two or more persons share actual or constructive possession over a thing, possession is joint. Possession is proven if you find beyond a reasonable doubt Defendant had actual or constructive possession, either alone or jointly with others.

"Knowingly" means Defendant knew or was aware Defendant possessed the substance. The State need not prove that Defendant had any knowledge of the weight or quantity of the substance. However, the State must prove beyond a reasonable doubt that the substance weighed a certain amount or was in a certain quantity. Knowledge may be inferred from the surrounding circumstances, considering whether a reasonable person in Defendant's circumstances would have had such knowledge.

"Deliver" means the actual, constructive or attempted transfer from one person to another of an illegal or prohibited drug, either directly or through another person.

**[§4753(2) Drug Dealing - Aggravated Possession
Manufacture, Delivery or Possession with Aggravating Factor]**

**DRUG DEALING: POSSESSION WITH INTENT TO DELIVER
[DESIGNER DRUG]**

In order to find Defendant guilty of this charge, you must find that the State has proved the following elements beyond a reasonable doubt:

1. The substance possessed was [drug], or any mixture containing [drug] [, or has a chemical structure substantially similar to [drug] or that was specifically designed to product an effect substantially similar to [drug]];
2. Defendant possessed the substance;
3. Defendant acted knowingly; and
4. When Defendant possessed the substance, Defendant had the intent to deliver it.

"Possession" includes actual possession and constructive possession. Actual possession means Defendant knowingly had direct physical control over the substance. Constructive possession means the substance was within Defendant's reasonable control, that is, in or about Defendant's person, premises, belongings, or vehicle. In other words, Defendant had constructive possession over the substance if Defendant had both the power and the intention, at a given

time, to exercise control over the substance, either directly or through another person. Possession may be sole or joint. If one person has actual or constructive possession of a thing, possession is sole. If two or more persons share actual or constructive possession over a thing, possession is joint. Possession is proven if you find beyond a reasonable doubt Defendant had actual or constructive possession, either alone or jointly with others.

"Knowingly" means Defendant knew or was aware Defendant possessed the substance. The State need not prove that Defendant had any knowledge of the weight or quantity of the substance. However, the State must prove beyond a reasonable doubt that the substance weighed a certain amount or was in a certain quantity. Knowledge may be inferred from the surrounding circumstances, considering whether a reasonable person in Defendant's circumstances would have had such knowledge.

"Deliver" means the actual, constructive or attempted transfer from one person to another of an illegal or prohibited drug, either directly or through another person.

SPECIAL CIRCUMSTANCE

The State must prove the following special circumstance beyond a reasonable doubt:

At the time Defendant possessed the substance with the intent to deliver the substance,

[Defendant was within 300 feet of a school.]

[Defendant was within 300 feet of a park.]

[Defendant was within 300 feet of a place of worship.]

[Defendant was an adult (age 18 or older) and the offense involved a juvenile (under the age of 18); and the juvenile was a co-conspirator or accomplice, or the juvenile was the intended or actual recipient of the substance; and Defendant was more than 4 years older than the juvenile.]

[the offense occurred in a vehicle.]

[Defendant intentionally prevented or attempted to prevent arrest by a law enforcement officer by using force or violence towards the officer.]

[Defendant fled in a vehicle from a law enforcement office while the officer was trying to arrest or detain Defendant, and Defendant created a substantial risk of physical injury to others.]

[§4753(3) Drug Dealing - Aggravated Possession Tier 4 Quantity]

DRUG DEALING: POSSESSION OF [DESIGNER DRUG]

In order to find Defendant guilty of this charge, you must find that the State has proved the following elements beyond a reasonable doubt:

1. The substance possessed was [drug], or any mixture containing [drug] [, or has a chemical structure substantially similar to [drug] or that was specifically designed to product an effect substantially similar to [drug]];
2. Defendant possessed the substance;
3. Defendant acted knowingly; and
4. Defendant possessed [amount] or more of the substance.

"Possession" includes actual possession and constructive possession. Actual possession means Defendant knowingly had direct physical control over the substance. Constructive possession means the substance was within Defendant's reasonable control, that is, in or about Defendant's person, premises, belongings, or vehicle. In other words, Defendant had constructive possession over the substance if Defendant had both the power and the intention, at a given time, to exercise control over the substance, either directly or through another person. Possession may be sole or joint. If one person has actual or constructive

possession of a thing, possession is sole. If two or more persons share actual or constructive possession over a thing, possession is joint. Possession is proven if you find beyond a reasonable doubt Defendant had actual or constructive possession, either alone or jointly with others.

"Knowingly" means Defendant knew or was aware Defendant possessed the substance. The State need not prove that Defendant had any knowledge of the weight or quantity of the substance. However, the State must prove beyond a reasonable doubt that the substance weighed a certain amount or was in a certain quantity. Knowledge may be inferred from the surrounding circumstances, considering whether a reasonable person in Defendant's circumstances would have had such knowledge.

**[§4753(4) Drug Dealing - Aggravated Possession
Tier 2 Quantity with Aggravating Factor]**

**DRUG DEALING: POSSESSION OF
[DESIGNER DRUG]**

In order to find Defendant guilty of this charge, you must find that the State has proved the following elements beyond a reasonable doubt:

1. The substance possessed was [drug], or any mixture containing [drug] [, or has a chemical structure substantially similar to [drug] or that was specifically designed to product an effect substantially similar to [drug]];
2. Defendant possessed the substance;
3. Defendant acted knowingly; and
4. Defendant possessed [amount] or more of the substance.

"Possession" includes actual possession and constructive possession. Actual possession means Defendant knowingly had direct physical control over the substance. Constructive possession means the substance was within Defendant's reasonable control, that is, in or about Defendant's person, premises, belongings, or vehicle. In other words, Defendant had constructive possession over the substance if Defendant had both the power and the intention, at a given time, to exercise control over the substance, either directly or through another

person. Possession may be sole or joint. If one person has actual or constructive possession of a thing, possession is sole. If two or more persons share actual or constructive possession over a thing, possession is joint. Possession is proven if you find beyond a reasonable doubt Defendant had actual or constructive possession, either alone or jointly with others.

"Knowingly" means Defendant knew or was aware Defendant possessed the substance. The State need not prove that Defendant had any knowledge of the weight or quantity of the substance. However, the State must prove beyond a reasonable doubt that the substance weighed a certain amount or was in a certain quantity. Knowledge may be inferred from the surrounding circumstances, considering whether a reasonable person in Defendant's circumstances would have had such knowledge.

SPECIAL CIRCUMSTANCE

The State must prove the following special circumstance beyond a reasonable doubt:

At the time Defendant possessed the substance with the intent to deliver the substance,

[Defendant was within 300 feet of a school.]

[Defendant was within 300 feet of a park.]

[Defendant was within 300 feet of a place of worship.]

[Defendant was an adult (age 18 or older) and the offense involved a juvenile (under the age of 18); and the juvenile was a co-conspirator or accomplice, or the juvenile was the intended or actual recipient of the substance; and Defendant was more than 4 years older than the juvenile.]

[the offense occurred in a vehicle.]

[Defendant intentionally prevented or attempted to prevent arrest by a law enforcement officer by using force or violence towards the officer.]

[Defendant fled in a vehicle from a law enforcement office while the officer was trying to arrest or detain Defendant, and Defendant created a substantial risk of physical injury to others.]

**[§4753(5) Drug Dealing - Aggravated Possession
Tier 1 Quantity with 2 Aggravating Factors]**

DRUG DEALING: POSSESSION OF [DESIGNER DRUG]

In order to find Defendant guilty of this charge, you must find that the State has proved the following elements beyond a reasonable doubt:

1. The substance possessed was [drug], or any mixture containing [drug] [, or has a chemical structure substantially similar to [drug] or that was specifically designed to product an effect substantially similar to [drug]];
2. Defendant possessed the substance;
3. Defendant acted knowingly; and
4. Defendant possessed [amount] or more of the substance.

"Possession" includes actual possession and constructive possession. Actual possession means Defendant knowingly had direct physical control over the substance. Constructive possession means the substance was within Defendant's reasonable control, that is, in or about Defendant's person, premises, belongings, or vehicle. In other words, Defendant had constructive possession over the substance if Defendant had both the power and the intention, at a given time, to exercise control over the substance, either directly or through another

person. Possession may be sole or joint. If one person has actual or constructive possession of a thing, possession is sole. If two or more persons share actual or constructive possession over a thing, possession is joint. Possession is proven if you find beyond a reasonable doubt Defendant had actual or constructive possession, either alone or jointly with others.

"Knowingly" means Defendant knew or was aware Defendant possessed the substance. The State need not prove that Defendant had any knowledge of the weight or quantity of the substance. However, the State must prove beyond a reasonable doubt that the substance weighed a certain amount or was in a certain quantity. Knowledge may be inferred from the surrounding circumstances, considering whether a reasonable person in Defendant's circumstances would have had such knowledge.

SPECIAL CIRCUMSTANCES

The State must prove the following special circumstances beyond a reasonable doubt:

At the time Defendant possessed the substance with the intent to deliver the substance,

[Defendant was within 300 feet of a school.]

[Defendant was within 300 feet of a park.]

[Defendant was within 300 feet of a place of worship.]

[Defendant was an adult (age 18 or older) and the offense involved a juvenile (under the age of 18); and the juvenile was a co-conspirator or accomplice, or the juvenile was the intended or actual recipient of the substance; and Defendant was more than 4 years older than the juvenile.]

[the offense occurred in a vehicle.]

[Defendant intentionally prevented or attempted to prevent arrest by a law enforcement officer by using force or violence towards the officer.]

[Defendant fled in a vehicle from a law enforcement office while the officer was trying to arrest or detain Defendant, and Defendant created a substantial risk of physical injury to others.]

**[§4754(1) Drug Dealing - Aggravated Possession
Manufacture, Delivery or Possession]**

DRUG DEALING: POSSESSION WITH INTENT TO DELIVER [DESIGNER DRUG]

In order to find Defendant guilty of this charge, you must find that the State has proved the following elements beyond a reasonable doubt:

1. The substance possessed was [drug], or any mixture containing [drug] [, or has a chemical structure substantially similar to [drug] or that was specifically designed to product an effect substantially similar to [drug]];
2. Defendant possessed the substance;
3. Defendant acted knowingly; and
4. When Defendant possessed the substance, Defendant had the intent to deliver it.

"Possession" includes actual possession and constructive possession. Actual possession means Defendant knowingly had direct physical control over the substance. Constructive possession means the substance was within Defendant's reasonable control, that is, in or about Defendant's person, premises, belongings, or vehicle. In other words, Defendant had constructive possession over the substance if Defendant had both the power and the intention, at a given time, to

exercise control over the substance, either directly or through another person. Possession may be sole or joint. If one person has actual or constructive possession of a thing, possession is sole. If two or more persons share actual or constructive possession over a thing, possession is joint. Possession is proven if you find beyond a reasonable doubt Defendant had actual or constructive possession, either alone or jointly with others.

"Knowingly" means Defendant knew or was aware Defendant possessed the substance. The State need not prove that Defendant had any knowledge of the weight or quantity of the substance. However, the State must prove beyond a reasonable doubt that the substance weighed a certain amount or was in a certain quantity. Knowledge may be inferred from the surrounding circumstances, considering whether a reasonable person in Defendant's circumstances would have had such knowledge.

"Deliver" means the actual, constructive or attempted transfer from one person to another of an illegal or prohibited drug, either directly or through another person.

[§4753(2) Drug Dealing - Aggravated Possession Tier 3 Quantity]

DRUG DEALING: POSSESSION OF
[DESIGNER DRUG]

In order to find Defendant guilty of this charge, you must find that the State has proved the following elements beyond a reasonable doubt:

1. The substance possessed was [drug], or any mixture containing [drug] [, or has a chemical structure substantially similar to [drug] or that was specifically designed to product an effect substantially similar to [drug]];
2. Defendant possessed the substance;
3. Defendant acted knowingly; and
4. Defendant possessed [amount] or more of the substance.

"Possession" includes actual possession and constructive possession. Actual possession means Defendant knowingly had direct physical control over the substance. Constructive possession means the substance was within Defendant's reasonable control, that is, in or about Defendant's person, premises, belongings, or vehicle. In other words, Defendant had constructive possession over the substance if Defendant had both the power and the intention, at a given time, to exercise control over the substance, either directly or through another person. Possession may be sole or joint. If one person has actual or constructive

possession of a thing, possession is sole. If two or more persons share actual or constructive possession over a thing, possession is joint. Possession is proven if you find beyond a reasonable doubt Defendant had actual or constructive possession, either alone or jointly with others.

"Knowingly" means Defendant knew or was aware Defendant possessed the substance. The State need not prove that Defendant had any knowledge of the weight or quantity of the substance. However, the State must prove beyond a reasonable doubt that the substance weighed a certain amount or was in a certain quantity. Knowledge may be inferred from the surrounding circumstances, considering whether a reasonable person in Defendant's circumstances would have had such knowledge.

**[§4753(3) Drug Dealing - Aggravated Possession
Tier 1 Quantity with Aggravating Factor]**

**DRUG DEALING: POSSESSION OF
[DESIGNER DRUG]**

In order to find Defendant guilty of this charge, you must find that the State has proved the following elements beyond a reasonable doubt:

1. The substance possessed was [drug], or any mixture containing [drug] [, or has a chemical structure substantially similar to [drug] or that was specifically designed to product an effect substantially similar to [drug]];
2. Defendant possessed the substance;
3. Defendant acted knowingly; and
4. Defendant possessed [amount] or more of the substance.

"Possession" includes actual possession and constructive possession. Actual possession means Defendant knowingly had direct physical control over the substance. Constructive possession means the substance was within Defendant's reasonable control, that is, in or about Defendant's person, premises, belongings, or vehicle. In other words, Defendant had constructive possession over the substance if Defendant had both the power and the intention, at a given time, to exercise control over the substance, either directly or through another person.

Possession may be sole or joint. If one person has actual or constructive possession of a thing, possession is sole. If two or more persons share actual or constructive possession over a thing, possession is joint. Possession is proven if you find beyond a reasonable doubt Defendant had actual or constructive possession, either alone or jointly with others.

"Knowingly" means Defendant knew or was aware Defendant possessed the substance. The State need not prove that Defendant had any knowledge of the weight or quantity of the substance. However, the State must prove beyond a reasonable doubt that the substance weighed a certain amount or was in a certain quantity. Knowledge may be inferred from the surrounding circumstances, considering whether a reasonable person in Defendant's circumstances would have had such knowledge.

SPECIAL CIRCUMSTANCE

The State must prove the following special circumstance beyond a reasonable doubt:

At the time Defendant possessed the substance with the intent to deliver the substance,

[Defendant was within 300 feet of a school.]

[Defendant was within 300 feet of a park.]

[Defendant was within 300 feet of a place of worship.]

[Defendant was an adult (age 18 or older) and the offense involved a juvenile (under the age of 18); and the juvenile was a co-conspirator or accomplice, or the juvenile was the intended or actual recipient of the substance; and Defendant was more than 4 years older than the juvenile.]

[the offense occurred in a vehicle.]

[Defendant intentionally prevented or attempted to prevent arrest by a law enforcement officer by using force or violence towards the officer.]

[Defendant fled in a vehicle from a law enforcement office while the officer was trying to arrest or detain Defendant, and Defendant created a substantial risk of physical injury to others.]

[§4755 Aggravated Possession - Tier 2 Quantity]

<u>AGGRAVATED POSSESSION OF [DRUG]</u>

In order to find Defendant guilty of this charge, you must find that the State has proved the following elements beyond a reasonable doubt:

1. The substance possessed was [drug], or any mixture containing [drug] [, or has a chemical structure substantially similar to [drug] or that was specifically designed to product an effect substantially similar to [drug]];
2. Defendant possessed the substance;
3. Defendant acted knowingly; and
4. Defendant possessed [amount] or more of the substance.

"Possession" includes actual possession and constructive possession. Actual possession means Defendant knowingly had direct physical control over the substance. Constructive possession means the substance was within Defendant's reasonable control, that is, in or about Defendant's person, premises, belongings, or vehicle. In other words, Defendant had constructive possession over the substance if Defendant had both the power and the intention, at a given time, to exercise control over the substance, either directly or through another person. Possession may be sole or joint. If one person has actual or constructive

possession of a thing, possession is sole. If two or more persons share actual or constructive possession over a thing, possession is joint. Possession is proven if you find beyond a reasonable doubt Defendant had actual or constructive possession, either alone or jointly with others.

"Knowingly" means Defendant knew or was aware Defendant possessed the substance. The State need not prove that Defendant had any knowledge of the weight or quantity of the substance. However, the State must prove beyond a reasonable doubt that the substance weighed a certain amount or was in a certain quantity. Knowledge may be inferred from the surrounding circumstances, considering whether a reasonable person in Defendant's circumstances would have had such knowledge.

[§4756 Aggravated Possession - Tier 1 Quantity]

<u>AGGRAVATED POSSESSION OF [DRUG]</u>

In order to find Defendant guilty of this charge, you must find that the State has proved the following elements beyond a reasonable doubt:

1. The substance possessed was [drug], or any mixture containing [drug] [, or has a chemical structure substantially similar to [drug] or that was specifically designed to product an effect substantially similar to [drug]];
2. Defendant possessed the substance;
3. Defendant acted knowingly; and
4. Defendant possessed [amount] or more of the substance.

"Possession" includes actual possession and constructive possession. Actual possession means Defendant knowingly had direct physical control over the substance. Constructive possession means the substance was within Defendant's reasonable control, that is, in or about Defendant's person, premises, belongings, or vehicle. In other words, Defendant had constructive possession over the substance if Defendant had both the power and the intention, at a given time, to exercise control over the substance, either directly or through another person. Possession may be sole or joint. If one person has actual or constructive

possession of a thing, possession is sole. If two or more persons share actual or constructive possession over a thing, possession is joint. Possession is proven if you find beyond a reasonable doubt Defendant had actual or constructive possession, either alone or jointly with others.

"Knowingly" means Defendant knew or was aware Defendant possessed the substance. The State need not prove that Defendant had any knowledge of the weight or quantity of the substance. However, the State must prove beyond a reasonable doubt that the substance weighed a certain amount or was in a certain quantity. Knowledge may be inferred from the surrounding circumstances, considering whether a reasonable person in Defendant's circumstances would have had such knowledge.

[§4763(b) Misdemeanor Possession]

<u>POSSESSION OF [DRUG]</u>

In order to find Defendant guilty of this charge, you must find that the State has proved the following elements beyond a reasonable doubt:

1. The substance possessed was [drug], or any mixture containing [drug] [, or has a chemical structure substantially similar to [drug] or that was specifically designed to product an effect substantially similar to [drug]];
2. Defendant possessed the substance; and
3. Defendant acted knowingly.

"Possession" includes actual possession and constructive possession. Actual possession means Defendant knowingly had direct physical control over the substance. Constructive possession means the substance was within Defendant's reasonable control, that is, in or about Defendant's person, premises, belongings, or vehicle. In other words, Defendant had constructive possession over the substance if Defendant had both the power and the intention, at a given time, to exercise control over the substance, either directly or through another person. Possession may be sole or joint. If one person has actual or constructive possession of a thing, possession is sole. If two or more persons share actual or

constructive possession over a thing, possession is joint. Possession is proven if you find beyond a reasonable doubt Defendant had actual or constructive possession, either alone or jointly with others.

"Knowingly" means Defendant knew or was aware Defendant possessed the substance. The State need not prove that Defendant had any knowledge of the weight or quantity of the substance. However, the State must prove beyond a reasonable doubt that the substance weighed a certain amount or was in a certain quantity. Knowledge may be inferred from the surrounding circumstances, considering whether a reasonable person in Defendant's circumstances would have had such knowledge.

[§4763(c) Misdemeanor Possession with Aggravating Factor]

<u>POSSESSION OF [DRUG]</u>

In order to find Defendant guilty of this charge, you must find that the State has proved the following elements beyond a reasonable doubt:

1. The substance possessed was [drug], or any mixture containing [drug] [, or has a chemical structure substantially similar to [drug] or that was specifically designed to product an effect substantially similar to [drug]];
2. Defendant possessed the substance; and
3. Defendant acted knowingly.

"Possession" includes actual possession and constructive possession. Actual possession means Defendant knowingly had direct physical control over the substance. Constructive possession means the substance was within Defendant's reasonable control, that is, in or about Defendant's person, premises, belongings, or vehicle. In other words, Defendant had constructive possession over the substance if Defendant had both the power and the intention, at a given time, to exercise control over the substance, either directly or through another person. Possession may be sole or joint. If one person has actual or constructive possession of a thing, possession is sole. If two or more persons share actual or

constructive possession over a thing, possession is joint. Possession is proven if you find beyond a reasonable doubt Defendant had actual or constructive possession, either alone or jointly with others.

"Knowingly" means Defendant knew or was aware Defendant possessed the substance. The State need not prove that Defendant had any knowledge of the weight or quantity of the substance. However, the State must prove beyond a reasonable doubt that the substance weighed a certain amount or was in a certain quantity. Knowledge may be inferred from the surrounding circumstances, considering whether a reasonable person in Defendant's circumstances would have had such knowledge.

SPECIAL CIRCUMSTANCE

The State must prove the following special circumstance beyond a reasonable doubt:

At the time Defendant possessed the substance with the intent to deliver the substance,

[Defendant was within 300 feet of a school.]

[Defendant was within 300 feet of a park.]

[Defendant was within 300 feet of a place of worship.]

[Defendant was an adult (age 18 or older) and the offense involved a juvenile (under the age of 18); and the juvenile was a co-conspirator or

accomplice, or the juvenile was the intended or actual recipient of the substance; and Defendant was more than 4 years older than the juvenile.]

[the offense occurred in a vehicle.]

[Defendant intentionally prevented or attempted to prevent arrest by a law enforcement officer by using force or violence towards the officer.]

[Defendant fled in a vehicle from a law enforcement office while the officer was trying to arrest or detain Defendant, and Defendant created a substantial risk of physical injury to others.]

[§4764(a) Possession of Marijuana with Aggravating Factor]

POSSESSION OF MARIJUANA

In order to find Defendant guilty of this charge, you must find that the State has proved the following elements beyond a reasonable doubt:

1. The substance possessed was Marijuana;
2. Defendant possessed the substance; and
3. Defendant acted knowingly.

"Possession" includes actual possession and constructive possession. Actual possession means Defendant knowingly had direct physical control over the substance. Constructive possession means the substance was within Defendant's reasonable control, that is, in or about Defendant's person, premises, belongings, or vehicle. In other words, Defendant had constructive possession over the substance if Defendant had both the power and the intention, at a given time, to exercise control over the substance, either directly or through another person. Possession may be sole or joint. If one person has actual or constructive possession of a thing, possession is sole. If two or more persons share actual or constructive possession over a thing, possession is joint. Possession is proven if you find beyond a reasonable doubt Defendant had actual or constructive possession, either alone or jointly with others.

"Knowingly" means Defendant knew or was aware Defendant possessed the substance. The State need not prove that Defendant had any knowledge of the weight or quantity of the substance. However, the State must prove beyond a reasonable doubt that the substance weighed a certain amount or was in a certain quantity. Knowledge may be inferred from the surrounding circumstances, considering whether a reasonable person in Defendant's circumstances would have had such knowledge.

SPECIAL CIRCUMSTANCE

The State must prove the following special circumstance beyond a reasonable doubt:

At the time Defendant possessed the substance with the intent to deliver the substance,

[Defendant was within 300 feet of a school.]

[Defendant was within 300 feet of a park.]

[Defendant was within 300 feet of a place of worship.]

[Defendant was an adult (age 18 or older) and the offense involved a juvenile (under the age of 18); and the juvenile was a co-conspirator or accomplice, or the juvenile was the intended or actual recipient of the substance; and Defendant was more than 4 years older than the juvenile.]

[the offense occurred in a vehicle.]

[Defendant intentionally prevented or attempted to prevent arrest by a law enforcement officer by using force or violence towards the officer.]

[Defendant fled in a vehicle from a law enforcement office while the officer was trying to arrest or detain Defendant, and Defendant created a substantial risk of physical injury to others.]

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11.859 . . . . . *Larceny of Livestock*

11.860(a)(1) . . . . . *Possession of shoplifter's tools or instrument facilitating theft*

11.860(a)(2) . . . . . *Possession of shoplifter's tools or instrument facilitating theft*

11.861(b)(1)a . . . . . *Forgery in the First Degree*

11.861(b)(1)b . . . . . *Forgery in the First Degree*

11.861(b)(2)a . . . . . *Forgery in the Second Degree*

11.861(b)(2)b . . . . . *Forgery in the Second Degree*

11.861(b)(2)c . . . . . *Forgery in the Second Degree*

11.861(b)(2)d . . . . . *Forgery in the Second Degree*

11.861(b)(2)e . . . . . *Forgery in the Second Degree*

11.861(b)(3) . . . . . *Forgery - Class A Misdemeanor*

11.862(1) . . . . . *Possession of Forgery Devices*

11.862(2) . . . . . *Possession of Forgery Devices*

11.871(1) . . . . . *Falsifying Business Records*

11.871(2) . . . . . *Falsifying Business Records*

11.871(3) . . . . . *Falsifying Business Records*

11.871(4) . . . . . *Falsifying Business Records*

11.872 . . . . . *Falsifying Business Records [Affirmative Defense]*

11.873 . . . . . *Tampering with Public Records in the Second Degree*

11.876 . . . . . *Tampering with Public Records in the First Degree*

11.877 . . . . . *Offering a False Instrument for Filing*

11.878 . . . . . *Issuing a False Certificate*

11.881(1) . . . . . *Bribery [Employee/Agent]*

11.881(2) . . . . . *Bribery [Union Official]*

11.881(3) . . . . . *Bribery [Participant in Sporting Event]*

11.881(4) . . . . . *Bribery [Official in Sporting Event]*

11.882(1) . . . . . *Receiving a Bribe [Employee/Agent]*

11.882(2) . . . . . *Receiving a Bribe [Union Official]*

11.882(3) . . . . . *Receiving a Bribe [Participant in Sporting Event]*

11.882(4) . . . . . *Receiving a Bribe [Official in Sporting Event]*

11.891 . . . . . *Defrauding Secured Creditors*

11.892(1) . . . . . *Fraud in Insolvency*

11.892(2) . . . . . *Fraud in Insolvency*

11.892(3) . . . . . *Fraud in Insolvency*

11.892(4) . . . . . *Fraud in Insolvency*

11.893 . . . . . *Interference with Levied-Upon Property*

11.900(a)(1) . . . . . *Issuing a Bad Check*

11.900(a)(2) . . . . . *Issuing a Bad Check*

11.902 . . . . . *Issuing a Bad Check by Employee [Affirmative Defense]*

11.903(a)(1) . . . . . *Unlawful Use of Credit Card [Improper Use of a Card]*

11.903(a)(2) . . . . . *Unlawful Use of Credit Card [Improper Use of a Card]*

11.903(a)(3) . . . . . *Unlawful Use of Credit Card [Improper Use of a Card]*

11.903(a)(4) . . . . . *Unlawful Use of Credit Card [Improper Use of a Card]*

11.903(b)(1) . . . . . *Unlawful Use of Credit Card [Unlawful Sale or Transfer of a Card]*

11.903(b)(2) . . . . . *Unlawful Use of Credit Card [Unlawful Sale or Transfer of a Card]*

11.903A(a) . . . . . *Reencoder and Scanning Devices*

11.903A(b) . . . . . *Reencoder and Scanning Devices*

11.905 . . . . . *Intention and Ability to Meet Obligations [Affirmative Defense].*

11.906(1) . . . . . *Deceptive Business Practices*

11.906(2) . . . . . *Deceptive Business Practices*

11.906(3) . . . . . *Deceptive Business Practices*

11.906(4) . . . . . *Deceptive Business Practices*

11.906(5) . . . . . *Deceptive Business Practices*

11.906(6) . . . . . *Deceptive Business Practices*

11.906(7) . . . . . *Deceptive Business Practices*

11.907(1) . . . . . *Criminal Impersonation*

11.907(2) . . . . . *Criminal Impersonation*

11.907(3) . . . . . *Criminal Impersonation*

11.907A(1) . . . . . *Criminal Impersonation [Vehicular Accident]*

11.907A(2) . . . . . *Criminal Impersonation [Vehicular Accident]*

11.907B(a)(1) . . . . . *Criminal Impersonation [Police Officer]*

11.907B(a)(2) . . . . . *Criminal Impersonation [Police Officer]*

11.907B(b)(1) . . . . . *Criminal Impersonation [Police Officer]*

11.907B(b)(2) . . . . . *Criminal Impersonation [Police Officer]*

11.908 . . . . . *Unlawfully Concealing a Will*

11.909 . . . . . *Securing Execution of Documents by Deception*

11.910 . . . . . *Debt Adjusting*

11.911 . . . . . *Fraudulent Conveyance of Public Lands*

11.912 . . . . . *Fraudulent Receipt of Public Lands*

11.913(a)(1) . . . . . *Insurance Fraud*

11.913(a)(2) . . . . . *Insurance Fraud*

11.913A(a)(1) . . . . . *Health Care Fraud*

11.913A(a)(2) . . . . . *Health Care Fraud*

11.916(b)(1) . . . . . *Home Improvement Fraud*

11.916(b)(2) . . . . . *Home Improvement Fraud*

11.916(b)(3) . . . . . *Home Improvement Fraud*

11.916(a)(4)a . . . . . *Home Improvement Fraud*

11.916(a)(4)b . . . . . *Home Improvement Fraud*

11.916(b)(4)c . . . . . *Home Improvement Fraud*

11.916(b)(5) . . . . . *Home Improvement Fraud*

11.917(b)(1) . . . . . *New Home Construction Fraud*

11.917(b)(2) . . . . . *New Home Construction Fraud*

11.917(b)(3) . . . . . *New Home Construction Fraud*

11.918(a) . . . . . *Ticket Scalping*

11.920(a) . . . . . *Transfer of Recorded Sounds*

11.921(a) . . . . . *Sale of Transferred Recorded Sounds*

11.922(a) . . . . . *Improper Labeling*

11.923(1) . . . . . *Defense to Transfer of Recorded Sounds [Statutory Defense, Non-Affirmative]*

11.923(2) . . . . . *Defense to Transfer of Recorded Sounds [Statutory Defense, Non-Affirmative]*

11.923(3) . . . . . *Defense to Transfer of Recorded Sounds [Statutory Defense, Non-Affirmative]*

11.925(a) . . . . . *Invasion of Video Privacy*

11.926(a) . . . . . *Trademark Counterfeiting*

11.932 . . . . . *Unauthorized Access to a Computer System*

11.933 . . . . . *Theft of Computer Services*

11.934 . . . . . *Interruption of Computer Services*

11.935(1) . . . . . *Misuse of Computer System Information*

11.935(2)a . . . . . *Misuse of Computer System Information*

11.935(2)b . . . . . *Misuse of Computer System Information*

11.935(3) . . . . . *Misuse of Computer System Information*

11.935(4) . . . . . *Misuse of Computer System Information*

11.936 . . . . . *Destruction of Computer Equipment*

11.937(1) . . . . . *Unrequested or Unauthorized Electronic Mail or Use of Network or Software to Cause Same*

11.937(2) . . . . . *Unrequested or Unauthorized Electronic Mail or Use of Network or Software to Cause Same*

11.937(3)a . . . . . *Unrequested or Unauthorized Electronic Mail or Use of Network or Software to Cause Same*

11.937(3)b . . . . . *Unrequested or Unauthorized Electronic Mail or Use of Network or Software to Cause Same*

11.937(3)c . . . . . *Unrequested or Unauthorized Electronic Mail or Use of Network or Software to Cause Same*

11.938(a) . . . . . *Failure to Promptly Cease Electronic Communication Upon Request*

11.951(a)(1) . . . . . *Money Laundering*

11.951(a)(2) . . . . . *Money Laundering*

11.951(a)(3) . . . . . *Money Laundering*

11.951(a)(4) . . . . . *Money Laundering*

11.951(a)(5) . . . . . *Money Laundering*

11.1001 . . . . . *Bigamy*

11.1002(1) . . . . . *Bigamy [Statutory Defense, Non-Affirmative]*

11.1002(2) . . . . . *Bigamy [Statutory Defense, Non-Affirmative]*

11.1002(3) . . . . . *Bigamy [Statutory Defense, Non-Affirmative]*

11.1002(4) . . . . . *Bigamy [Statutory Defense, Non-Affirmative]*

11.1003 . . . . . *Bigamous Marriage Contracted Outside Delaware*

11.1004 . . . . . *Advertising Marriage in a Another State*

11.1100 . . . . . *Dealing in Children*

11.1101 . . . . . *Abandonment of Child*

11.1102(a)(1)a . . . . . *Endangering the Welfare of a Child [Physical or Mental Injury/Neglect]*

11.1102(a)(1)b . . . . . *Endangering the Welfare of a Child [Physical or Mental Injury/Neglect]*

11.1102(a)(2) . . . . . *Endangering the Welfare of a Child [Contributing to Delinquency]*

11.1102(a)(3) . . . . . *Endangering the Welfare of a Child [Run Away/Harboring]*

11.1102(a)(4) . . . . . *Endangering the Welfare of a Child [Witness to Violent Crime]*

11.1102(a)(5) . . . . . *Endangering the Welfare of a Child [DUI Passenger]*

11.1102(a)(6) . . . . *Endangering the Welfare of a Child [Presence of Child During Drug Offense]*

11.1102A . . . . . *Abandonment of a Baby at a Hospital as Defense*

11.1104 . . . . . *Treatment of Child by Prayer [Affirmative Defense]*

11.1105(a) . . . . . *Endangering the Welfare of an Incompetent Person*

11.1106(1) . . . . . *Unlawfully Dealing with a Child*

11.1106(2) . . . . . *Unlawfully Dealing with a Child*

11.1106(3) . . . . . *Unlawfully Dealing with a Child*

11.1106(4) . . . . . *Unlawfully Dealing with a Child*

11.1107 . . . . . *Endangering Children*

11.1108(1) . . . . . *Sexual Exploitation of a Child*

11.1108(2) . . . . . *Sexual Exploitation of a Child*

11.1108(3) . . . . . *Sexual Exploitation of a Child*

11.1108(4) . . . . . *Sexual Exploitation of a Child*

11.1109(1) . . . . . *Dealing in Child Pornography*

11.1109(2) . . . . . *Dealing in Child Pornography*

11.1109(3) . . . . . *Dealing in Child Pornography*

11.1109(4) . . . . . *Dealing in Child Pornography*

11.1109(5) . . . . . *Dealing in Child Pornography*

11.1111(1) . . . . . *Possession of Child Pornography*

11.1111(2) . . . . . *Possession of Child Pornography*

11.1112(a)(1) . . . . . *Sexual Offender Prohibited From School Zone*

11.1112(a)(2) . . . . . *Sexual Offender Prohibited From School Zone*

11.1112A(a)(1) . . . . . *Sexual Solicitation of a Child*

11.1112A(a)(2) . . . . . *Solicitation of a Child*

11.1112A(a)(3) . . . . . *Solicitation of a Child*

11.1113(a) . . . . . *Criminal Non-Support of a Minor Child*

11.1113(b) . . . . . *Criminal Non-Support of a Minor Child*

11.1113(b)(1) . . . . . *Criminal Non-Support of a Minor Child*

11.1113(b)(2) . . . . . *Criminal Non-Support of a Minor Child*

11.1113(b)(3) . . . . . *Criminal Non-Support of a Minor Child*

11.1114(a) . . . . . *Body-piercing, Tattooing or Branding, Consent for Minors*

11.1114(b) . . . . . *Body-piercing, Tattooing or Branding*

11.1114A(a) . . . . . *Tongue-splitting*

11.1114A(b)(1) . . . . . *Tongue-splitting*

11.1114A(b)(2) . . . . . *Tongue-splitting, Consent for Minors*

11.1116(a) . . . . . *Sale or Distribution of Tobacco Products to Minors*

11.1118(a) . . . . . *Distribution of Samples to Minors*

11.1119(a) . . . . . *Distribution of Cigarettes through Vending Machines*

11.1119(c) . . . . . *Distribution of Cigarettes through Vending Machines*

11.1124(a) . . . . . *Purchase or Receipt of Tobacco Products by Minors*

11.1201(1) . . . . . *Bribery*

11.1201(2) . . . . . *Bribery*

11.1202 . . . . . *Bribery [Statutory Defense, Non-Affirmative]*

11.1203(a) . . . . . *Receiving a Bribe*

11.1203(b) . . . . . *Receiving a Bribe*

11.1203(c) . . . . . *Receiving a Bribe*

11.1204 . . . . . *Theft or Coercion to Receiving Bribe*

11.1205 . . . . . *Giving Unlawful Gratuities*

11.1206 . . . . . *Receiving Unlawful Gratuities*

11.1207(1) . . . . . *Improper Influence*

11.1207(2) . . . . . *Improper Influence*

11.1208 . . . . . *Defect in Office No Defense*

11.1209(1) . . . . . *Harm [Definition]*

11.1209(2) . . . . . *Party Officer [Definition]*

11.1209(3) . . . . . *Personal Benefit [Definition]*

11.1209(4) . . . . . *Public Servant [Definition]*

11.1211(1) . . . . . *Official Misconduct*

11.1211(2) . . . . . *Official Misconduct*

11.1211(3) . . . . . *Official Misconduct*

11.1211(4) . . . . . *Official Misconduct*

11.1212(1) . . . . . *Profiteering*

11.1212(2) . . . . . *Profiteering*

11.1212(3) . . . . . *Profiteering*

11.1221 . . . . . *Perjury in the Third Degree*

11.1222 . . . . . *Perjury in the Second Degree*

11.1223 . . . . . *Perjury in the First Degree*

11.1224 . . . . . *Swear Falsely*

11.1231 . . . . . *Retraction of False Statement* ***[****Affirmative Defense****]***

11.1232 . . . . . *Competency, Mistaken Belief, Defective Swearing, Lack of Jurisdiction* ***[****No Defense in Perjury Prosecution****]***

11.1233 . . . . . *Making a False Written Statement*

11.1239(a) . . . . . *Wearing a Disguise During the Commission of a Felony*

11.1240(a) . . . . . *Terroristic Threatening of Public Officials*

11.1241 . . . . . *Refusing to Aid a Police Officer*

11.1243 . . . . . *Obstructing Fire-Fighting Operations*

11.1244(a)(1) . . . . . *Hindering Prosecution*

11.1244(a)(2) . . . . . *Hindering Prosecution*

11.1244(a)(3) . . . . . *Hindering Prosecution*

11.1244(a)(4) . . . . . *Hindering Prosecution*

11.1244(a)(5) . . . . . *Hindering Prosecution*

11.1244(a)(6) . . . . . *Hindering Prosecution*

11.1245(1) . . . . . *Falsely Reporting an Incident*

11.1245(2) . . . . . *Falsely Reporting an Incident*

11.1245(3)a . . . . . *Falsely Reporting an Incident*

11.1245(3)b . . . . . *Falsely Reporting an Incident*

11.1245(3)c . . . . . *Falsely Reporting an Incident*

11.1245(3)d . . . . . *Falsely Reporting an Incident*

11.1245(4) . . . . . *Falsely Reporting an Incident*

11.1245A(a) . . . . . *Providing a False Statement to Law Enforcement*

11.1246(1) . . . . . *Compounding a Crime*

11.1246(2) . . . . . *Compounding a Crime*

11.1247 . . . . . *Compounding a Crime [Affirmative Defense]*

11.1248(a) . . . . . *Obstructing the Control and Suppression of Rabies*

11.1249(a) . . . . . *Abetting the Violation of Driver's License Restrictions*

11.1249(b) . . . . . *Abetting the Violation of Driver's License Restrictions*

11.1249(c) . . . . . *Abetting the Violation of Driver's License Restrictions*

11.1250(a) . . . . . *Harassment of Law-Enforcement Animals*

11.1250(b)(1) . . . . . *Assault Against Law-Enforcement Animals in the Second Degree*

11.1250(c)(1) . . . . . *Assault Against Law-Enforcement Animals in the First Degree*

11.1251 . . . . . *Escape in the Third Degree*

11.1252 . . . . . *Escape in the Second Degree*

11.1253 . . . . . *Escape after Conviction*

11.1254(a) . . . . . *Assault in a Detention Facility [Physical Injury]*

11.1254(b) . . . . . *Assault in a Detention Facility [Serious Physical Injury]*

11.1254(c) . . . . . *Assault in a Detention Facility [Striking with Bodily Fluids]*

11.1256(1) . . . . . *Promoting Prison Contraband*

11.1256(2) . . . . . *Promoting Prison Contraband*

11.1256(3) . . . . . *Promoting Prison Contraband*

11.1257(a)(1) . . . . . *Resisting Arrest with Force or Violence*

11.1257(a)(2) . . . . . *Resisting Arrest*

11.1257(a)(3) . . . . . *Resisting Arrest*

11.1257(b) . . . . . *Resisting Arrest with Force or Violence*

11.1257A(a) . . . . . *Use of an Animal to Avoid Capture*

11.1257A(b)(1) . . . . . *Use of an Animal to Avoid Capture*

11.1257A(b)(2) . . . . . *Use of an Animal to Avoid Capture*

11.1259 . . . . . *Sexual Relations in a Detention Facility*

11.1260(1) . . . . . *Misuse of Prisoner Mail*

11.1260(2) . . . . . *Misuse of Prisoner Mail*

11.1261(1) . . . . . *Bribing a Witness*

11.1261(2) . . . . . *Bribing a Witness*

11.1262(1) . . . . . *Bribe Receiving by a Witness*

11.1262(2) . . . . . *Bribe Receiving by a Witness*

11.1263(1) . . . . . *Tampering with a Witness*

11.1263(2) . . . . . *Tampering with a Witness*

11.1263(3) . . . . . *Tampering with a Witness*

11.1263A(a)(1) . . . . . *Interfering with a Child Witness*

11.1263A(a)(2) . . . . . *Interfering with a Child Witness*

11.1263A(a)(3)a . . . . . *Interfering with a Child Witness*

11.1263A(a)(3)b . . . . . *Interfering with a Child Witness*

11.1263A(a)(4)a . . . . . *Interfering with a Child Witness*

11.1263A(a)(4)b . . . . . *Interfering with a Child Witness*

11.1264 . . . . . *Bribing a Juror*

11.1265 . . . . . *Bribe Receiving by a Juror*

11.1266(1) . . . . . *Tampering with a Juror*

11.1266(2) . . . . . *Tampering with a Juror*

11.1267(1) . . . . . *Misconduct by a Juror*

11.1267(2) . . . . . *Misconduct by a Juror*

11.1269(1)a . . . . . *Tampering with Physical Evidence*

11.1269(1)b . . . . . *Tampering with Physical Evidence*

11.1269(2) . . . . . *Tampering with Physical Evidence*

11.1271(1) . . . . . *Criminal Contempt*

11.1271(2) . . . . . *Criminal Contempt*

11.1271(3) . . . . . *Criminal Contempt*

11.1271(4) . . . . . *Criminal Contempt*

11.1271(5) . . . . . *Criminal Contempt*

11.1271(6) . . . . . *Criminal Contempt*

11.1271(7) . . . . . *Criminal Contempt*

11.1271(8) . . . . . *Criminal Contempt*

11.1271A(a) . . . . . *Criminal Contempt of Domestic Violence Protection Order*

11.1271A(c)(1) . . . . . *Criminal Contempt of Domestic Violence Protection Order*

11.1271A(c)(2) . . . . . *Criminal Contempt of Domestic Violence Protection Order*

11.1273 . . . . . *Unlawful Grand Jury Disclosure*

11.1301(1)a . . . . . *Disorderly Conduct*

11.1301(1)b . . . . . *Disorderly Conduct*

11.1301(1)c . . . . . *Disorderly Conduct*

11.1301(1)d . . . . . *Disorderly Conduct*

11.1301(1)e . . . . . *Disorderly Conduct*

11.1301(1)f . . . . . *Disorderly Conduct*

11.1301(1)g . . . . . *Disorderly Conduct*

11.1301(2) . . . . . *Disorderly Conduct*

11.1302(1) . . . . . *Riot*

11.1302(2) . . . . . *Riot*

11.1302(3) . . . . . *Riot*

11.1303(a)(1) . . . . . *Disorderly conduct; Funeral or Memorial Service*

11.1303(a)(2) . . . . . *Disorderly conduct; Funeral or Memorial Service*

11.1304(a)(1) . . . . . *Hate Crimes*

11.1304(a)(2) . . . . . *Hate Crimes*

11.1311(a)(1) . . . . . *Harassment*

11.1311(a)(2) . . . . . *Harassment*

11.1311(a)(3) . . . . . *Harassment*

11.1311(a)(4) . . . . . *Harassment*

11.1311(a)(5) . . . . . *Harassment*

11.1312(a)(1) . . . . . *Stalking*

11.1312(a)(2) . . . . . *Stalking*

11.1312(i) . . . . . *Stalking* ***[****Affirmative Defense****]***

11.1313(b)(1) . . . . . *Malicious Interference of Emergency Telephone Calls*

11.1313(b)(2) . . . . . *Malicious Interference of Emergency Telephone Calls*

11.1315 . . . . . *Public Intoxication*

11.1320 . . . . . *Loitering on Property of a State-Supported [School, College or University]*

11.1321(1) . . . . . *Loitering*

11.1321(2) . . . . . *Loitering*

11.1321(3) . . . . . *Loitering*

11.1321(4) . . . . . *Loitering*

11.1321(5) . . . . . *Loitering*

11.1321(6) . . . . . *Loitering*

11.1322(1) . . . . . *Criminal Nuisance*

11.1322(2) . . . . . *Criminal Nuisance*

11.1323 . . . . . *Obstructing Public Passages*

11.1324 . . . . . *Obstructing Ingress to or Egress from Public Buildings*

11.1325(b)(1) . . . . . *Cruelty to Animals*

11.1325(b)(2) . . . . . *Cruelty to Animals*

11.1325(b)(3) . . . . . *Cruelty to Animals*

11.1325(b)(4) . . . . . *Cruelty to Animals*

11.1325(b)(5) . . . . . *Cruelty to Animals*

11.1325A(a)(1) . . . . . *Unlawful Trade in Dog or Cat By-products*

11.1325A(b)(1) . . . . . *Unlawful Trade in Dog or Cat By-products*

11.1326(a) . . . . . *Animals [Fighting or Baiting]*

11.1326(b) . . . . . *Animals [Fighting or Baiting]*

11.1326(c) . . . . . *Animals [Fighting or Baiting]*

11.1327 . . . . . *Maintaining a Dangerous Animal*

11.1330 . . . . . *Smoking on Trolleys and Buses*

11.1331 . . . . . *Desecration*

11.1332 . . . . . *Abusing a Corpse*

11.1333(b) . . . . . *Trading in Human Remains and Associated Funerary Objects*

11.1335(a)(1) . . . . . *Violation of Privacy*

11.1335(a)(2) . . . . . *Violation of Privacy*

11.1335(a)(3) . . . . . *Violation of Privacy*

11.1335(a)(4) . . . . . *Violation of Privacy*

11.1335(a)(5) . . . . . *Violation of Privacy*

11.1335(a)(6) . . . . . *Violation of Privacy*

11.1335(a)(7) . . . . . *Violation of Privacy*

11.1335(a)(8) . . . . . *Violation of Privacy*

11.1338(b) . . . . . *[Manufacture/Transfer/Use/Possess/Transport] of [Bomb/Incendiary Device/Molotov Cocktail/Explosive Device]*

11.1339(a)(1) . . . . . *Adulteration*

11.1339(a)(1) . . . . . *Adulteration [Causing Physical Injury/Illness]*

11.1339(a)(1) . . . . . *Adulteration [Causing Death]*

11.1340 . . . . . *Desecration of Burial Place*

11.1341 . . . . . *Lewdness*

11.1342(a)(1) . . . . . *Prostitution*

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